

Senate Local Government & Taxation Committee

Minutes
2009



MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 15, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators McKenzie, Jorgenson, Corder, McKague, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Stegner

CONVENED: **Chairman Hill** called the meeting to order at 3:05 p.m. on Thursday, January 15, 2009, with a quorum present.

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.

MINUTES: **Chairman Hill** welcomed two new members of the Committee, Senator Jorgenson and Senator Werk and page Porter Chelson. **Mr. Chelson** provided a brief biography and stated that he is the second person in his family to be a page for the Legislature. **Chairman Hill** announced that the order of the day was to begin the rules review process.

Vice Chairman Heinrich stated that three sections would be completed at this meeting. Tuesday will focus on Property Tax Administrative Rules and Administration and Enforcement Rules. On Wednesday, Senator Jorgenson will cover the Income Tax Rules.

Chairman Hill turned the gavel over to **Vice Chairman Heinrich** to conduct the rules review.

DOCKET NO. 35-0102-0801 Sales Tax Administrative Rules.
Senator McKague introduced **Jim Husted**, Idaho State Tax Commission.

Rule 014 states that contractors should not charge sales tax to the homeowner for installed real property improvements such as, but not limited to, built-in appliances, carpet, and fencing. The contractor is the consumer and must pay sales or use tax on all purchases of those materials.

Chairman Hill asked what was the practical effect of this rule. **Mr. Husted** responded that they had been getting requests for refunds because contractors had charged sales tax for items that were not personal property but a part of the real property. This rule clarifies which items sales tax can be collected on and which items shouldn't have sales tax collected.

Chairman Hill asked if people are trying to “get out of paying the sales tax?” If the contractor paid the sales tax they would pass that cost onto the buyer anyway – where is the problem? **Mr. Husted** said there wasn’t any intentional intent to avoid the tax, only a misunderstanding. This is only to ensure that everyone is following the process correctly. **Chairman Hill** stated that it seems to be in conflict with what is defined as real and personal property for purposes of the property tax. That rule states that anything that can be removed without significantly defacing the property is considered personal property. **Ted Spangler**, Idaho State Tax Commission, explained that this rule is not changing anything within the sales tax rules and these practices are long standing. This effort is to set these practices specifically in the rules so there is no confusion for the contractor as to when sales tax should be paid and collected and when it should not. The final outcome will be to end up with definitions of personal property for property tax that are not inconsistent with the definition for personal property for sales tax.

Senator Jorgenson summarized the questions that this rule seems to create:

- Enforcement.

Mr. Husted: Usually the buyer contacts the Tax Commission requesting a refund.

- Interpretation—who does it and how is it determined.

- Determination of residential versus commercial.

Mr. Husted: A business in the home would be treated as residential. These rules are limited to residential.

- Origin of purchase.

Mr. Husted: When buying out of state or over the internet there is a use tax that should be paid.

Senator Jorgenson asked what the refund volume was and is the state making these refunds. **Mr. Husted** said he would check with the audit staff to get the volume numbers. The Tax Commission is making refunds when an application is made and sales tax has been paid incorrectly.

Senator Bilyeu asked how the sales tax is included when a home is sold.

Mr. Husted answered that when real property is purchased, the contractor who installed the fixtures should not be charging sales tax but he should pay sales tax when he buys the materials or fixtures for that home. The contractor can recover that as part of his cost but he should not be itemizing and billing it separately as sales tax.

Senator McKague questioned whether or not the contractor was really the consumer since they are selling the product. **Mr. Husted** stated that legally, they are the consumer because they are defined as such even though they will not be the end user. The sales tax act puts the liability for the sale between the general supplier and the contractor.

Chairman Hill summarized that under the current law the contractor buys materials for a home and pays sales tax on those materials and then sells the home for a total price which includes materials and labor and the buyer doesn’t pay sales tax although it is included in the total price of the home. The sales tax is collected by the seller of the materials. This rule defines the materials going into the house itself. However, if that contractor

furnished the house with furniture, that is not part of the home, he would charge the buyer of the home sales tax. **Mr. Husted** concurred.

Senator Jorgenson understood that there is sales tax on appliances and not necessarily building supplies. Also, the sales tax is rooted around wholesale or retail and these purchases are for resale. **Mr. Husted** said the distinction is between built-in and free-standing appliances. The retail sale occurs between the seller and the last person who owns the item as personal property. The contractor is defined by law as the consumer so he is the one to pay the sales tax. To change that would require a change in the statute.

Senator Corder stated that if the intent here is for clarity, it is not successful.

Senator McKenzie thought this rule did provide clarity between whether the fixture was personal or real property. The question between this and personal property for businesses is another question.

Chairman Hill agreed that it does clarify. All this rule is saying is that the fixture is becoming a part of the building just like all other building materials.

Rule 024 is amended to conform to the current statute. **Mr. Husted** explained that long-term rentals of personal property are taxable. In 2008, the legislature enacted an exemption that allowed the personal property tax a lessor pays to a lessee to be exempt from sales tax if the property tax is billed as a separate line item and is no more than the property tax actually paid by the lessor.

Rule 044 provides a definition of "trade in" for *Idaho Code § 63-3613*. **Mr. Husted** said this definition applies to most trade-ins and to qualify for the trade-in allowance, the item must be delivered from the buyer to the seller with documents identifying the item. It must also be a component of a single transaction.

Vice Chairman Heinrich brought up a related concern from his constituents involving car accidents. When a car is totaled and a new car is purchased, sales tax must be paid on the full amount of the new car. Can the amount allowed for the wrecked car be considered as exempt from tax when purchasing the new car? **Mr. Husted** stated that was not possible under current statute. The theory revolves around having a trade-in that will be sold with sales tax attached to it as opposed to an allowance with no future sales tax opportunity.

Rule 067 amends Sales Tax Rule 067 to say that, in most cases, store fixtures are to be considered personal property. It also adds a subsection stating that cable removed from abandoned buildings would be considered personal property.

Mr. Spangler interjected that the sales tax rule test is outlined in this rule (p.90 in rule book) and compared it to the property tax rule test (p.110 in rule book) to show they are relatively close standards. The same test is

being applied for both sales tax and being adopted in the personal property tax section.

Mr. Husted stated that the majority of store fixtures is personal property regardless of who owns the building unless removing them would cause substantial harm to the building or the item is a substantial benefit to the building such as air conditioning. The second part categorizes abandoned cable as personal property. This was brought about because the National Electrical Code required removal of fibre optic cable if it is going to be left unused.

Rule 079 amends the production exemption rule to conform to current law. **Mr. Husted** explained that the rule is being expanded from exemptions for services of custom farmers and contract miners to include processing fuel for the production of energy. **Senator Werk** inquired about the actual uses that are being designated – manure, corn? **Mr. Husted** said that in the past, if a company was not selling the product, it would not qualify. With this change, it would qualify. **Senator Werk** asked if the context of this bill would apply to other energy creating substances. **Mr. Husted** responded that the way it is written, it would but it only affects people who are processing fuel but not selling it.

Rule 100 states that a purchase of a prescription must be made under the prescription or work order of specifically named types of practitioners on the list included in this rule. **Mr. Husted** stated that this rule clarified that prescriptions written by only specifically identified practitioners listed in this rule would qualify as exempt from sales tax.

Rule 101 amended the rule to state that the use of the fleet will become taxable on the day after the end of the registration period for which the mileage requirement is not met. **Mr. Husted** said that this is just a rewording of the current rule. There is an exemption for IRP fleets where out of state mileage is a minimum of 10% of the total fleet miles in any registration period. The old rule stated that if that requirement was not met, tax was due the day after the registration period ended. The tax is not due the day after; that date refers to when the use becomes taxable.

Rule 105 is amended to state that the Tax Commission can allow retailers that report less than \$12,000/year in taxable sales to file annually and can also allow filing periods other than monthly by permission of the Tax Commission. **Mr. Husted** explained the reasoning behind this change.

Senator Corder referred back to Rule 100 and the purchase of dental filling material by a practitioner. **Mr. Husted** agreed that removing the sales tax requirements on filling materials was a change to conform to statute.

Senator Corder referred to Rule 101 and asked about striking the sentence that the tax would be due on the value of the trucks and trailers on the 20th day the month. How and when will the value of those vehicles be established that don't qualify for the 10%? **Mr. Husted** answered that the National Automobile Dealers Association (NADA) puts out a book which gives the approximate value. **Senator Corder** responded that

NADA is not used now, appraised value is used. **Mr. Husted** understood that they did use NADA. **Mr. Spangler** interjected that they would get an answer and get back to the Committee on Tuesday. **Senator Bilyeu** asked how the value determination is made if the NADA is not used and is the value more or less. **Senator Corder** replied that a dealer appraises the vehicles and that the NADA is not a reliable source of value on these kind of vehicles because values are so regional. **Mr. Husted** said that the taxpayer is always allowed the opportunity to provide evidence of a change of value if they do not agree. **Senator Corder** stated they are more than fair but he just wanted to make sure the practice is stated correctly.

Senator Werk was trying to determine if the rule defines when the fleet becomes taxable as opposed to how the tax is established. **Mr. Husted** confirmed that the rule was not talking about the value, it was related to the timing of when a fleet would become taxable. **Senator Werk** stated that the Committee's deliberation then, was when the fleet would become taxable. **Mr. Spangler** concurred.

Vice Chairman Heinrich asked if Rule 105 applied to all the farmers markets that are appearing. **Mr. Husted** said if a farmer grew the vegetables and sold them at a stand, it would apply.

Rule 107 was amended to provide a new definition of "ATV." **Mr. Husted** stated that this conforms the rule to the Motor Vehicle Statute.

Senator Jorgenson asked if the Tax Commission was aware of any problems with "UTVs" (utility vehicle). **Mr. Husted** answered that the statute doesn't provide an exemption. If a non resident took possession of a UTV in Idaho, it would be taxable in Idaho. **Senator Jorgenson** stated that UTVs are not listed or defined on the exemption form and the Tax Commission has said the seller owed sales tax. **Mr. Husted** said that could be possible. ATVs are listed in the instructions on the exemption form, UTVs are not because, by statute, they do not qualify for the exemption. **Senator Jorgenson** commented that this is a problem and he will continue to make the Tax Commission aware of it.

Rule 130 deletes the requirement for retailers participating in sponsored events to provide a social security number. **Mr. Husted** said this was done for reasons of preventing identity theft.

Senator Jorgenson requested and was granted permission to ask a related question. Schools are exempt from sales tax. However, when teachers purchase supplies, they are charged sales tax and when they turn in the receipts for reimbursement, the schools decline to pay the sales tax portion. Are there any suggestions about how to address this issue? **Mr. Husted** said the exemption applies to sales to schools but not to sales to teachers. Each school district addresses this issue independently. Under the statute, the sale to the teacher is taxable and it would take a statutory amendment to change that. **Senator Jorgenson** stated that these supplies are not for the teachers use, but are to be used in the classroom and in his area, the teacher is given a specific amount of money to acquire supplies. **Mr. Husted** said that if the purchase was made with school

funds, i.e., a check drawn on a school bank account, it would be up to the teacher to claim the exemption. If it were a personal check, then sales tax would have to be paid.

Senator Hill stated that the schools in his area have accounts set up with local retailers that allow teachers to make most school purchases and charge them. The school pays for them and avoids paying sales tax. A policy needs to be set up between the teachers and the school to address this issue appropriately.

Vice Chairman Heinrich said there are ways to make these purchases so the county is paying directly and it saves the 6%. There are ways to address this without altering the law. **Senator Jorgenson** said he didn't expect to change the law, but passing this information on to his school districts will be very helpful.

Vice Chairman Heinrich asked for any further questions.

MOTION: **Senator McKague** moved to adopt the rules for Docket 35-0102-0801 as written. **Senator Werk** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

DOCKET NO.
35-0110-0801

Cigarette and Tobacco Tax Administrative Rules

Senator Corder introduced these rules.

Rule 022 refers to exemptions and adds the words "or distributors" stating that a tobacco distributor may claim a credit for sales to out of state retailers and distributors (wholesalers). **Mr. Husted** explained that distributors generally pay taxes on tobacco they import into the state. When they export to a retailer out-of-state they could claim credit for the Idaho tax paid but would be subject to tax in the other states. The same applies to out-of-state distributors.

MOTION: **Senator Corder** moved to approve the rule under Docket 35-0110-0801 as written. **Senator Jorgenson** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

DOCKET NO.
35-0111-0801

Unclaimed Property Administrative Rules

Senator Bilyeu clarified that Rules 015 and 017 dealing with unclaimed property was not a tax and these two rules are technical changes only. The words unclaimed and abandoned mean the same.

Rule 015 amended states that an unclaimed property report must meet the requirements of *Idaho Code § 14-517* and strikes the reference to Rule 150. **Mr. Husted** reported that the rule does not have to comply with the income tax rule but with the statute. **Senator Hill** stated that it was unusual to have one rule refer to another rule which is probably not good. Is that the reason for changing this? **Mr. Husted** responded that in areas of enforcement, there are rules that apply to all tax types. The problem here is that this is not a tax and tax returns are not filed. Unclaimed

property or abandoned property reports are filed, most likely from a bank where accounts are involved.

Rule 017 is a technical change that amends the language to use parallel language striking “original due date of the report” and replace them with “date that the property should have been reported.” **Mr. Husted** explained that the replacement language may not always be the original due date.

MOTION: **Senator Bilyeu** moved to adopt Rules 015 and 017 under Docket No. 35-0111-0801 as written. **Chairman Hill** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Vice Chairman Heinrich thanked Mr. Husted and Mr. Spangler for their presentation.

Senator Corder complimented the Tax Commission in the description of the rules and their careful noting of the occasion of the rulemaking.

Mr. Spangler acknowledged **Shelley Sheridan**, Agency Rule Coordinator for her support. Ms. Sheridan is a past secretary of this Committee.

Vice Chairman Heinrich announced the schedule to review the rest of the rules and returned the gavel to **Chairman Hill**.

ADJOURN: **Chairman Hill** adjourned the meeting at 4:25 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 20, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

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 Hill** called the meeting to order at 3:03 p.m. on Tuesday, January 20, 2009 with a quorum present. **Chairman Hill** passed the gavel to **Vice Chairman Heinrich** to conduct the rules review.

Vice Chairman Heinrich called on **Ted Spangler**, Idaho State Tax Commission, for follow-up to a question from the January 15th meeting regarding valuation of fleets. **Mr. Spangler** reported that **Senator Corder** was correct in the way trucks are valued when they become subject to tax. A written appraisal by a truck dealer is required to establish the fair market value of the truck at the time they fall below the minimum mileage percentage and the exemption is lost.

Tax Commission Administration and Enforcement Rules
Notice of Rulemaking - Adoption of Temporary Rule 500

Docket No.
35-0201-0802

Rule 500 is amended to improve the explanation of the grounds the Tax Commission considers when it receives settlement offers. It replaces the term "compromise" with "settlement;" defines "disputed liability," "doubt as to collectability," and "economic hardship" based on language in Federal Revenue Procedure 2003-71; and adds "promotion of effective tax administration" as an additional ground.

