

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Thursday, March 12, 2015

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Siddoway, Vice Chairman Johnson, Senators McKenzie, Rice, Vick, Bayer, Guthrie, Stennett and Burgoyne

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Siddoway** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

**MINUTES APPROVAL:** **Senator Guthrie** moved to approve the Minutes of February 17, 2015. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Burgoyne** moved to approve the Minutes of February 26, 2015. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator McKenzie** moved to approve the Minutes of March 3, 2015. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

**H 172** **Jeff Sayer**, Director of the Department of Commerce (Commerce), presented **H 172** and discussed the purpose of this bill. He said since becoming effective July 1, 2014, the Idaho Tax Reimbursement Incentive (TRI) has proven very effective in helping existing companies expand, and it is attracting new companies to the State. The unexpected activity has enabled the Commerce team to see a wide variety of scenarios and situations where the application process and the corresponding rules have all been tested and put into practice. From those varied scenarios, the Commerce team has identified certain parts of the statute that need to be modified to more accurately implement the statute. **H 172** addresses those necessary changes.

The summary of changes are:

- Clarify definitions to ensure projects are held accountable for bringing higher paying jobs.
- Clarify the affiliation with the municipalities who partner on the projects.
- Correct minor descriptions such as an affidavit to letter and calendar year to tax year.
- Moving clauses to more appropriate sections of the statute.

The key is that these revisions do not change the original scope or intent of the bill, nor do they materially change the requirements in the bill. Instead, these changes respond to difficulties encountered during implementation of the statute and help Commerce move forward with more clarity.

**Mr. Sayer** reported these changes are not anticipated to create any variations to the proposed eligibility of projects applying for the TRI, and as a result, there is not an anticipated fiscal impact.

A lengthy discussion ensued concerning **H 172** and the TRI. **Senators Bayer, Guthrie, Burgoyne, Vick, Rice, Stennett** and **Johnson** submitted questions to Mr. Sayer in efforts to clarify.

**MOTION:**

**Senator McKenzie** moved to send **H 172** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**. **Senator Johnson** requested to be recorded as having voted nay.

**H 209**

**Jason Kreizenbeck**, President of Lobby Idaho, presented **H 209** and said this legislation represents several months worth of work that started with the rulemaking process taken on by the Tax Commission last summer and fall on last year's HB 598 dealing with "remotely accessed computer software", or the Cloud Services bill. **H 209** is one more clarification to this bill. **Mr. Kreizenbeck** reported that the purpose of this proposal is to amend Idaho Code § 63-3616 revising the definition of "Tangible Personal Property" to clarify that the purchaser of digital music, digital books, digital games or digital videos must be granted a "permanent right to use" in order to be subject to the Idaho Sales and Use Tax, regardless of the method of delivery. It clarifies that if the right to use digital music, digital books, digital videos or digital games is conditioned upon continued payment from the purchaser, then it is a subscription to a service and is not a "permanent right to use" and is therefore not subject to the Idaho Sales and Use Tax.

This change is necessary to clarify that online-based subscription services like Netflix, Pandora, and Spotify are services because they do not allow the end user to keep, copy, or permanently use content and are therefore not subject to the Idaho Sales and Use Tax. If an end user is granted a "permanent right to use" digital content, regardless of the method of delivery, then it is subject to the Sales and Use Tax and fits under the description of tangible personal property that was modified last session as part of H 598.

**H 209** also removes the definition of "digital videos" in an effort to clarify that broadcast television services, regardless of method of delivery, are also not subject to the Idaho Sales and Use Tax. The current definition of "digital videos" had references to "live broadcasts" and "television or cable broadcasts" as exempt from this section, but it did not include a reference to "satellite broadcasts." There was an attempt to clarify this during the rulemaking process, but the Tax Commission said that a legislative fix was needed, despite the fact that such services had never previously been subject to the Idaho Sales and Use Tax.

**H 209** also has an emergency clause and will be in effect on and after April 1, 2015 if adopted. This date was selected due to the fact that Sales and Use Tax is collected on a monthly basis. The fiscal impact of **H 209** is estimated to be \$331,875 to the General Fund from sales tax payments in fiscal year 2015, as the estimated changes could have an annual impact as high as \$1,327,500 to the General Fund. Several companies submitted comments to the Idaho Tax Commission during the rulemaking process stating that last year's H 598 did not grant the Tax Commission the ability to levy a new tax on online subscription services because they were and remain "services" that are not taxed in Idaho.

**Mr. Kreizenbeck** said **H 209** is intended to put speculation that tax could be applied to streaming services and other services to rest. He reported that the larger fiscal impact number of \$1,327,500 annually is based mainly on the levying of a tax that some would argue the Tax Commission was not granted legislative authority to do. In addition, while it could have a \$331,875 fiscal impact to the General Fund in FY 2015, **H 209** does not order a refund of an estimated \$1.125 million that may have been collected in Sales and Use Tax under this section so far.

**Mr. Kreizenbeck** referenced a letter from the Tax Commission (see attachment 1) that he wanted included in the record. The letter, dated March 4, 2015, explains how the Tax Commission interprets **H 209** and how it would apply if approved by the Legislature. This letter was an important submission for some of the advocates who worked on the rules for H 598 last year and commented on different versions

on **H 209** as it was a work in progress.

**Mr. Kreizenbeck** stated last session when the Legislature approved H 598 an important tax policy was set for both the software industry and all Idaho businesses that use software. That policy recognized how much this industry and the delivery of these products and services had changed with new technology. It was an important modernization of the Idaho Tax Code. In setting such a policy, the Legislature also wanted to make it clear that the current taxes applied to software defined as "entertainment" in the form of digital music, digital books, digital games or digital videos would remain in tact to keep these products in parity with the same products that could be purchased in a retail outlet in the form of CDs, DVDs, Blue Ray discs, books and video games.

There is already a well-defined system in place to levy and collect sales tax on these types of transactions, which will remain preserved with **H 209**. He stated that what the Legislature did not do with the passage of H 598 was create a new tax on traditional broadcast television services in its various forms or on other services defined as "entertainment" in the statute.

The Idaho Tax Commission indicated through the rulemaking process on H 598 that this distinction was not clear, and they needed a clear line to be created in the Idaho Code. **H 209** is language negotiated, proposed and agreed upon by the Tax Commission to make this important policy distinction.

**Mr. Kreizenbeck** asked that the Committee send **H 209** to the Senate floor with a do pass recommendation.

**Senator Burgoyne** asked a question regarding the fiscal note and if the State collected any money. **Mr. Kreizenbeck** said the fiscal note was developed in conjunction with the Tax Commission and said he couldn't say for sure if the money had actually been collected or remitted to the State. Estimations are with the changes tied to the previous rules reviewed that related to H 598 of last year. If those were put into place, it could collect as much as 1.5 million dollars. Based on that assumption the fiscal note was developed.

**Senator Rice** asked if his understanding was correct that the fiscal note was speculation. **Mr. Kreizenbeck** replied that he thought it was an honest effort to put a number on what the impact of the policy was that the Tax Commission was developing through rules.

- TESTIMONY:** **Ron Williams**, Idaho Cable Telecommunication Association, said he was concerned about a few changes, but the new language in **H 209** had clarified the concerns he had.
- MOTION:** **Senator Vick** moved to send **H 209** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
- ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:15 p.m.

---

Senator Siddoway  
Chair

---

Amanda McLennan  
Secretary