Mr. Spangler explained that this amendment came as a directive from the Governor as a result of an investigative report performed in 2008 that alluded to some ambiguities in the current rule. **Mr. Spangler** provided a handout that outlines the steps taken to promulgate the temporary rule (on file). Ultimately, a final rule will be presented to the Committee at a future date.

In preparing the rule, the Tax Commission considered IRS *Revenue Procedure 2003-71* with modifications as well as practices used by other state tax administration agencies, to meet the needs of Idaho. The

highlights of the rule address “settlements” rather than “compromises” because not all resolutions are compromises; some represent agreements where neither party is giving up anything to which they think they are entitled. The rule also better reflects the language of statutes authorizing settlements.

Mr. Spangler continued to explain that the change in language from “doubt as to liability” to “disputed liability” also resulted from the directive from the Governor. Part of the controversy arose from differences of opinion as to the degree of doubt needed to justify a settlement. The new wording provides a definition of when it is appropriate for the State Tax Commission to exercise its statutory settlement authority.

As a side note, **Mr. Spangler** stated that the State Commission means the four appointed tax commissioners. This does not mean the agency the Commissioners head. The confusion is that the State Tax Commission refers to the Commissioners as the head of the agency but State Tax Commission is also used to refer to the agency itself. Under statute, the authority lies with the Commissioners.

As part of this process, the Tax Commission added explanations for other grounds for settlement borrowing language from the Federal Regulations and Procedures. Settlements would be made for the following reasons:

- Doubt as to collectability.
- Economic hardship of the taxpayer.
- Promotion of effective tax administration.

In deciding any of the hardship cases, the Commissioners must balance the needs of the taxpayer with their duty to the state. In addition, the Commissioners have charged senior staff with developing internal management policies to better define the practices of how protests are reviewed, how settlement proposals get reviewed, and how to strike a balance between why decisions are made and protecting the taxpayer’s due process rights.

Vice Chairman Heinrich asked for questions from the Committee.

Senator Corder referred to page 3, A. ii, and asked if “An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation” was not a bit broad. He was concerned about the evaluation process. Who gives the Commissioners that kind of information? **Mr. Spangler** responded that some comes from attorneys as part of their responsibility as legal counsel for the Commission or it could come from other forms of evaluation like cost or precedent setting. It is a mixture of legal analysis and practical considerations.

Senator Corder asked for an example of “compelling public policy” or “equity consideration.” Also, how can some settlements undermine public confidence? **Mr. Spangler** referred to a current case where a district judge sent a case back to the Tax Commission asking them to reconsider settlement involving a series of unusual circumstances. The judge denied a settlement and told the Commission to act within the scope of their specific discretion. The Commission had not recognized that the resolution

of the case was within the scope of their authority.

The Tax Commission is very limited on what they can disclose but the taxpayer is under no limitations. If a taxpayer thinks they are unfairly treated, they are quick to “tell the world” and those incidents undermine the public’s confidence.

Senator McKenzie referred to the statutory authority where the court said there was very broad authority under *Idaho Code 63-3048* for compromising liability under the Income Tax Act. Has there been any case law interpreting the limits of that authority? **Mr. Spangler** responded that the only case is the one just described and the judge in that case ruled that, under the statute, the Commission has that broad authority. **Senator McKenzie** stated that *Idaho Code 63-3048* deals with the authority to resolve tax liability, but *Idaho Code 63-3047* deals with compromising penalties and is a little stricter. This temporary rule applies to both. It seems that under the statute there should be a different rule for penalties using the same standards, but reflecting the limitations on the authority to settle penalty cases. **Mr. Spangler** answered that internal documentation and processes within the Tax Commission are consistent with both requirements. The rule, as it is written, does not make that distinction because judgements are essentially the same. **Senator McKenzie** thought this was a reasonable approach. The concern is with the settlement of penalties because the rule is broader than the authority granted under the statute. Although there is an internal process, a couple of the requirements are not reflected in the rule. **Mr. Spangler** stated that observations such as this are the reason permanent rule-making was deferred until there was input from this process.

Senator Stegner said this was a reasonable approach and doesn’t deviate significantly from prior tax policy. This could be construed to be a broadening of authority but, in your opinion, is this a significant expansion of what the Commission has interpreted to be their statutory authority? **Mr. Spangler** stated that this reflects what the Tax Commission has been trying to do all along.

Senator Werk questioned the lack of transparency within the process. The rule is helping but there is nothing specified about the analysis process. Wouldn’t it be pertinent to put some definitions into the rules so the public could better understand the process? **Mr. Spangler** explained that there are difficult competing values in play, transparency versus the taxpayer’s right to confidentiality which is an important component of the voluntary compliance system. There is also the need to protect the attorney/client privilege between the attorney’s and the Tax Commission’s very frank conversations during the analysis of a case. The rules do reflect some of the hazards and costs of litigation but that it is a discretionary function. The range of size and complexity of the cases make it difficult to have a step-by-step process that would be applicable to all cases. **Senator Werk** did not see anything within the rule that required some kind of annual reporting associated with liabilities and collections for overall performance. **Mr. Spangler** reported that the Governor and Leadership has asked for those kinds of reports and the Commission staff is working on that now. Also, the Office of Performance Evaluation reviews Tax Commission

activities providing some accountability.

Senator Bilyeu asked a two-part question dealing with multi-state cases:

- 1) How often are these cases litigated?
- 2) Discuss the assumption to settle rather than litigate large cases.

Mr. Spangler replied that the number of large corporate income tax cases is a small percentage of all protests but generally involve larger dollar amounts. There are many conflicting determinations involving these large, complex and expensive cases and limited resources is a factor. Careful consideration is given to cases that are litigated to choose those that will give guidance on important issues. The precedential value of a case is sometimes much more significant than the dollar amount.

Senator Hill commended the Commission on the rule. The rules contain more detailed definitions of the terms and are in line with what the Tax Commission is trying to do to follow the direction from the Attorney General's Office, and other policy guidelines. The concern is with the internal procedures that are not in the rules. Can these procedures be used to provide a report to this Committee about the results of the actions by the Tax Commission keeping in mind the taxpayer's right to confidentiality? **Mr. Spangler** responded that yes, they are working on that now and it is just not far enough along to bring before the Committee at this time. **Senator Hill** said that the Committee is interested in seeing those procedures completed in a timely manner.

Vice Chairman Heinrich stated that he had attended a meeting where they were considering a premature disposition of a timber sale based on economic hardship relative to a small proprietorship and this definition was used. The interpretation, based on this definition, was that since the small proprietor was not in bankruptcy proceedings, he was not in an economic hardship state. Would you concur with that decision? **Mr. Spangler** concluded he would not use that situation for a standard of what is or isn't considered a hardship. If that was going to be the consideration, it should be written in the rule. However, it could be one of several points to be considered.

Senator Kelly distributed copies of the investigative review (on file) performed by LaVern Gentry at the request of the Governor's office and copies of a general review by Jeff Youtz, Legislative Service Office, Idaho State Legislature (on file), at the request of **Senator Kelly**.

Senator Kelly explained that both reports concluded that there were changes that could be implemented to improve the process. Her interest is in seeing a system that works fairly for everyone, is as transparent as possible while protecting appropriate business confidences along with attorney/client confidences. The rule suggests a way to improve the basis on which the settlements or compromises are reached but the internal control issues are not addressed although that was part of the recommendations made by both Mr. Gentry's and Mr. Youtz's reviews.

The concern is that this rule only addresses a piece of the issue and neglects the internal control issue. The response was that an internal procedure is being developed. There have been internal controls in place

but they have not provided the transparency they might have.

Senator Kelly said that she has worked in conjunction with the Governor's office and the Tax Commission to develop legislation that will address the process from a statutory standpoint in terms of asking for an annual report and putting in basic controls. It would be better to see all of this in a rule rather than an internal procedure.

Senator Bilyeu asked if the rule being reviewed was going to solve anything? **Senator Kelly** replied that, in her opinion, it does add more certainty to the process. Adding the fourth circumstance will improve the process and puts the practice into written form. It is better but could be improved.

Chairman Hill commended **Senator Kelly** for her time spent on this issue as well as **Senator Langhorst** and **Senator Stegner**.

Vice Chairman Heinrich announced that voting for today's rules will be held until a future meeting.

Idaho Property Tax Administrative Rules
Proposed Rule Amendments – Personal and Real Property Defined

Docket No.
35-0103-0801

Rule 205 is being amended to delete obsolete definitions and to define real and personal property in conformance with the definitions in new legislation, HB 599A.

Rule 210 has been deleted and is now included in 205.

Alan Dornfest, Idaho State Tax Commission, explained that a letter from the Joint Committee to the Tax Commission requested the following items to be included in the rules pertaining to Rule 205:

- Clarify the portability as a basis for separating personal from real property.
- Restate portions of the statute controlling the separation between real and personal property.
- Requested a three factor test to be included.

Mr. Dornfest pointed out the addition of Section 01.b as a new addition to the rule that relates to the three factor test. Fixtures that are defined as real rather than personal property must meet a three part test:

1) Annexation where **Mr. Dornfest** explained "constructively incorporated" and used the example of a house key – it is unique to the property and functions in conjunction with the real property so becomes real property as opposed to any other key defined as personal property.

2) Adaptation

3) Intent where the wording is verbatim from statute except for adding the term "during their useful life." The inclusion of the last sentence was taken from Idaho case law to indicate the intent depends on an objective standard and was not the subjective intention of the owner of the property.

Although there are no lists included in this rule, **Mr. Dornfest** recommends going forward. Rules 205/210 are obsolete and contrary to statute. This rule amends certain language and removes conflicting language. It also

agrees, as far as possible, with the Legislative Services directive and provides general guidance to taxpayers and assessors. It will not resolve all the issues given the verbiage in the statute.

Senator Jorgenson referred to *Section 03.iii* and the words “reasonable person.” That wording is an invitation to subjective interpretation and by striking the specific list this wording would open that door. **Mr. Dornfest** pointed out that the word “reasonable” is already in *iii* and that wording is directly from statute. This is setting up a process without being specific. Those specifics will be set up by the courts.

Senator Corder stated that most complaints about unreasonableness comes from different interpretations of what the rules say and what the statutes say. This is very confusing. **Mr. Dornfest** stated that the intent is not to be more confusing. Ultimately, legally there are only two types of property, real or personal. If the distinction is needed within the realm of operating property, everyone would be advised after the review, where that operating property fell. **Senator Corder** assured **Mr. Dornfest** that was not a criticism, he appreciated the efforts of the Tax Commission.

Senator Bilyeu read the contents of *Idaho Code, Section 63-201* stating that what seems to be the effect of the rule is that all operating property can be construed to be personal property. **Mr. Dornfest** replied that the statutory change in *HB 599* specifically requires that definition.

Chairman Hill's concern was with eliminating the list. Is there a place to go see lists or will assessors have to apply the guidelines and come up with their own interpretation? **Mr. Dornfest** said that they would have to apply the test. Currently, assessors are not treating certain property items uniformly. Legal staff felt that the language of the statute did not permit lists. **Chairman Hill** requested a later conference to determine what language in the statute would permit lists because it is not clear that the intent of the statute was to prevent such clarification. **Mr. Dornfest** agreed.

Public Testimony

Jack Lyman, Idaho Mining Association, gave a graphic description of the issues being discussed by using an example of the crushing and flotation process and equipment for an Idaho molybdenum mine. The equipment and appurtenances were attached to the concrete floor. The question put to the Tax Commission when this rule was heard in the House, “is this personal property?” The answer was “we can’t say.” That is the concern. The assessor in Custer County has designated the equipment, building, and all controls – everything used in the reduction process, as personal property. It is their belief that the intent of *HB 599* is to classify this all as personal property. **Senator Bilyeu** agreed that all the equipment would be personal property but the building probably should be real property.

Mr. Lyman stated that at such time as this mine should close down, this equipment will be unbolted and used elsewhere. The problem is that the equipment is personal property in Custer County and then it could be moved to another county where it would be determined to be real property. This is the issue, not to criticize the rule. Additional clarification is needed.

Senator Bilyeu confirmed that Mr. Lyman would prefer a list. There are lists of intangibles in other rules, are there not? **Mr. Dornfest** agreed that there are some lists that are allowed by statutory discretion. In this case, that is not so given the three part test and the directive in statute is to look at case law. **Mr. Lyman** commented that there doesn't have to be a list, this is clearly stated in the "Fixtures" section that makes it personal property. The assessors need direction from the Commission about how to handle this type of situation.

Vice Chairman Heinrich asked for further comments on this rule. Being none the gavel was turned back to **Chairman Hill** and the rules remaining on the agenda will be rescheduled.

Mr. Dornfest agreed to return the following day to complete the property tax rules. .

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:56 p.m. until 3:00 p.m. on Wednesday, January 24th.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 21, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

CONVENED: **Chairman Hill** called the meeting to order at 3:04 p.m. with a quorum present. The gavel was turned over to **Vice Chairman Heinrich** to conduct the review of the rules.

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.

MINUTES:

Docket No. 35-0103-0802 Property Tax Administrative Rules

Alan Dornfest, Idaho State Tax Commission, introduced the rules contained in the dockets related to property tax administration.

Rule 317 is being amended to give directions for the allocation of the occupancy tax revenue among taxing districts and urban renewal allocation areas in accordance with newly enacted *HB 470*.

Mr. Dornfest explained that, with the passage of *HB 470* in 2008, certain funds, like bonds and overrides, were no longer used to generate revenue for urban renewal agencies. Occupancy tax will be allocated in the same proportionate manner as property taxes.

Senator Bilyeu asked for clarification. Does that mean the urban renewal district does get revenue from the occupancy tax? How much of a change is it, is it a reduction, and is there much of an impact? **Mr. Dornfest** responded that it will be a reduction in comparison to what they would have received if *HB 470* had not passed and the restrictions were not in place. There are two instances: 1) If an existing taxing district, i.e., a school district, passes a new voter approved levy and there is urban renewal within that district, the money from newly levied occupancy and property tax from that new levy will not go to urban renewal. 2) If the district had an existing instrument, for example, a 20-year bond that was passed 10 years ago, and during this time, the urban renewal district

changed its boundaries, then the area within the changed boundary would not get a distribution from that bond levy.

Chairman Hill asked if no boundary changes were made in the urban renewal district and a new bond was passed, but half those proceeds were used to pay off an old bond, would there be any effect? **Mr. Dornfest** said they don't look at how the proceeds are used. If there was an old bond that ceased to exist and was clearly replaced by a new bond, urban renewal would no longer get the funds. It would be dependent on how the district worded the new bond.

Rule 509 provides for the reporting of property tax exemptions resulting from the new 2008 legislation. Those exemptions would be reported on the county abstracts beginning in 2008.

Mr. Dornfest explained that the abstracts listing values are sent to the Tax Commission by the counties annually and exemption information is reported to the extent possible. This is a reporting issue.

**Docket No.
35-0103-0804**

Property Tax Administrative Rules

Mr. Dornfest explained that this docket contains a series of rules.

Rule 006 updates guides and standards used as reference.

Mr. Dornfest said this rule is updated annually. Many of the reference documents used are now available electronically so the proper format to refer to them is to note the website and last access date. **Chairman Hill** asked why the studies performed by the International Association of Assessing Officers and the website could not be used independent of the dates so annual changes would not have to be made. **Mr. Dornfest** responded that was not legally permissible.

Rule 114 is amended to increase tiers of value data for properties receiving the homeowner's exemption due to substantially increased property values.

Mr. Dornfest explained what the different valuation brackets were and that this is just a reporting mechanism.

Rule 125 and 126 shortens Rule 125 by putting the certification programs into new Rule 126 and clarifies the description and functions of the Tax Commission's Program of Education.

Mr. Dornfest stated that they have tried to shorten long rules by moving material to a second rule. This rule carves out the certification programs from *Rule 125* and put them into *Rule 126* with a few changes. The certification requirements are expanded to provide more flexibility at the request of the counties. The courses are more specifically related to what the assessors are doing whether it is commercial or residential.

Senator Bilyeu asked if there is a requirement that commercial assessors are required to pass the income approach course, i.e. Course 102. **Mr. Dornfest** said that they do and that requirement is set in

statute. **Chairman Hill** asked for clarification about what the “strings” of requirements meant and are they clear? **Mr. Dornfest** responded that there really should be an additional comma to make it clearer. **Senator Stegner** suggested that the requirements would be better understood in an outline form to make reading easier. **Mr. Dornfest** concurred.

Rule 128 is a new rule establishing the requirements and procedures for the Cadastral Certification Program.

Mr. Dornfest explained the requirements that are needed to qualify for a Cadastral Specialist or mapper. **Vice Chairman Heinrich** referred to section 02.b of the rule and asked if the Commission establishes equivalent courses, and if the examination committee has the power to veto. **Mr. Dornfest** stated that all the course work is subject, by statute, to the approval of the examination committee.

Rule 218 and 219 divides 218 into two rules. Amended *Rule 218* covers the Assessors’ plat book maintenance. *Rule 219* explains the parcel numbers system, definitions, and provides that a form of the parent parcel number may be maintained upon a split of the parcel.

Mr. Dornfest said this splits a very large rule into two rules. Rule 219 also allows for smaller plat sizes as long as parcel boundaries and dimensions are clearly readable. There are some added definitions for parent and child parcels and additional flexibility when cancelling a parcel number. These changes conform to practice.

Rule 225 defines a countywide taxing district and stipulates that a copy of the resolution creating a countywide taxing district will suffice as documents to be filed with the county assessor, county recorder and State Tax Commission.

Mr. Dornfest stated that this rule resolved some issues that arose when the Western Idaho College District was implemented and was contiguous in Ada and Canyon counties. This will save time and money for the state. A second issue occurs when the Tax Commission initiates or changes a tax code area number. This occurs when an area is annexed into an existing RAA and those area funds generated cannot be distributed to an urban renewal agency.

Rule 302 provides that the list required to be filed by *Idaho Code section 63-302* will serve as the taxpayer’s application for exemption and requires the form to be filed in order to be eligible for the exemption.

Mr. Dornfest explained that this rule relates to lists included in the Declaration of Personal Property. When the exemption for personal property goes into place, the taxpayer still must meet the reporting requirements. By statute, the county must provide the location and description of the property that is exempt. The list constitutes the application and reduces the amount of documentation needed to get the exemption. There also must be an attestation that the company is not related to another company filing the same list. Failure to file the list means the property becomes taxable. There is a companion rule, *Rule*

626, that will be covered further down in these rules.

Rule 313 is amended to clarify the allocation of the personal property exemption between or among counties for transient personal property and allows the taxpayer to choose the tax code area for which the exemption will apply.

Mr. Dornfest explained that transient personal property is mostly construction equipment and moves from county to county. This property is eligible for the personal property exemption and for the exemption up to \$100,000 per county. That limit applies to the sum of permanent and transient property within the county. **Senator Bilyeu** asked for clarification where that property is located in more than one county. **Mr. Dornfest** responded that if the total of the personal property was \$175,000 located in more than one county, the taxpayer would get the full \$175,000 exemption because he would qualify for up to \$100,000 in each county. **Vice Chairman Heinrich** asked if the taxpayer had property in two counties, can he choose whichever taxing district is the lowest? **Mr. Dornfest** said the answer is yes because statute is not specific.

Rule 314 deletes the reference to a non-existent example in *Rule 217*.

Mr. Dornfest stated that this rule corrects an oversight that occurred when *Rule 217* was deleted and deletes language that doesn't apply anymore. **Senator Corder** asked where one would go to get an example of the methodology when valuating Section 42 properties? Would they go to another section that specifies the methodology as based in typical assessment procedure or could an assessor use *Brandon Bay* and the guidelines in that case to assess this property? **Mr. Dornfest** responded that, in his opinion, both are appropriate.

Vice Chairman Heinrich asked **Bob McQuade**, Ada County Assessor, if there would be clarification on the Section 42 housing issues? **Mr. McQuade** answered that there was a group working on a method of valuing Section 42 housing. **Chairman Hill** said he has been involved with that committee and they do have some legislation they will be proposing.

Rule 508 is a new rule to require that the value of property exempted by *Section 63-6-2KK, Idaho Code*, be reported by taxing district in order to compute the tax levies.

Mr. Dornfest said this is a notification rule requiring that counties report the value of property pursuant to the personal property exemption. Once that is in place by taxing district or unit, the amount should be included within the increment value for any urban renewal agency so all the replacement money can be calculated.

Rule 626 is a new rule explaining that the personal property exemption will become effective with the first tax year (Jan. 1) after state fiscal year revenues have increased by more than 5% over the previous fiscal year as provided in *HB 599A, Idaho Code section 63-602KK*.

Mr. Dornfest explained that this is a new rule, and a companion to *Rule 302*, dealing with certain administrative aspects of the personal property exemption different than the listing of property dealt with in 302. Statute did not specify whether the exemption would go into effect retroactively or not. The Tax Commission took the position that it would go into effect the following January 1st after the 5% increase to the General Fund stipulation was reached. The Tax Commission is also making this same recommendation in statutory form this year. **Mr. Dornfest** went through this rule, section by section. **Senator Bilyeu** referred to section 04, the Valuation Assessment Notice; is that depreciated value? **Mr. Dornfest** replied yes, that would be the value the assessor would assess. **Vice Chairman Heinrich** asked if there was an education program in place for the county commissioners so they would know the ramifications of cancelling any personal property taxes after this date. **Mr. Dornfest** answered that the Tax Commission does maintain an education program and that is a good point to cover in that context.

Rule 631 is a new rule clarifying that the exemption provided for in *HB 550, Idaho Code, section 62-602NN*, does not include land.

Mr. Dornfest stated that this is a new rule that provides the county commissioners with the discretion to grant an exemption for certain plants that invested at least \$3.0 million. This rule answers the question that this exemption and the investment could only apply to buildings and equipment, not to land.

Rule 802 is amended to explain how to value new construction and to explain that the taxable portion of the property would be included on the New Construction Roll.

Mr. Dornfest stated that the changes in this amendment relate back to *Rule 631* and, to date, no one has claimed that exemption. When this exemption is taken, new construction would not count towards the budget allowance until the property appears on the tax roles. This change clarifies that the value of the portion of the property subject to the exemption shall be the amount at the time the exemption was first granted. **Chairman Hill** said the new construction roll is for the purpose of determining the amount the county can set its budget for. It still is going on the property tax rolls as the assessed value for purposes of valuation for the levy. **Mr. Dornfest** concurred.

Rule 803 is amended as a result of new legislation: 1) *HB 599A, IC § 63-3638(12)* provides replacement funds to be paid to counties for personal property exempt by *IC 63-602KK*. 2) *HB691, section IC § 31-808(11)* stipulates that the money received from the interest-bearing trust fund is to be subtracted in computing the levy for the indigent fund.

Mr. Dornfest explained that this rule applies to budget certification, the form that taxing districts and counties rely upon to make sure that levies are correctly calculated. There are two changes and both deal with funds coming from another source. In the past, replacement monies were set at a point in time. In this case, the amount changes because it depends on the list provided each year. To avoid double dipping issues,

the tax levies need to be set without regard to these monies.

The second part of this rule says that all replacement monies are not to be deducted from the "balance to be levied" except for those monies transferred from the interest-bearing fund. This has been covered in great detail with the officer at the county level who does the mathematical calculations and it is believed this is in accordance with statute.

Rule 804 is amended to explain how to calculate the tax rate for certain identified funds located in revenue allocation areas established after January 1, 2008 and deletes obsolete items.

Mr. Dornfest said that these amendments deal with implementing *HB 470* where renewal agencies overlap taxing districts. When bonds are subsequently bonds, then bonds and overrides no longer generate revenue for the renewal agency. The provisions, retroactive to January 1, 2008, set out two ways to compute levies: a) Is for funds **other** than those meeting the criteria relating to the bonds and overrides; and, b) Is for taxing district funds meeting the criteria, subject to *HB 470* provisions, which includes the increment value. This must be done fund-by-fund. Also, the criteria is set out for instances when boundaries change.

Rule 806 clarifies the property tax budget and levy information that county clerks are to include in the notice of election to form a new taxing district.

Mr. Dornfest related that this rule concerns, *Idaho Code, section 63-802C*, a new law from three years ago. This rule covers some of the ramifications of that law. The statute sets certain requirements for the county clerk when there is an election being held creating a new taxing district. A notice must be sent out with an estimate of the effect on the taxpayers, but there was not clarity on how that was to be done. Procedures were established in this rule.

Rule 902 is amended to require that the amount to be paid by the state and the net amount of tax to be paid by the taxpayer is to be shown on the property tax notice even if it is zero.

Mr. Dornfest said this rule reduces the confusion for taxpayer notification when a portion or all of the tax is paid by the state by requiring that a notice is to be sent showing the gross value of the personal property, the gross tax amount, the amount exempted, the amount paid by the state, and the net amount due from the taxpayer even if it is zero.

Rule 966 explains the calculations for deferred taxes on lands that change use and/or lands that change ownership.

Mr. Dornfest explained that the section dealing with section 03 dealing with properties that don't have a change in ownership, and section 04 dealing with properties that do have a change in ownership have been rewritten to provide clarity. There is no substantive effect or

consequences to the rule.

Mr. Dornfest stated that this was the end of the Property Tax Rules.

Docket No.
35-0201-0801

Tax Commission and Administration and Enforcement Rules

Janice Boyd, Idaho State Tax Commission, will present these rules.

Rule 310 is amended to add the interest rate of 5% for calendar year 2009.

Ms. Boyd reported that this amendment sets the interest rate for the current year to be applied to notices of deficiency or refunds. The calculation to derive the percentage is set by statute.

Vice Chairman Heinrich returned the gavel to **Chairman Hill**.

Chairman Hill asked **Ms. Boyd** to come back on Tuesday to cover the Income Tax Administration Rules. The secretary is requested to put these rules first on the agenda and then a final vote will be made on all dockets that have not been voted on. The State Tax Commissioners will be on the agenda for Thursday, January 22. **Chairman Hill** thanked the Committee and **Mr. Dornfest** for attending the meeting today.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:23 p.m. until Thursday, January 22, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 22, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:03 p.m. on Thursday, January 22, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- ANNOUNCEMENT:** **Chairman Hill** announced that there will not be a committee meeting on Wednesday, January 28. Committee pictures will be taken at that time.
- RS 18271** **Relating to investment of idle moneys to provide that the State Treasurer may invest idle moneys in time deposit accounts invested in accordance with certain conditions.**
- Chairman Hill** introduced RS 18271 to the Committee for a print hearing. The bill talks about the State Treasurer but this is not really for the State Treasurer. *Idaho Code section 57-127* deals with what municipalities can invest in and references back to the section that is being amended allowing municipalities to invest in these instruments under certain conditions. The banking community has initiated a program called the Certificate of Deposit Account Registry Service that allows a bank customer to buy more than the \$100,000 certificates the FDIC will insure and have the full amount insured. The bank will take the amount greater than the \$100,000 and exchange each additional \$100,000 certificate with other banks so the full amount is insured. In this manner, the originating bank still has the full amount its customer invested and the customer has the full amount of his investment insured. Banks are already doing this for businesses and individuals and this amendment extends that opportunity to municipalities.
- MOTION:** **Senator Werk** moved to send RS 18271 to print with the note that a correction be made to the SOP deleting one of the two identical fiscal notes. **Senator Corder** seconded the motion.
- Senator Jorgenson** stated that the State Fund is available to all

government agencies for deposits and they typically pay a little more than a local bank. He asked for clarification about why this is being brought forward. **Chairman Hill** explained that this is just one more option for municipalities to use in investing those monies. A copy of this legislation has been sent to the State Treasurer asking for any concerns or suggestions. To date, there has been no response.

VOTE:

The motion carried by unanimous voice vote.

Chairman Hill welcomed State Tax Commissioner Chairman Royce Chigbrow and Commissioners: Coleen Grant, Sam Haws, and Tom Katsilometes. They will provide the Committee with their annual report.

Commissioner Katsilometes distributed the annual five year report of the appraisal process (on file). The consulting appraisers provide this information on a monthly basis by county and it is up-to-date. Every county is current with their rolling five-year appraisals. **Chairman Hill** asked if there were any counties that were out of compliance.

Commissioner Katsilometes stated there were none at this time.

Senator Corder inquired about the percentage of total parcels that has been appraised; the range goes from 37.89% to 9.27%. How can that happen and all the counties still be in compliance? **Commissioner Katsilometes** replied that percentage is just for one year.

Commissioner Katsilometes continued with an update on county support:

- Winter school for Idaho appraisers was completed with 188 students participating in a total of 343 classes.

-The Geological Information System (GIS) has moved to a web-based digital system with more counties being added each month. This is an information sharing system that all counties will be able to use.

Chairman Hill asked if the appraisers' classes were provided throughout the state or were they all held in Boise? **Commissioner Katsilometes** said that they are generally held in Boise. They do meet with the assessors' associations around the state and provide some training at that time. Training is not only available for assessors, but for all personnel working in those offices.

Chairman Hill asked if training was provided to county commissioners since they are members of the Board of Equalization and must make these kinds of determinations. Also, what percent of the county commissioners attend that kind of training? **Commissioner Katsilometes** responded that they do this type of training at the meeting held for newly elected officials the Idaho Association of Counties has. The training includes information about how the Board of Equalization works. Due to the turnover of county commissioners, it is an ongoing training process.

Senator Bilyeu inquired if the Tax Commission is looking at ways to help the counties save money since travel is being cut from budgets.

Commissioner Katsilometes replied "yes." One example is the GIS program, all training is on-line. They are working on various ways to mitigate travel. **Senator Bilyeu** referred to the rules dealing with the

change in the courses assessors are required to take. The concern is that people who are doing commercial appraisals are required to take the appropriate income/value related courses and that the Tax Commission is not monitoring the process. **Commissioner Katsilometes** agreed that not having the correct training would be a problem. They are providing that training as best they can. The counties have their own authority, they are elected, and the Tax Commission cannot tell them what to do. They do approach this through the valuation process and monitoring their values.

Commissioner Haws opened her comments by thanking the Committee for visiting the Commission offices last year to view how their operation works.

There have been some good things implemented over the past year to increase productivity and efficiency using electronic means.

- Employers can now go on-line and file W2s.

- Federal, state, corporate, S corporations, and partnership tax returns can be filed on-line. Others filing on line are: Boise Auditorium District, the State Traveling Convention, and the Nez Perce Local Option tax.

- The first sales tax on-line training was introduced for contractors, suppliers, and other firms working with the Idaho construction business.

Last year *HB 344* was approved reducing the reporting burden for taxpayers by allowing the use of the Reconciliation Withholding Form resulting in an estimated savings of \$9,000/year. Paper storage costs have been reduced by \$800/month. Fees for the use of bank/credit cards for tax payments reverted to the taxpayers who use it, returning about \$2.0 million back to the General Fund.

The central processing unit has been able to hire back 34 of the 63 temps who were laid off.

Chairman Hill asked **Commissioner Haws** what her specific areas of responsibility were. **Commissioner Haws** responded that she has oversight of the sales and use tax, unclaimed property, revenue operations, communications, and outreach.

Next on the agenda, **Commissioner Grant** reported that her responsibilities covered individual income tax, the Information Technology Division, Human Resources, and Audit and Collection Field Services (compliance).

The Information Technology Division (IT) emphasized improving security throughout the agency. That included implementing new anti-virus and anti-spam desktop software, new anti-virus software for internet traffic, enhanced virtual private network capabilities, new intrusion prevention systems going from detecting to preventing intrusion, and enhancing the vulnerability testing of the software. The GenTax discovery module was completed this year. They are heavily involved in the Governor's consolidated messaging project and will convert the Tax Commission email system this fiscal year.

There was record production in both the audit and compliance areas. Audit recoveries were up 12% from \$50.0 to \$56.0 million. The recoveries have increased 50% over the last 5-year period. Recovery means that audits of businesses and individuals result in dollars that accrue to the state, after the audit has been completed, over and above what the entity paid voluntarily. Compliance recoveries, referring to the collectors, increased 26% this past year from \$113.0 to \$142.0 million. Over the last five years, recoveries have been up 43%. Not only have they collected more dollars, there has been an increase in the number of audits; over 18,000, up 100% over the last five years. A record number of cases has been closed by the compliance area, about 129,000 and the cost to close a case continues to decline from a high of \$46.75 to \$35.44. **Chairman Hill** asked what kinds of costs are in that number? **Commissioner Grant** explained that it includes all costs to close a case, i.e., time, administrative, expenditures for legal needs. It is the total cost to close the case. The focus has been to get the per case cost down.

The new GenTax module was implemented this last year and will enhance the individual income tax audit selection process and improve the non-filer identification process. It provides the ability of real-time, W2, employer/employee matching. Idaho is the first to be able to do this electronically. This allows the Tax Commission to match what the employee reports on their income tax form with what the employer is reporting. Very often these amounts are not the same. The Discovery Module has many additional projects that are being reviewed and could be implemented over the next few years to improve all capabilities.

A tremendous amount of time has been spent on work force planning. The audit and compliance staff will be affected by the number of staff that will be retiring and the large amount of expertise that will be lost. There has also been difficulty retaining new audit staff. The Tax Commission was/is the training ground for the IRS and the private sector. After six months of training, they were going elsewhere at a higher wage. A career ladder concept has been implemented that provides for career advancement, allows staff to gain a broader knowledge, and facilitates staff transfers between various audit bureaus. This has helped curtail the turnover rate and has allowed the agency to benefit from the extensive training process each auditor receives.

Human Resources is very much involved with work force planning for all divisions throughout the agency. Emphasis has been placed on business continuity planning and enhancing security.

Commissioner Grant stated that this will be her last report to the Committee. After 18 years, her term ends on March 6, 2009 and she will be moving on to other endeavors. **Commissioner Grant** commented on the great amount of change that has occurred over that 18 years, it is like night and day. When she first appeared before the Committee, there was a feeling of "us and them." There was no cooperation or collaboration and it seemed to her the Commission was largely at fault. After determining what their role was, the Commission found it did not have a policy making role but an implementing role, the climate changed. There

has been a change from dreading coming to the Committee to enjoying the opportunity to appear before the Committee and that benefits the citizens of Idaho.

Chairman Hill expressed the gratitude of this Committee for **Commissioner Grant's** many years of service to the people of Idaho and her positive influence on the State Tax Commission.

Senator Corder asked about the percentage of audits where the taxpayer owed zero or the state owed the taxpayer. **Commissioner Grant** didn't have an answer but could find out. However, it would be expected that not many because of the sophisticated way audit selection is done.

Senator Werk commented that there have been reports of the Commission laying off employees, mostly referring to audit/collection staff. Has this reduced the ability to collect taxes? **Commissioner Grant** stated that they had to find a way to comply with the hold-back and their agency costs are primarily personnel costs. They considered where to make the cuts that would have the least impact and they determined that reducing the permanent temporary staff would minimize the effect. The GenTax module will help tremendously. **Senator Werk** asked if it is known what the impact of those reductions will be to the bottom line of the taxes that will be collected – is there a number? **Commissioner Grant** said that they could not develop a number until the taxes are in. **Senator Werk** remarked that there must be some diminished capacity in collecting tax. **Commissioner Grant** concurred.

Chairman Hill said obviously a reduction in people is a reduction in capacity, but there is always the issue of diminishing returns.

Senator Werk asked for a report on what the Commission was able to mitigate and any kind of analysis to better understand the impact of those cuts.

Chairman Hill referred to the real-time matching of W2s. If the taxpayer has over-reported federal withholding to get a larger refund, is that being reported to the federal government? **Commissioner Grant** couldn't answer but would check on it. **Chairman Hill** stated that the use of GenTax started years ago and it has proven to be good. Do we now have all the modules that were originally identified as necessary? **Commissioner Grant** responded that they have the majority of them.

Chairman Hill invited **Commissioner Chigbrow** to sum up and then there would be time for questions particularly regarding Rule 500 and issues from this summer.

Commissioner Chigbrow reported that the Commission is processing just under 1.0 million individual tax returns filed during the year. In addition, there are 112,000 corporate/business returns and 400,000 sales tax returns. There were 12,000 individual audits, 651 corporate audits, and 5,293 sales tax audits and a small number of compromise and closing agreements: 29 individual, 8 corporate, and 7 sales tax cases.

The Tax Commission was reviewed and the report indicated the Commission was legal and acting within their statutory authority.

Commissioner Chigbrow provided some history and current experiences with the Tax Commission; first, as a practicing CPA and now, as a member of the Commission.

Taxes are very complex and there will be some litigation. Anytime a case goes to court, there is only a 50-50 chance of winning because there are two opinions about the proper treatment and interpretation of the law. Most of the cases have been settled in favor of the state. The Tax Commission has one basic need – 25 more auditors. The state has grown, tax laws are more complex, and even with technology, capable people are needed. The Commission should be auditing 2.5% of the returns instead of 1%. The Tax Commission needs to be maintained in a healthy state. **Commissioner Chigbrow** introduced **Dan John** who works on tax policy, and **Ted Spangler**, who covers the legal side. **Commissioner Chigbrow's** said his areas of responsibility are corporate taxes and gift taxes.

Chairman Hill initiated discussion on the reports that **Commissioner Chigbrow** alluded to. It has been five months since Mr. Gentry submitted his report. Neither Mr. Gentry, the Attorney General, nor anyone else, found any illegality on the part of any commissioners or anyone in the State Tax Commission. However, he did make some suggestions to be considered for improvements. A similar report was done in 1996 from a Legislative Services (LSO) audit that made two recommendations; one was having more than one commissioner involved in the comp and closing reports, and two, provide a better paper trail. Mr. Gentry had three general recommendations. He referenced that there are multiple persons participating in the comp and closing agreements and it appears that LSO recommendation was addressed.

Chairman Hill requested some discussion on Mr. Gentry's suggestions even though nothing is settled yet. However, over the past five months, the Commission must have developed some idea as to how to resolve those issues. This Committee would like some understanding about the direction the Commission is going and could possibly provide some input. First, is there more than one commissioner involved in those comp and closing settlements? **Commissioner Chigbrow** replied, "not in every case" but in those involving more than \$50,000. More than \$50,000 requires two commissioners to sign off. Also, the Chief of Audit and Deputy Chief of Audit generally signs off on those.

Chairman Hill quoted Mr. Gentry's recommendation on transparency which may include a review of select compromise and closing agreements by this Committee. **Commissioner Chigbrow** responded that a report is in review at this time that will provide information to this Committee. **Mr. Spangler** said a draft of that document is sitting on his desk and he will get that sent on through the process. **Commissioner Chigbrow** said that legal, policy, and audit supervisors have been meeting to streamline all the efforts so transparency will exist between all three departments.

Chairman Hill stated that it is good internally, but there should be external transparency as well without jeopardizing the confidentiality of the taxpayer. **Senator Werk** thought it would be more helpful to understand the total tax liability associated with the compromise and closing agreements and what the incoming/outgoing dollars were.

Commissioner Chigbrow responded that there are many things to take into consideration like the application of the law and even the mood of the auditor. The cooperation, or lack thereof, of the taxpayer in providing information affects the reports. What is actually accepted as the bottom line is what it should be.

Chairman Hill stated that one of Mr. Gentry's recommendations was that the commissioners help the auditors more in obtaining information from the taxpayer. It doesn't appear that the commissioners are backing the auditors sufficiently to make the taxpayers provide information to them instead of waiting until the case goes to appeal. **Commissioner Chigbrow** responded that the legal advisors wanted those cases to get into the courts earlier. **Mr. Spangler** said, over the past few months, the Tax Commission has issued summons to the taxpayer requiring them to produce information to assist the auditors. **Chairman Hill** asked if these procedures are being put in writing so the auditors know what options they have. **Mr. Spangler** responded that it does need to be in writing. It is not at this time because they are still working through the process. They are still learning how this works and developing techniques. How to interpret the statute may be the dispute not the lack of information.

Chairman Hill said *"this is not going away, something must be done to resolve this. It has been five months. When can a commitment be expected?"* Also, there must be a better job in getting access to legal assistance from the Attorney General's staff. All of this must be reduced to writing so the auditors know what their options are and they can be at a certain comfort level when asking for information. In addition, there are the issues of communication, the paper trail, and putting it all in writing.

The role of the commissioners in relationship to the audits should be defined. This may be determined by the legislature with the help of the Commission. The question is, are they an independent party the taxpayer can turn to and say "I want independence." "Lets work out what the right tax liability is;" or, "are you advocates of the State Tax Commission?" If that role was more specifically defined either in statute or rule or procedure, it might help in knowing what communications are proper. **Commissioner Chigbrow** said that, to a degree, those are things they are working through because audit is working with policy and legal and then communicating back to the auditors. **Commissioner Chigbrow** gave a step-by-step description of the process for a compromise and close case. **Chairman Hill** said it should be reduced to writing so the procedures are visible. We are going to *"hold your feet to the fire on this."* **Commissioner Chigbrow** agreed it would be reduced to writing in the very near future.

Senator Corder referred to **Chairman Hill's** comments on the

Commission's roles. That is very important because, in your case, your role changed when you crossed over from being a CPA to being a member of the Tax Commission. As a CPA representing the people, you didn't like the Tax Commission and now that you are on the Tax Commission, you like the Tax Commission but the Tax Commission never changed. What changed was the understanding of what your role was. **Commissioner Chigbrow** said 20 years ago, the Tax Commission had a very different role and, as a CPA, he had a total misconception of the Tax Commission in its present mode. **Commissioner Chigbrow** believes that the role of the Tax Commission is to see that the tax laws of the state of Idaho are administered in a fair and equitable way. This Committee and the Legislature give the Commission direction and the intention of the statute.

Senator Corder asked for the number of IFTA returns that are filed and what percentage are audited. **Commissioner Chigbrow** said they have about 3100 IFTA accounts but he doesn't know what the percentage is for auditing. **Senator Corder** requested that number in view of "fair and equitable." **Commissioner Chigbrow** will get that information to the Committee. **Chairman Hill** commented that although a small number of returns are audited, certain categories are audited more than others.

Chairman Hill said there has been no intention to offend the Commission and their work is very much appreciated. He looks forward to reports on the progress and thanked all of the commissioners for taking the time to come to this meeting.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:30 p.m. until Tuesday, January 27, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 27, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:06 p.m. on Tuesday, January 27, 2009, with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** Minutes for January 15, 2009. **Senator Bilyeu** made the following corrections to the minutes: page 3, line 3, comma after home, remove "and;" line 4, delete "would not pay sales tax but he." **Senator Bilyeu** moved to adopt the minutes of January 15, 2009 as corrected. **Senator Heinrich** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Chairman Hill** relinquished the gavel to **Vice Chairman Heinrich** to complete the review of the rules.
- Vice Chairman Heinrich** welcomed Janice Boyd, Idaho State Tax Commission.
- Ms. Boyd** reviewed the pending rules contained in *Docket No. 35-0101-0801* relating to income tax administrative issues. The changes modified, clarified, repealed, and added rules to conform them to current statute.
- Docket No. 35-0101-0801** Income Tax Administrative Rules
Notice of Rulemaking - Adoption of Pending Rules
- Rule 075* - Tax on Individuals, Estates, and Trusts was amended to add the table for the income tax brackets and rates for taxable years beginning in 2008 and to remove all but five years of historical data in the rule. At the request of this Committee last year, this process will continue as the new year is added and the oldest year is dropped, maintaining a five year history.
- Rule 108* - Adjustments to Taxable Income – Additions Required Only of

Individuals was amended to conform to 2008 HB 549 amending *Idaho Code, Section 63-3022*. The change limits the addition required for transfers from an Idaho college savings account to just those that were contributed to the account within the last twelve months.

Rule 120 - Adjustments to Taxable Income – Subtractions Available to All Taxpayers was amended to conform to 2008 *HB 615* modifying Idaho law to conform to federal law regarding bonus depreciation for property acquired in 2008. This rule was modified to clarify that those adjustments previously required do not apply to property acquired after 2007. There was also a reference to *Rule 193* added to *Subsection 6* addressing long-term care insurance.

Rule 125 - Adjustments to Taxable Income – Bonus Depreciation was amended to conform Idaho law to federal law regarding bonus depreciation for property acquired in 2008. Text was added to clarify that the rule only applies to bonus depreciation on property acquired after September 10, 2001, and before December 31, 2007.

Rule 128 - Idaho Adjustments – Pass-Through Entities was amended to remove information in the rule that is addressed in *Rule 291* and to add references to *Rules 291 and 173* with regard to pass-through entities that pay tax for electing owners or beneficiaries. Information in this rule was also found in *Rule 291* so that portion of *Subsection 05* was deleted and replaced with a reference to *Rule 291*.

Rule 130 - Deduction of Certain Retirement Benefits was amended to clarify who qualifies for the deduction allowed for civil service retirement benefits received. Idaho allows a deduction for retirement benefits paid to individuals that are considered civil service employees. The deduction is allowed because some paid into the social security system and some did not and those paying into the social security system get an Idaho deduction. This is a clarification as to who gets the deduction.

Rule 171 - Idaho Capital Gains Deduction – Qualified Property was amended to conform to 2008 *HB 563* amending *Idaho Code, section 63-3022H*. This rule eliminates the requirement that a member of a pass-through entity, S Corporation, or partnership hold his interest in the income of the entity for the same time as the holding period of the property qualifying for the capital gains deduction. Also, a reference was added to another internal revenue code where rules can be found discussing holding periods. Other clarifying language was added or deleted from this rule.

Rule 173 - Idaho Capital Gains Deduction – Pass-Through Entities was amended to conform to 2008 *HB 563* amending *Idaho Code, section 63-3022H*, eliminating the requirement that a member of a pass-through entity hold his interest in the income of the entity for the same time as the holding period of the property qualifying for the deduction. *Subsection 02* was deleted relating to the income/interest limitations to conform to this change.

Rule 193 - Health Insurance Costs and Long-Term Care Insurance was amended to address the payments for Medicare Part D and qualifications

for the Idaho deduction for health insurance costs. Information related to Medicare Part D has been added to this rule and as well as an added reference to *Rule 194*. Examples contained in *Rule 193* were transferred to a new, *Rule 194*, and deleted from this rule.

Rule 194 - Health Insurance Costs and Long-Term Care Insurance - Examples of Limitations is a new rule that contains the examples of the limitations when costs are otherwise deducted or accounted for. This language is being moved from *Rule 193* to reduce the length of that rule.

Rule 254 - Nonresident and Part-Year Resident Individuals – Subtractions Allowed in Computing Idaho Adjusted Income was amended to conform Idaho law to federal law regarding bonus depreciation for property acquired prior to 2008. A reference to *Rule 193* was also added.

Rule 266 - Income from Intangible Property was amended to address two issues with regard to the sourcing of income from intangible property. The rule deals with income from intangible property for nonresidents to determine if they have Idaho source income from this type of property. *Subsection 03* was added to address the sourcing of payments that are considered penalties related to intangible assets. *Subsection 05* was added to address when the sourcing determination is made for income received from the sale of intangible personal property including those gains reported on the installment method.

Rule 273 - Idaho Compensation is a new rule being promulgated to discuss the sourcing of unemployment compensation. It provides guidance on how to determine the sourcing of the unemployment compensation when it relates to work performed in Idaho using the same calculation that was used to determine the original benefit. **Chairman Hill** asked if Idaho would pay unemployment compensation benefits based on credit from another state. **Ms. Boyd** said that in the majority of the cases, benefits are paid based on the work done within the state although there are some reciprocal agreements where some work may have actually occurred in another state. **Chairman Hill** commented that he understood that if you worked in Oregon, you were taxed in Oregon and the same applies when working in Idaho. It would be very difficult for a taxpayer to apportion the amount of income that comes from each state. **Ms. Boyd** stated that the employee gives the Department of Labor the information about where they worked and whether or not the employer operated in more than one state. **Chairman Hill** said that the employee knows that the benefits are paid in Idaho but doesn't necessarily know how the calculations were made. **Ms. Boyd** answered that it might be a problem. They would investigate more.

Rule 290 - Tax Paid by Entities for Officers, Directors, Shareholders, Partners, Members, or Beneficiaries – Election was amended to clarify that an individual who has income from more than one pass-through entity, but no other income, can make an election for each pass-through entity to pay the tax on his income from the pass-through entity. Two new subsections have been added to clarify and provide examples about how the process would work.

Rule 550 - Sales Factor – Sales Other Than Sales of Tangible Personal

Property in Idaho was amended to conform more closely to language included in the Multistate Tax Commission (MTC) Regulation IV.17., Sales Factor: Sales Other Than Sales of Tangible Personal Property. One of the MTC rules was amended and the changes in Rule 550 introduced language to conform to the MTC change.

Rule 700 - Credit for Income Taxes Paid to Another State or Territory – In General was amended to conform to 2008 *HB 564* which allow the credit for income taxes paid to another state by a qualifying part-year resident when he is residing in Idaho even though domiciled in another state. Previously, the rule did not have language to provide that those just residing in Idaho would be given the credit and this amendment conforms to that change.

Rule 701 - Credit for Income Taxes Paid Another State or Territory – Part-Year Residents was amended to clarify terms by adding “or residing” to Subsection 01. This is another credit rule that relates to income tax paid to another state and several instances of “or residing” have been added to be consistent with the changes relative to *HB 564*.

Rule 710 - Idaho Investment Tax Credit - In General was amended to exclude from the definition of qualified investment for purposes of the investment tax credit, the cost of property acquired after 2007 for purposes of the deduction when first-year bonus depreciation is claimed. Subsection 06 is added to modify the rule to show that there is not a tax credit for property acquired after 2007 when a deduction for bonus first-year depreciation is claimed. Also, some obsolete language was deleted.

Rule 770 - Grocery Credit – Taxable Years Beginning Before January 1, 2008 was amended to clarify language relating to the grocery credit for taxable years beginning prior to 2008. The title of this rule was changed to reflect that it only applied to the grocery credit prior to January 1, 2008.

Rule 771 - Grocery Credit – Taxable Years Beginning after December 31, 2007 is a new rule changing the amounts and qualifications for claiming the grocery credit for 2008 and forward. The table will be extended for future years.

Rule 785 - Credits – Pass-Through Entities (this rule has general application to many code sections) was amended to add *Subsection 01.d* adding information to the rule that pass-through entities may not pass a credit through to partners or owners based on special allocations.

Rule 799 - Priority Order of Credits and Adjustments to Credits was amended to repeal the Idaho Corporate Headquarters Incentive Act of 2005 because no one ever qualified for the incentives and those credits are being removed.

Rule 800 - Valid Income Tax Returns was amended to clarify how taxpayers who file electronic income tax returns must verify Idaho income tax withheld. The change allows that W2s and 1099s do not have to be attached when filing income tax returns electronically as long as the information is included with the filing.

Rule 830 - Information Returns was amended to address the due date for

filing information returns electronically to follow the federal due date of March 31.

Rule 855 was amended to clarify that the permanent building fund tax is required to be paid by an entity at certain times. Legislation last year modified the statute to clarify that if a pass-through entity has taxable income, they are required to pay the permanent building fund tax and the rule was modified to be consistent with that change. A subsection was added to address the situation when an individual has more than one pass-through entity and each would be required to pay the permanent building fund tax with no proration.

Rule 872 - Reporting and Paying State Income Tax Withholding was amended to change the due date for the reconciliation returns from the last day of January to the last day of February and made changes to the thresholds for employers remitting income tax withholding. The rule was modified to conform to legislative changes made in 2008 and modified the thresholds.

Rule 874 – Employees Wage and Tax Statements was amended to remove obsolete references to “magnetic media” and replace it with “electronic filing” and modified to reference Rule 270 outlining instructions for non-residents when computing Idaho compensation.

Rules 920 through 926 – Idaho Corporate Headquarters Incentive Act of 2005 are being repealed as part of repealing the Idaho Corporate Headquarters Incentive Act of 2005 because no one claimed the credit.

Rules 930 through 936 – Idaho Small Employer Incentive Act of 2005 are being repealed for lack of qualified participants.

Rule 941 – Idaho Small Employer Incentive Act of 2005 - In General was amended to delete Subsection 01 since it referenced a statute that was repealed.

Senator Jorgenson complimented **Ms. Boyd** on an outstanding job of interpreting these rules. **Senator Jorgenson** asked if **Ms. Boyd** was a tax lawyer or CPA. **Ms. Boyd** responded that she was not an attorney and her CPA license is on an inactive status. She has worked for the Tax Commission since 1982.

Chairman Hill commended **Ms. Boyd** and the Agency on the way they prepared and presented these rules. The additional explanations are very useful. Also, returning this year with additions to the rules based on recommendations from this Committee last year is very much appreciated. **Ms. Boyd** said they do appreciate receiving input from the Committee.

Vice Chairman Heinrich stated that the Committee has had the opportunity to review all the dockets that have been presented by members of the State Tax Commission and asked for any questions or comments.

MOTION:

Senator Jorgenson moved to approve the following dockets as presented:

35-0101-0801
35-0201-0802
35-0103-0801
35-0103-0802
35-0103-0804
35-0201-0801

Senator Bilyeu seconded the motion.

Senator Werk commented on Rule 500 and expressed his appreciation to the Chairman for his forthrightness when the Tax Commission was here about the elements of this rule. Rule 500 is the starting point to help the Commission with that process.

VOTE:

The motion carried by unanimous voice vote.

Vice Chairman Heinrich concluded the review of the rules and returned the gavel to the Chairman.

Chairman Hill thanked the Tax Commission and the Committee for the opportunity to go through this review process. There will not be a Committee meeting on Wednesday as pictures will be taken. Mr. John will give his annual review of taxes on Thursday.

ADJOURNMENT:

The meeting was adjourned at 3:38 p.m. until Thursday, January 29, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 29, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senator McKenzie
- CONVENED:** **Chairman Hill** called the meeting to order at 3:03 p.m. on January 29, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Jorgenson** moved to accept the January 20, 2009 minutes as written. **Senator Corder** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Chairman Hill** introduced **Dan John**, Idaho State Tax Commission, who will be providing the annual update of Idaho's tax sources.
- Mr. John** explained that the handout is in black and white (on file) but that he would electronically transmit the power point presentation in color.
- Senator Jorgenson** asked why property tax is being included in the charts since no part of property tax goes to the State. **Mr. John** said it is included to give a total of state and local tax revenues for the year but is not an indication that the legislature controls that portion. **Senator Jorgenson** inquired if there were other revenues included that did not go to the State. **Mr. John** answered that this does not include any federal revenues that go to state or local entities nor does it show any fees or other miscellaneous income collected by local or state governments. This is a pure tax analysis.
- Sales, individual, and property taxes are almost identical in size. Motor fuels are not a general fund tax revenue source; that money goes to the highway distribution account, the Department of Transportation, and to local government entities for highway and road districts. **Chairman Hill** clarified that this does not include federal funds coming to the highway district. **Mr. John** agreed. It is purely the 25¢ per gallon and a small amount of the transfer fee.

Mr. John continued with his explanation of the collection and history of tax resources. Distributions from the General Account showed that Education received about 64.7% and Health & Welfare was at 20.2%. **Mr. John** dispelled a popular myth that all sales tax revenues went to fund schools. Schools spend more than the receipts from sales tax and that revenue goes to a variety of uses, i.e., building fund, circuit breaker, and county and city revenue sharing. **Chairman Hill** asked for the formula for the amount of the sales tax that goes for revenue sharing? **Mr. John** answered that it is 11.5% of the full amount.

Property tax distribution is about equal between cities, counties, and schools. The amount for schools would have been much larger prior to 2006 when school maintenance and operations was transferred from property tax to General Fund. The chart showing the major categories of property tax indicated that the residential category tracked closely with the total in growth from 1978 - 2008. **Chairman Hill** asked for the reason for the dip in 2006. **Mr. John** said that was the removal of maintenance and operations from the property tax revenues.

Senator Heinrich observed that residential tax revenues are going up even with the increase in the homeowner's exemption. **Mr. John** responded that was because it also includes recreation properties and rentals, unless they are more than a fourplex, in addition to owner occupied homes. Inflation and new construction is also built into this amount.

Mr. John stated that there are 1108 different taxing districts in Idaho including cities, counties and school districts. Of those, 950 levy property tax.

The next charts showed how Idaho taxes compared with neighboring states and the nation based on income for fiscal year 2006, the most recent census data available. Four of the western states, Idaho, Montana, Oregon, and Utah, have corporate and income taxes while three states, Nevada, Washington and Wyoming, do not have these taxes. Although Idaho's corporate income taxes are comparable nationwide, all the western states are over the national average for individual income taxes. **Senator Werk** asked if there was a reason why we are above the national average. **Mr. John** answered that it is a combination of income, structure, and rates.

When looking at motor fuels and licenses, keep in mind this is 2006. If this were fiscal year 2008 data, it would be much higher because states have increased their rates in the last two years. Also, this only includes motor fuels tax and licenses and does not include personal property tax which some states have on vehicles. It is a western phenomena that all the western states are above the national average. It is a function of more miles and fewer people. **Senator Corder** asked if license fees included registration fees. **Mr. John** answered that it did. **Chairman Hill** requested clarification that this data is based on dollars of income per capita and not the use of raw figures. **Mr. John** responded that this is the tax burden based on what is collected in Idaho for motor fuels tax and license fees compared to personal income. **Chairman Hill** said that is why it costs

more per person based on income because they travel more miles. **Mr. John** agreed and added that in Idaho it becomes less favorable because the state has a lower than average personal income.

The sales tax numbers reflect 5¢ because it is 2006 data; next year will be different due to the increase to 6¢. Idaho is below the national average while neighboring states are quite a bit higher. Those states also have a broader base for collections.

Overall, the western states are relatively close to the national average. Wyoming is the exception due to the severance tax on mineral extraction. When looking at Idaho versus the national average, property taxes are 12.9% below the national average while motor fuels are 54.3% above when using income based data. Looking at a per capita based comparison, Idaho is well below the national average in every category except individual income tax and motor fuels.

Mr. John showed charts comparing all states in the U.S. and the District of Columbia using the largest city in each state. The comparison used a hypothetical family of three at varying income levels of \$25,000, \$50,000, \$75,000, \$100,000 and \$150,000. The \$25,000 property tax segment is level because it is based on all persons living in a rental. Property tax in the other categories is based on owner-occupied housing. Idaho is relatively low compared to other states.

Idaho's individual income tax rate brackets are fairly broad. Idaho has a relatively high flat corporate tax rate but that is a little misleading due to tax credits and business type. **Senator Corder** asked how Idaho compared using the effective rate. **Mr. John** said that is difficult to answer because of the variance caused by credits and types of businesses.

Sales tax charts showed that those states with a straight sales tax had, in some cases, exempted or reduced the rate for groceries, and some exempted prescription drugs. **Chairman Hill** asked if this is strictly the sales tax rate and doesn't include any local option sales taxes. **Mr. John** said it is purely the state rate.

The motor fuel rates show Idaho at a total tax of 25¢/gallon. The chart shows that most of the western states are similar except Washington is at 36¢. **Chairman Hill** asked for an explanation of "additional tax." **Mr. John** replied that some states have sur charges, mostly on diesel. Idaho has a transfer fee of 1¢ for every gallon of fuel sold to cover clean up insurance and that is non-refundable. The courts have determined that this is actually a tax even though it is called a fee so it goes to the building and maintenance of highways with very little going to the State Insurance Fund. **Senator Jorgenson** asked about the privilege tax noted for Washington. **Mr. John** will find out what that is.

Idaho's cigarette tax rates are 57¢ per pack. New Jersey has the highest on the chart at \$2.575 per pack. **Senator Werk** commented that there could be a correlation between the price of cigarettes and consumption but **Mr. John** debated that observation.

The wine tax rate is 45¢/gallon and has not changed since 1972. The U.S.

median for wine is 69¢. Idaho's beer tax is 15¢ a gallon and has been at this level since 1961. The U. S. median is 18.8¢.

A 2004 survey conducted by the Federation of Tax Administrators and updated in 2007 showed the services that are taxed by each state. The imposition statutes tax items such as admissions, fabrication, and labor but do not include the sale of tangible personal property. Idaho taxes 29 such services.

Mr. John concluded his presentation and asked for questions.

Senator Corder asked if there is a way to measure the broadness of the tax base. **Mr. John** stated that there is not an index that shows 100% of what all the states are taxing although this survey does cover a portion of those services.

Senator Bilyeu asked if a comparison of personal property tax to other states was made and, if not, is that information available? **Mr. John** said he would try to find a study addressing personal property exemptions and get back to the Committee.

Senator Stegner inquired about the services included in the breakdown for the utilities category. **Mr. John** responded that he would send a copy of the full study to the Committee which would provide that detailed information.

ADJOURNMENT: **Chairman Hill** thanked Mr. John, announced that the Committee will only meet two times during the coming week, and adjourned the meeting at 3:55 p.m. subject to the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 4, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:05 p.m. on February 4, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** The minutes of January 21st were held for corrections until February 5, 2009.
- Chairman Hill** asked if the Committee had any issues they would like to have brought before JFAC. **Chairman Hill** will provide information to JFAC on current issues coming before the committee, i.e., conforming Idaho Code to federal legislation related to the various stimulus packages that have been passed in recent months and the status of the recommendations made to the Tax Commission.
- Chairman Hill** introduced **Dan John** and **Ted Spangler**, Idaho State Tax Commission.
- HB 03** Relates to Corporation Income Taxes
- Mr. Spangler** stated that this bill only affects corporations who are part of a commonly owned corporation doing business internationally and have a business in Idaho and at least one foreign country. This multi-corporate structure can file a single, combined return for income tax as if it were a single corporation and the income of the entire group “shall be allocated or apportioned as if the group of corporations were a single corporation.” If that group files a “water’s-edge” election, only domestic U.S. corporations would be included in the Idaho corporation income tax return.
- The changes in *HB 03* clarify that the alternate apportionment provisions and the general combined reporting provision in Idaho Code still apply to a combined group reporting under a water’s edge return removing any indication that these provisions would not apply to those electing to file a water’s edge return. It also makes clear that all affiliated corporations are included in the combined return.
- The focus was on the availability of records from all affiliated corporations, not just the parent corporation, and that any new group whether purchased,

merged, or newly organized, would be deemed automatically a part of the water's edge election.

Senator McKenzie asked how this change would result in an increase to the General Fund. **Mr. Spangler** answered that it enhances the ability to get records resulting in efficiencies in the collection process.

Senator Stegner inquired if this would make Idaho more consistent with other states. **Mr. Spangler** said it would with those states that had a water's edge election.

Senator Bilyeu asked if these were primarily large corporations and are there very many of them? **Mr. Spangler** stated that they could be. Also, the parent corporation may be overseas and have a subsidiary in the U.S. This is not a large group but they tend to pay a lot of taxes.

Chairman Hill asked if the election was permanent or was it revocable? **Mr. Spangler** responded that it was permanent for all corporations in the group, not just the parent corporation.

Senator McKague asked if there was a specific reason that "triggered" this change. **Mr. Spangler** replied that questions from tax managers and corporations indicated a need to clarify the language.

MOTION: **Senator Stegner** moved to send *HB 03* to the Senate floor with a do pass recommendation. **Senator Werk** seconded the motion.

VOTE: The motion carried with one dissenting vote by Senator McKague.

HB 04 Relating to the Property Tax Exemption for Homesteads

Mr. John explained that the 2009 homestead exemption is \$104,471. When the 2006 Legislature increased the homestead exemption and directed the amount to be indexed using the Idaho housing price index, it did not necessarily provide for a decrease in that index. *HB 04* modifies the law to provide that the adjustment would be based on a change in the index allowing the maximum amount of the exemption to decrease as well as increase.

MOTION: **Senator Heinrich** moved to send *HB 04* to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

HB 05 Relating to Income Taxes

Mr. John introduced *HB 05* disallowing state income tax deductions for passive losses incurred in years in which the taxpayer was not taxable in Idaho. Resident individual taxpayers are required to add back any capital loss incurred in activities not taxable by Idaho at the time the loss was incurred. Under current law, there is no such limitation on non-Idaho passive losses carried forward into years of Idaho residency.

It is inconsistent to disallow non-Idaho capital losses and net operating losses carried forward into years of Idaho residency and yet allow non-Idaho passive losses incurred in years before Idaho residency to be deducted in

calculating Idaho taxable income. Non-residents moving to Idaho could not deduct passive losses against future income earned in Idaho. Such losses were non-Idaho when incurred, and should remain non-Idaho when deducted.

Chairman Hill stated concerns with this bill. Passive losses are losses from a business in which the taxpayer is not actively involved. This is much different than net operating loss which affects the current income. Capital loss is different because it affects something that was sold. With this change, people will be earning income and paying Idaho tax but will not get the benefit from losses incurred in the past. **Chairman Hill** said he could not support this bill because of the effect it would have on the taxpayer.

Senator Werk's understanding is that right now, without this legislation, the taxpayer gets to use losses to offset gains. Is that correct? **Mr. John** agreed. **Senator Werk** stated that, with this bill, the taxpayer would not be able to use those losses. It is a change in policy of how to view passive losses in Idaho.

Senator Stegner asked if it would be difficult for the taxpayer to track these losses. **Mr. John** agreed there would be some work involved. **Senator Stegner** commented that it would be difficult for a non-CPA person to absorb or understand this change. The Tax Commission is suggesting that it is not really a matter of passive losses, it is the matter that the tax on the gain was not paid in Idaho so the loss should not be taken in Idaho. **Mr. John** stated that this is not concentrating on passive losses/gains or capital losses/gains but is more involved in the difference of where the taxpayer resides—it is a residence issue.

Senator Werk asked how other states treat this issue. **Mr. John** could not answer that question. **Senator Werk** stated that this is an issue of fairness in the system if all states were treating this the same as opposed to Idaho standing alone. **Chairman Hill** stated that all states treat this differently. **Chairman Hill** added that there were federal issues as well.

HB 05 was moved to the February 5th agenda for further consideration. **Mr John** will get more information in answer to the questions that were raised.

ADJOURNMENT: There being no further business, **Chairman Hill** adjourned the meeting at 4:55 until 3:00 p.m. on February 5, 2009.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 5, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Vice Chairman Heinrich** called the meeting to order at 3:03 p.m. with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:**
- January 21, 2009** **Senator Stegner** moved to accept the minutes of January 21, 2009 as corrected. **Senator Corder** seconded the motion.
The motion carried by unanimous voice vote.
- January 22, 2009** **Senator Corder** moved to accept the minutes of January 22, 2009. **Senator Stegner** seconded the motion.
The motion carried by unanimous voice vote.
- January 27, 2009** **Senator Jorgenson** moved to accept the minutes of January 27, 2009 as presented. **Senator Bilyeu** seconded the motion.
The motion carried by unanimous voice vote.
- HB 10** **Vice Chairman Heinrich** announced that the discussion for HB 05 would be moved to the end of the agenda.
- Related to Sales and Use Tax on Airplanes
Ted Spangler, Idaho State Tax Commission, brought this bill before the committee with two changes relating to the way the exemption from sales and use tax applies to aircraft under certain circumstances.
- 1) Currently, the exemption for use tax applies to personal effects, household goods, and motor vehicles owned by a resident if those articles were acquired while they were a non-resident at least three months before becoming an Idaho resident. The amendment would extend that exemption to personally owned aircraft.
 - 2) Presently, the exemption for aircraft sales and use taxes applies to aircraft primarily used for transporting passengers and freight for hire and excludes parts and other materials for maintenance and repair. That means that the parts are taxable even though there were no sales or use taxes paid at the

time the airplane was purchased. The purpose of this legislation is to clarify the language “transport passengers or freight for hire.” The bill makes the language consistent with the intent of the exemption as it was originally enacted.

Chairman Hill is in attendance and **Vice Chairman Heinrich** passed the gavel to him.

Senator Corder inquired if this bill exempts parts used to repair an aircraft from sales/use taxes. Interstate trucks can be exempt from taxes but there is not a provision for the parts to repair that truck to be tax exempt. That seems to be a contradiction. **Mr. Spangler** responded it is the tools and equipment used in performing repair and replacement functions that remain taxable. Parts for aircraft are exempt from sales tax but parts for trucks are not. However, the purpose of *HB 10* is to address the definition of “passengers and freight for hire.” **Senator Corder** commented that there should be consistency with current law.

Senator McKenzie asked about aircraft that carry passengers for hire but do not go point-to-point, i.e, a plane used for jumpers that lands back at the point of origin without ever touching down at another point. That plane is always used for passengers for hire. **Mr. Spangler** replied that is one of the circumstances that has caused some of the confusion in the statute. The Tax Commission has taken the position that the original intent was a common carrier function of carrying things from one place to another and a plane used for jumpers would not qualify.

Senator Stegner recalled being present when the parts exemption was put into law. The justification was that repair locations for airplanes could be anywhere and the planes flew to them for scheduled repair. In order to attract these businesses and jobs, the exemption was offered in order to be competitive with other states.

Senator Werk stated that the language would not change policy, it clarifies in statute what the policy has been. **Mr. Spangler** agreed and it would remove any ambiguities.

Chairman Hill inquired if the Tax Commission will continue the same way whether or not this legislation is passed. **Mr. Spangler** agreed they would continue to administer the statute under the existing interpretation that could result in some challenges. This bill would eliminate that kind of dispute.

Testimony was heard from:

Russell Westerberg on behalf of Western Aircraft

Allen Hoyt, President and COO - Western Aircraft

Mike Maynard, Vice President and CFO - Western Aircraft

Senator Stegner requested clarification about the problem Western Aircraft was bringing before the Committee. **Mr. Maynard** stated that they were asking the Committee to consider a sales tax exemption on parts for a non-resident aircraft when they fly into Boise for repairs and maintenance.

Senator Stegner noted that there must have been a ruling from the Tax Commission or they are under the assumption that parts are taxed, is that correct? **Mr. Maynard** agreed. **Senator Stegner** said the distinction is, the

planes are not for hire.

Senator Bilyeu asked if this legislation would correct the problem **Mr. Maynard** is discussing. **Chairman Hill** said the intent is to clarify what the statute says and the revised language does make it clearer. The question comes with *Subsection (3)* stated in the existing statute. The changes attempt to state what the statute applies to and to make it very clear it does not apply to non-resident aircraft. The gentlemen from Western Aircraft are saying that it should apply to non-resident aircraft. There are a couple of options: 1) accept it the way it is and exempt the resident aircraft that are for hire but still make it taxable for the repairs on the non-resident aircraft; or, 2) send the bill to the amending order, strike the portion of *Subsection (4)* that says “subsections (1) and (2) of” so it will say “aircraft described under this section are exempt.” That would make Sections (1), (2), and (3) exempt. That is the decision the Committee needs to make.

Senator Stegner thought it was not a matter of whether or not it was a resident airplane, it was a matter of whether it was a common carrier. **Mr. Maynard’s** problem is that a number of his customers are private aircraft that are not common carriers but the solution is the same when striking “subsections (1) and (2) of” in section (4). Then only parts are exempt.

Mr. Spangler stated, if you were to strike the words “under subsections (1) and (2) of,” it may or may not be adequate because “aircraft in this section” are those that are exempted – it may take additional language.

Chairman Hill said that under Idaho Code, Section 63-3622GG, we are saying that these certain aircraft are exempt from the sales tax when they are acquired. Then the new Section (4) says only (1) and (2) are going to be exempt when repairs are made but (3) will not be exempt when repairs are made. Is that what is being said? **Mr. Spangler** agreed that is what the bill is saying but there is still a question. What is being suggested may be sufficient but could create some inadvertent ambiguities so it may require a little bit of additional language. **Chairman Hill** interjected that if there is a list of aircraft that are exempted from the sales tax, why would you pick one part of those and say that the parts to repair them are not exempt for sales tax but the others would be – what is the rationale behind that? **Mr. Spangler** could not speak for the rationale behind the statute as it is currently written, but what it may be trying to get to is, if the aircraft were exempt then the parts that go on them are exempt, but if the aircraft are not exempt, then the parts that go on them are taxable. **Chairman Hill** asked if the aircraft under subsection (3) were exempt. **Mr. Spangler** said that is an exemption for newly acquired aircraft purchased or leased in Idaho and then taken out-of-state but doesn’t apply to aircraft that was acquired out-of-state and brought here for maintenance and repairs.

Senator Stegner explained why the original statute was written in this manner. The request for an exemption on parts came from a repair shop for a common carrier and the justification was that the common carrier was in the business of producing revenues within and outside the state and was almost an extension of production by adding value in terms of commerce. There was only one person making the request. It wasn’t offered to private aircraft that may be used only for luxury or convenience and wasn’t engaged in commerce. The

exemption had some kind of nexus to production and business which is traditionally exempt in this state. As to why it wasn't expanded to include all aircraft, in my opinion and recollection, it was because it wasn't asked for and was not a part of the consideration. What both **Mr. Maynard** and **Mr. Hoyt** are suggesting, is that it hinders their business by using this commercial application for that exemption.

Senator Corder commented that he now understands. The policy is consistent with the policy that applies to trucks. If they weren't exempted, they wouldn't get the business. The logic behind that exemption was to produce some commerce within the state and what **Mr. Hoyt** and **Mr. Maynard** are suggesting would do that – more planes would be flying in here and if we charge them sales tax, the planes are going to go somewhere else to do business. They are not locked in. This is not an expansion of the exemption, it is a logical progression of commerce.

MOTION:

Senator Corder moved to send *HB 10* to the amending order to make that correction and provide that consistency. **Senator Bilyeu** seconded the motion.

Senator Werk stated that his initial reaction is, if you want an exemption, come to the legislature and ask for that exemption. Right now the Committee is considering an exemption without any idea of whether or not that exemption will result in lower direct taxes. The proper way to go about asking for an exemption is to bring a bill with a fiscal impact statement so that we can evaluate it and if the exemption has merit, it can be granted. This is a "back door" approach by trying to tack the exemption to this bill without a clue to the fiscal impact.

Senator Stegner said we could send this to the amending order and have this fight on the floor and while that strategy serves a purpose from time to time, this is not one that adds the most value to the discussion, particularly to the expansion of an exemption. It would be very helpful to ask the Tax Commission to look at the language needed to accomplish the expansion of the exemption and to estimate the cost so the Committee can evaluate it before sending it to the Senate floor. That will contain the initial discussion to this group, data can be reviewed, and appropriate language could be crafted.

SUBSTITUTE MOTION:

Senator Stegner made a substitute motion to hold *HB 10* to allow the Tax Commission time to provide that data. **Senator Werk** seconded the motion.

Chairman Hill asked Mr. Spangler if it is possible to estimate the fiscal impact and draft the language needed within the next week. **Mr. Spangler** said it is possible with the language but the fiscal impact will require some investigation.

Chairman Hill stated there is a substitute motion before the Committee to hold *HB 10* in Committee for an indefinite period of time until information is received, at which time the Chair will bring it forth to be discussed again.

VOTE:

The substitute motion carried with Senator Corder casting a dissenting vote .

HB 11

Relates to Filing Tax Returns Electronically

Dan John, Idaho State Tax Commission, explained that *HB 11* makes modifications in two areas of the tax code:

1) The change in the motor fuels law would require any motor fuels distributor who must report 25 receipts or disbursements of motor fuel monthly to file returns electronically. The Tax Commission must take into account the ability of the taxpayer to comply at a reasonable cost. There are 211 licensed distributors; 89 currently file electronically. Of the remaining 122, 55 reported zero gallons in October, 21 reported between 1-20,000 gallons and will not be affected, 20 reported between 20,001-250,000 gallons. A few of these will be required to report electronically. The 16 distributors reporting over 250,000 gallons would fall under these provisions.

2) It would require a business which files at least 250 information returns to file electronically. This is similar to language that is used by the IRS. This will trigger the joint filing with the IRS which is then passed on to the Tax Commission.

Chairman Hill asked if this saves time for the State Tax Commission and makes it easier to collect these taxes and process the returns. **Mr. John** said it would save a great deal of time.

MOTION: **Senator Heinrich** moved to send HB 11 to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

HB 12 Relating to Taxes on Beer and Wine

Mr. John stated that *HB 12* deals with the beer and wine taxes collected in Idaho. There have been references to stamps in the beer tax law that are no longer valid. The stricken language is removing the last remnant referring to beer stamps.

The changes in both section (1) and section (2), for both beer and wine, deal with the dates, times, and periods for filing returns. Under current law, any taxpayer paying taxes for beer or wine has only one alternative: to pay monthly, even very small amounts. This is a request to provide the ability to write rules to prescribe other periods for filing returns consistent with options available in the sales tax law and the withholding portion of the income tax law. Those taxpayers owing less than \$750 per quarter would be able to pay quarterly making it easier and more simple for the taxpayer and more cost efficient for the State.

Chairman Hill asked if it would permit future Tax Commission personnel to change the reporting periods to something else like twice a month or even more often. **Mr. John** stated it could be interpreted that way but it is the same language occurring in other areas of the law.

MOTION: **Senator McKenzie** moved to send *HB 12* to the Senate floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

HB 05 Relating to Income Taxes – continued from February 5, 2009

Chairman Hill asked for a report from **Mr. John** regarding questions on *HB 05*. **Mr. John** reported that surveys or charts providing that information could

be found. A telephone survey was made to those surrounding states that have income taxes; Utah, Oregon, and Montana. Utah does not treat those passive losses like the Tax Commission is proposing to treat them, they just allow whatever is on the federal return to flow through. Oregon treats them the way this statute proposes for Idaho. Montana didn't return the phone call.

Chairman Hill presented some examples that everyone could identify with.

Senator Werk said the two neighboring states that view this issue differently present an interesting conundrum. Does the Tax Commission have an equally compelling argument to Chairman Hill's explanation to convince the Committee? **Mr. John** answered that the losses coming into Idaho do not always go against income from the same company. The thought was that it was not fair to offset income from unrelated losses. The fiscal impact only amounts to \$150,000 a year.

Senator Stegner asked for clarification on "they just allow whatever is on the federal return to flow through." **Mr. John** responded that flowing through means it is treated the same. **Senator Werk** inquired if the statute would make us alter what the federal tax does. **Mr. John** stated that this would be an adjustment to federal taxable income.

Chairman Hill indicated that this is a complex issue and he will support the Committee's decision.

Senator Stegner commented that **Chairman Hill** makes a compelling argument that appeals to the fairness issue. The opposite one protects Idaho but it doesn't protect the individual quite as much.

MOTION: **Senator Stegner** moved to hold *HB 05* in Committee. **Senator Jorgenson** seconded the motion.

VOTE: The motion passed by unanimous voice vote.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:15 p.m. until 3:00 p.m. Tuesday, February 10, 2009.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 10, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, McKague, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Corder

CONVENED: **Chairman Hill** called the meeting to order at 3:05 p.m. with a quorum present.

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

MINUTES:
January 29, 2009 **Senator Stegner** moved to accept the minutes of January 29, 2009. **Senator Werk** seconded the motion.
The motion carried by unanimous voice vote.

Chairman Hill announced that there would not be a meeting on Wednesday, February 11th. There are several items for Thursday's agenda including the reappointment of Linda Pike to the State Board of Tax Appeals. **Chairman Hill** welcomed **Senator Keough** to the meeting.

RS 18529 Relating to the Idaho Travel and Convention Industry Council
Senator Keough explained that RS 18529 is a proposal to rearrange some of the statutes under which the Idaho Travel and Convention Council operates. The Sandpoint Chamber of Commerce is bringing this issue to the Legislature and Amy Little, Executive Director of The Greater Sandpoint Chamber of Commerce, will be a contact listed on the printed copy of this legislation.

Idaho has a 2% lodging tax that is collected on lodging accommodations and then allocated to a grant program. The money is granted back to seven regions across the State for promotional activities. The concern is, at least in the Northern end of the State, that the grant funding comes back to the region as opposed to a county and that those proceeds do not get back to the county in direct proportion to what has been collected.

Senator Keough distributed a list of the Idaho Travel Council Regions including the names of the representatives from each region. (On file) Each member serves a two year term. This legislation would require the

membership to rotate between the counties within the region so one area does not dominate a particular region.

Senator Stegner stated some concerns. 1) There will be a cost to redistribute the money back to the county versus regions resulting in a larger fiscal impact than indicated. 2) The whole concept of the original legislation was to allow counties to work together to promote themselves regionally. By dividing this up by county, it may confuse the unified message that the original legislation intended. **Senator Keough** responded that in regard to regionalism versus counties and the need to work together to promote a region, that ability would still be there. Regional priorities could continue with each county, or other funding sources, contributing to that effort. At this time, with the regionalism, it occasionally works to the betterment of one community over another.

Chairman Hill asked why the language on page 2, line 5 “No allocations to a planning region or county shall lapse,.....” remains in this legislation since there will not be any more allocations to the planning region.

Senator Keough said there are occasions when grant funds are given for multi-year promotions and this would not disrupt those activities. That language would not be pertinent to future regional activities.

Senator Heinrich requested further explanation at the next hearing on this issue. The interpretation is that, in the future, no more regional grants will be awarded. Is it the intent that if there is a regional activity, it would have to be from the contribution of each of the individual counties?

Senator Keough answered that would be the interpretation. Regional agreements would have to be separate from this program.

MOTION: **Senator Jorgenson** moved to send *RS 18529* to print. **Senator Werk** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

ADJOURNMENT: There being no further business, the meeting was adjourned at 3:22 p.m. until Thursday, February 12, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 12, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senators Jorgenson and Werk

CONVENED: **Chairman Hill** called the meeting to order at 3:05 p.m. on Thursday, February 12, 2009 with a quorum present.

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

MINUTES:

February 4, 2009 **Senator McKenzie** moved to approve the minutes of February 4, 2009. **Senator McKague** seconded the motion. The motion carried by unanimous voice vote.

February 5, 2009 **Senator Corder** moved to approve the minutes of February 5, 2009. **Senator Heinrich** seconded the motion. The motion carried by unanimous voice vote.

RS 18595 Relating to Urban Renewal to Revise Application for School Levies modifies Urban Renewal Law to assure that Charter School Districts who impose levies are exempt from distributions to an Urban Renewal District. **Senator James Hammond** explained that this bill is a slight modification to the Urban Renewal Law. Legislation passed in 2008 assures that funds from any bond issue passed by a school district go to the cause for which it was voted and none will go to an urban renewal district. There are some Charter Districts who can pass school levies for a period greater than two years and the 2008 bill did not cover those alternative time periods. *RS 18595* corrects that oversight.

Senator Stegner asked if this was the intent of the original legislation. **Senator Hammond** said it was.

MOTION: **Senator Heinrich** moved to send *RS 18595* to print. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Gubernatorial Linda Pike to the Board of Tax Appeals

Appointment

Chairman Hill welcomed Linda Pike and members of the Board of Tax Appeals (Board). **Ms. Pike** introduced Lyle Cobbs, Chairman, David Kinghorn, and Susan Renfro.

Ms. Pike provided a brief description of the purpose of the Board and a history of her involvement with that Board.

Ms. Pike is considered the Northern Idaho representative to the Board and covers the territory from Grangeville to Bonners Ferry with the assistance of other hearing officers. Hearings are conducted for taxpayers and assessors who file appeals. Those hearings are a service not only to the taxpayer but relieve the load on the court system.

Senator Bilyeu asked **Ms. Pike** if she writes any of the decisions. **Ms. Pike** responded that she does in the case of legal matters. If it is a value matter, and she did not hear it, the person who heard the case writes the decision. However, she reads every decision and makes necessary corrections before signing it.

Senator Stegner commented that there is a particular interest in conflicts of interest issues at this time and asked how were these addressed; what is the process and procedure for disclosing conflicts and reassigning those cases? **Ms. Pike** answered that she had encountered conflicts of interest at times. The first step is to identify the case and participants to assure there aren't any conflicts and, if there are real or perceived conflicts, request to be excused from the case. **Senator Stegner** asked if the Board is aware of the sensitivity of the appearance of conflicts and is there a heightened awareness of that issue? **Ms. Pike** said this issue has always existed and Board members have excused themselves in those instances. **Senator Stegner** asked if there had been instances of conflicts when clients from her law firm were involved in an appeal to the Board. **Ms. Pike** responded that there had been one instance and she not only refused them as a client but asked to be excused from the appeal.

Senator Corder asked how much time was spent with Board self evaluation such as case assessment, taxpayer support, education, and addressing their strengths and weaknesses. **Ms. Pike** said they have some statistics. Cases are hard to put into a particular category since they can involve a single decision or a combination of several different modifications. They do look for ways to improve their processes. Taxpayers who do not show up for a hearing without letting the Board know is a current issue that is being addressed.

Senator Heinrich inquired if there were instances where more than one Board member should attend a hearing. **Ms. Pike** answered that it happens very rarely because of the cost and time involved. However, if it is necessary, more than one member will sit in on a case. **Senator Heinrich** asked how the taxpayer is represented. Is he presenting a good defense or is he overwhelmed with the professionalism of the opposition? **Ms. Pike** said that sometimes they have an attorney. Sometimes they are overwhelmed, especially if there is an aura of sophistication. In some

cases, the amount of data available to the opposition but not to the taxpayer can be an issue. However, the taxpayer is getting more sophisticated and there are more complicated appeals with better evidence being heard.

Senator Corder asked if time was spent analyzing what type of appeals were being made, i.e., income tax, sales tax or property tax. If it is property tax, are more appeals coming from a specific county? **Ms. Pike** answered that the majority of appeals are ad valorem because assessments are based on the prior year and, this declining market results in an increase in cases.

Chairman Hill inquired if the hearings were public. **Ms. Pike** responded that they were. Also, all decisions are posted on their website. **Chairman Hill** asked if there was any policy in place for a review of cases over a certain dollar amount by another Board member. **Ms. Pike** answered that all three Board members review every case.

Chairman Hill thanked Ms. Pike and the members of the Board for their service. This appointment will be voted on at the next scheduled Committee meeting.

HB 09

Relating to Motor Fuels Tax and Transfer Fee on Biodiesel Fuel

Dan John, Idaho State Tax Commission, brought *HB 09* before the Committee from the Tax Commission. Under current law, there is a requirement to pay a one cent per gallon petroleum transfer fee and a 25 cents per gallon motor fuels tax. There is a mechanism within the law to pay the tax but there is no provision to pay the transfer fee except as a licensed motor fuels distributor. The problem lies with those who produce biofuel for their own use, usually less than 1,000 gallons annually. They can and do pay the tax but there is no way to pay the transfer fee because they are not licensed. This bill exempts anyone from the licensing requirement who produces less than 5,000 gallons of biofuel for their own use during the year. The tax is still due.

Senator Bilyeu asked how many of this type of users are there. **Mr. John** said there are just a few that would be affected.

MOTION:

Senator McKenzie moved to send *HB 09* to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

HB 64

Relating to Income Taxes

Mr. John explained that *HB 64* provides the annual updates to conform to the Internal Revenue Code. This year there is an added provision relative to the Housing and Economic Recovery Act retroactive to 2008. An additional standard deduction will be allowed for non-itemized returns up to \$1000 for couples and \$500 for a single person. The fiscal impact will be a \$2.0 million decrease to the General Fund.

Senator McKenzie asked if the decrease of \$2.0 million was for this fiscal

year and the next fiscal year. **Mr. John** responded that Congress passed this provision for the standard deduction and extended it in a later piece of legislation for 2009. So it would be \$2.0 million in FY 2009 and \$2.0 million in FY 2010.

Chairman Hill inquired what type of taxpayers would take advantage of that provision in the law. **Mr. John** said that Idaho has a relatively high percentage of homeowners in the population. It also has a very high number of non-itemizers because of the state tax add back. The people who will use this are those with modest homes who do not pay a lot of interest or people who have paid their homes down and are not paying enough interest and property tax to itemize. The user will be more mature people or those in less expensive houses.

Chairman Hill asked if the Governor's Office had taken a position on this bill. **Mr. John** answered that they had presented two bills, one to comply and one not to comply, and this is the one that came out of committee on the House side. It is assumed this is the one that was released by the Governor's Office.

Chairman Hill asked **Melissa Nelson**, Idaho Society of Certified Public Accountants, if they had taken a position on this bill. **Ms. Nelson** said they had and they liked conforming.

Senator McKenzie inquired if JFAC had considered the impact of the bill. **Senator Bilyeu** said she hadn't heard any discussions in JFAC.

MOTION: **Senator Stegner** moved to send HB 64 to the Senate floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

ADJOURNMENT: There being no further business, Chairman Hill adjourned the meeting at 3:45 p.m. until Tuesday, February 17th at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 17, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m. on Tuesday, February 17, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Bilyeu** moved to adopt the minutes of February 10, 2009. **Senator McKenzie** seconded the motion.
The motion carried by unanimous voice vote.
- CONFIRMATION VOTE:** **Senator Corder** moved to approve the appointment of Linda Pike to the State Board of Tax Appeals. **Senator Bilyeu** seconded the motion.
The motion carried by unanimous voice vote. **Senator Stegner** will sponsor the candidate.
- S 1091** Relating to Urban Renewal to Revise Application for School Levies modifying Urban Renewal Law to assure that Charter School Districts who impose levies are exempt from distributions to an Urban Renewal District. **Senator James Hammond** explained that this bill is a slight modification to the Urban Renewal Law. Legislation passed in 2008 assures that funds from any bond issue passed by a school district go to the cause for which it was voted and none will go to an urban renewal district. There are some Charter Districts that can pass school levies for a period greater than two years and the 2008 bill did not cover those alternative time periods. S1091 corrects that oversight.
- Chairman Hill** asked for an example of a practical application of this bill. **Senator Hammond** said charter school districts; Lewiston, Boise, and Emmett, typically run a 5-year levy. Other school districts are limited to a 2-year levy. After the first two years of a 5-year levy, the remaining three years of funding would be subject to distribution to an urban renewal district. With this change, urban renewal would not be entitled to any funds from a charter school levy.
- Public Testimony
Phil Homer, representing the Idaho Association of School Administrators (IASA), stated that IASA supports this legislation.
- MOTION:** **Senator Heinrich** moved to send S 1091 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.

Relating to Payment and Collection of Property Taxes requires that tax notices show the percent change in taxes from the prior year and the acreage for each parcel. **Representative Steve Kren** explained that HB 30 will create more transparency.

Senator Bilyeu asked if it was possible for the counties to include this information on tax notices. **Representative Kren** stated that there are a number of counties that do include acreage.

Senator Werk inquired if these tax notices provide the actual tax or the estimated tax. **Representative Kren** stated that this would be the actual taxes owed.

Senator Corder asked if the counties participated in the discussions about this bill and what were their conclusions? **Representative Kren** said that discussions with some counties showed support of the bill. However, some of the Treasurers disliked it.

Senator Bilyeu asked what would be the maximum number of taxing districts and was there room for the additional information on the tax bill and is the acreage by taxing district. **Chairman Hill** said there was no limit to the number of taxing districts. According to the Tax Commissions website, there are 1245 taxing districts in the state of Idaho. **Representative Kren** answered that the acreage would not be per district, it will be part of the legal description for the parcel. There was room on the notice for both requirements.

Senator McKenzie inquired if this is the percent change in the tax rate or the dollar amount. **Representative Kren** said it is the dollar amount.

Senator Heinrich asked how many counties would have to buy additional equipment to comply. **Representative Kren** was unaware of how many counties would have to change their equipment.

Public Testimony

Donna Peterson, Payette County Treasurer and representing the Idaho Association of County Treasurers, testified in opposition to this bill for the following reasons:

- When the taxpayer receives the tax bill, budgets and levies have been set and it is past the time for an appeal. The percent change should be started at the beginning of the process when budgets are set and published with those budgets.
- Tax bills are cramped and the fonts are small without adding more information.
- Forty-three counties already put acreage on the tax bill.
- The cost to change programming and equipment could be substantial.

Senator Heinrich asked how many counties would have to buy additional equipment. **Ms. Peterson** did not know about equipment but there would have to be additional programming. **Chairman Hill** asked how often were programs updated. **Ms. Peterson** responded that their system was created in 2005 and is not updated annually. **Senator Werk** inquired if a program would have to be altered for each taxing district. **Chairman Hill** answered that the statement would have to be reprogrammed. The program must go somewhere to retrieve the tax from the prior year and do the calculation. **Ms. Peterson** added that there could have been adjustment activities that would complicate any programming.

Senator McKenzie said constituents have inquired about the acreage in a parcel. **Ms. Peterson** said that Canyon County does include acreage so it could have been an oversight. **Senator McKenzie** asked how long does someone have after receiving the first notice to file an appeal. **Ms. Peterson** responded that it was three weeks.

Senator Jorgenson asked if other counties agree with Payette County about this bill. **Ms. Peterson** answered that most Treasurers agree that this information should not be on the tax bill.

Chairman Hill asked if the sample notices used today showed the acreage. **Representative Kren** said there were acreages on the larger parcels but they do not appear on smaller parcels in more developed areas.

Senator Werk questioned the cost issue; is it substantial or minimal? **Dan John**, Idaho State Tax Commission, said that the Tax Commission would do the programming for the counties they support through Uniform Assessment (30 counties) and they would also have to redesign the forms, all at no cost to the counties. **Chairman Hill** noted that there could be a fiscal impact. **Mr. John** said their systems people did not anticipate very much programming but that doesn't apply to others who may be taking data from more than one program.

MOTION: **Senator McKague** moved to send HB 30 to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

SUBSTITUTE MOTION: **Senator Corder** made a substitute motion to hold HB 30 in Committee until such time as information can be provided regarding the fiscal impact to the state and to the counties. **Senator Werk** seconded the motion.

VOTE: The substitute motion carried by voice vote with two dissenting votes; Senators McKague and McKenzie.

S 1081 Relating to the Idaho Travel and Convention Industry Council to allow grant program monies to be redistributed and to revise provisions relating to appointments to the Council.

Senator Shawn Keough introduced **Amy Little**, Executive Director of the Greater Sandpoint Chamber of Commerce and co-sponsor of *S 1081*.

Ms. Little explained how the grant program and the Council works. A review of the distribution of monies from the grant program in relationship to what bed tax lodgers were collecting revealed an issue with fairness and equity. **Ms. Little** distributed several handouts (on file) showing contributions and distributions of funds from the program. In fiscal year 2008, over \$7.0 million was collected from the 2% lodging tax. About \$3.2 million went out for grants, 3.9% stayed in the department and \$108,000 went to the Tax Commission for processing fees. Over a nine year period, Bonner County in Region I showed a \$336,257 deficit. This type of scenario exists not only in Bonner County but statewide. The purpose of the bed tax and the Council is very good and allows counties to promote their areas. However, it is time to look at the way funds are distributed to make it more fair and equitable for all the counties. Distributing the funds in proportion to the counties where they are collected would foster more regional participation in marketing that region.

The second piece of this legislation addresses the rotation of the members of the Council so one county within a region does not dominate representation on the Council. In Region I, representation has been from Kootenai County since

1995. Many counties across the State face this issue. Changes should be made in the rotation process to ensure fairness.

Senator Jorgenson asked what percentage of the funds from the Idaho Travel Council does Sandpoint and Bonner County receive. **Ms. Little** said the numbers provided were in proportion to what was collected and what came back. On average, they collect about 22% but were granted back about 14 - 15%. **Senator Jorgenson** pointed out that the numbers by the percentage of volume created for each county showed that Bonner County contributes about 20% of the total revenue for Region I while Kootenai County generates about 66 - 70%. There are five counties in this region; the strongest and largest is Kootenai County and Bonner County is second. The other counties generate from 5% to less than 1%. A simple formula applied to revenues would be detrimental to smaller counties. **Ms. Little** responded some marketing funds went to the smaller counties from other sources. **Senator Jorgenson** stated that \$220,000 is set aside by the State, in addition to the bed tax revenue, specifically for skiing and snowmobiling. Kootenai County does not participate in those activities and does not receive any of those funds. Also, Kootenai County does not get any of the \$10,000 that goes to Bonner and Boundary counties for the Selkirk Route. The numbers in these reports are misleading because the additional dollars other counties receive, that Kootenai does not get the benefit from, are not included. The whole reason the Travel Council was formed was to promote regions.

Ms. Little agreed that there is no simple equation that can solve this. The language in the bill could be altered so it would satisfy those benefitting from the revenues generated by the lodging tax and still allow individual communities to have tourism as a primary industry. There are other regional grants and **Ms. Little** would support changing some of the language to accommodate those.

Senator Werk observed that there are two issues: 1) Appointments to the Council, and 2) the County versus Regional issue. Based on this language, the Council membership has been dominated by a certain county and from that representation, money goes to that county. **Ms. Little** responded that, in her opinion, that representation influenced where the grant money goes.

Public Testimony-Opposition to Bill

John May, is a Representative from Region III to the Travel Council, Past President of the Idaho Lodging and Restaurant Association, and General Manager, Owyhee Plaza Hotel-Downtown Boise. **Mr. May** is speaking on behalf of the Idaho Travel Council and its members. **Mr. May** restated the two issues of the bill: the requirements for council members and funding generated from the 2% lodging tax. The question is not the council makeup, but the rotation within the regions. In some regions, it is very difficult to find volunteers who meet the qualifications to serve on the council. Grantees have the opportunity to meet with their regional representative as well as the Council to present their requests and resolve issues. With a recommendation from the regional member, all members of the Council vote on who receives the grant. In regard to the fair return of the 2% monies, the changes in this bill would penalize most of the smaller, rural counties. The bill would also eliminate monies for the multi regional groups and related associations who get some of their funding from the regions.

Senator Corder stated that in the case of Region III, Ada, Canyon, and Valley counties generate the majority of the funds from the 2% lodging tax but activities from the smaller counties stimulate the lodging in those larger areas so when the

smaller, rural counties that do not have the lodging facilities receive grants, it is equitable. **Mr. May** responded that is correct and this bill would actually leave more funds in the Boise area and less for those outlying areas.

Senator Werk asked what the term of office was for a council member and if the new language specified that a new council member had to be from a different county within that region. **Mr. May** answered that it was a three year term with a limit of two consecutive terms. **Chairman Hill** stated that there is strict language in the bill about rotation of members.

Senator Heinrich asked how grants are categorized and prioritized. **Mr. May** answered that advertising is the basis but different types of programs such as travel guides, web sites, or tours would bring people to the area.

Senator Bilyeu asked if an appeal had been made by Region 1. **Mr. May** said he was not aware of any appeal. Some grantees have raised questions about the amount of grant dollars they received.

Pam Eaton, representing the Idaho Lodging and Restaurant Association, spoke in opposition to this bill. Many of the unpopulated counties are not set up to administer these grants and are better served by the regional or statewide effort and rural counties generally receive more than they collect. The best person should serve on the Council without a lot of limitations. **Senator Heinrich** asked if the Council meetings are public. **Ms. Eaton** answered that they are.

Grant Simons, Executive Director, Idaho Outfitters and Guides Association, spoke in opposition to *S 1081*. The Council has been instrumental in promoting small, rural-based tourism for the recreation industry.

Russell Westerberg, representing Hagadone Hospitality, spoke in opposition to this legislation because it would disrupt programs that are working across the State and would be to the detriment of smaller communities who don't have the lodging to participate using the mathematical ratio that is being proposed.

Reid Rogers, President, Teton Valley Chamber of Commerce, spoke to this issue. They had experienced the same issues that Sandpoint expressed. However, they went through the process to resolve the issues through the Council. The Council responded and solved the problem and they have been treated fairly since. The current process works.

Senator Stegner asked if it was correct that Mr. Rogers' area wasn't getting enough money, they worked through the process, was more involved, and the percentage of the grants in that region increased. **Mr. Rogers** concurred. **Senator Stegner** asked if the interaction increased the quality of the grant applications. **Mr. Rogers** agreed. It improved the resolution process as well.

Senator Keough concluded the discussion. This is an old issue. The outreach dollars for snowmobiling and skiing are not the dollars that are being discussed in this legislation. Every property benefits from the snowmobiling and skiing promotions because of the packages. This issue is the 2% lodging money going to the grant program.

The requirement in this bill to change the membership only allows for a rotation, it doesn't change the terms of office or qualifications. If there is another way to craft the language to provide the tools to allow that rotation; the sponsors would be agreeable. There is nothing in the language of the bill that disallows the

existing multi regional or regional relationships. It may enhance those opportunities.

The people that raised this issue did talk with the regional representative numerous times and expressed their concerns to the department. They were not given any guidance. The outreach and invitation for information exchange for The Travel Council meeting is not easy to access.

If there are ways to change this legislation that are amenable to those involved in the industry, the Council, the department, and the Legislature, throughout the State, the co-sponsors are open to discussion. Over a 26 year history, there have been several challenges made. Now is the time to review this and make some improvements.

Senator Werk stated his intent is to completely amend out Section 2 and revise the language in Section 1 to ensure a rotation of representation on the Council.

MOTION: **Senator Werk** moved to send *S 1081* to the 14th Order of business. **Senator Heinrich** seconded the motion.

SUBSTITUTE MOTION: **Senator Stegner** made a substitute motion to hold *S 1081* in Committee. **Senator Jorgenson** seconded the motion.

Senator Stegner explained that this is a controversial issue which has existed for some time. There is some merit to modify the first section but the time constraints in the 14th Order does not allow enough time to resolve the issue. The better position is to hold the bill in Committee and invite the sponsors to reintroduce the language dealing with representation.

VOTE: The substitute motion carried with a roll call vote of six ayes and 3 nays with Senators Stegner, McKenzie, Jorgenson, McKague, Bilyeu, and Hill voting aye and Senators Heinrich, Corder, and Werk voting no.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:40 p.m. until Wednesday, February 19, 2009.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 18, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator McKague

CONVENED: **Chairman Hill** called the meeting to order at 3:03 p.m. on Wednesday, February 18, 2009 with a quorum present.

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

MINUTES: **Senator McKenzie** moved to approve the minutes of February 12, 2009. **Senator Jorgenson** seconded the motion. The motion carried by unanimous voice vote.

RS18728 **Chairman Hill** introduced **Jeff Youtz**, Legislative Services, to present a new piece of legislation for Committee discussion and recommendation that it be sent to a privileged committee for printing.

Mr. Youtz reviewed issues regarding compromise and closing agreements that were raised by a legislative audit of the State Tax Commission and, concurrently, by an investigation by Mr. Gentry, a CPA, authorized by the Governor. Although there was no misconduct by the Tax Commission, both groups made similar recommendations to avoid real or perceived secrecy, increased communication, involvement of an additional Commissioner as well as one or more staff personnel. Mr. Gentry added that some guidelines should be defined either by statute or administrative rule. The Tax Commission has addressed some of these issues but has not reported back to the Legislature.

Senator Kelly and the Legislative Services Offices (LSO) researched background and profile information about how the process works and put together a list of options to consider. This legislation is the result of a cooperative effort with the Tax Commission to address those issues.

Chairman Hill commented that the Tax Commission has recently developed internal documents. This legislation is using the same terminology as that document. First, the word "compromise" was changed to "settlement." Compromise was not consistent with the process and had a negative connotation.

Mr. Youtz said there are basically four components to this process:

- 1) One final review process is being defined in which one additional Commissioner would be required to be present before the settlement agreement can be executed.
- 2) Expanded participation would involve a representative from the Office of the Attorney General, a tax policy analyst, and either a representative from the audit division or the division where the case originated.
- 3) A tax policy specialist or deputy attorney general will prepare and submit to the commission for the final review, a written summary explaining the issues, why the case is being settled, and the terms of the agreement which includes any recommendations of the staff member.

Senator Corder asked what the difference was between a tax policy analyst and a tax policy specialist and what do they do in regard to this issue. Are they determining whether the compromise is consistent with existing tax policy? How much liberty do they have to determine what policy really is. **Ted Spangler**, State Tax Commission, explained that tax policy specialist would be the title. **Mr. Youtz** said that the tax policy specialist, as referred to in No. 3, will submit a written summary of the settlement agreement that has been negotiated. **Mr. Spangler** identified who a tax policy specialist is and that they are general purpose experts in a particular area of tax law.

Senator Bilyeu referred to "representative from the audit division." That person should be the auditor that actually worked on the account since they would be the most knowledgeable. **Mr. Youtz** agreed although the Tax Commission should be left with some discretion. **Chairman Hill** stated that most of the auditors in his area are in Pocatello and these agreements would be done in Boise. There could be time or financial hardship to bring them from out of town. **Mr. Spangler** said they had not discussed that specific detail with the Commissioners. It would probably differ case-by-case depending on the complexity or circumstances.

- 4) The Tax Commission shall retain a copy of all settlement and closing decisions and summaries.

Mr. Youtz added that the Tax Commission will be required to submit a summary annual report to the Governor and the Legislature on March 1 of each year and shall promulgate appropriate administrative rules. There is a need for some framework for minimum standards in statute but the Tax Commission will design the process based on their expertise.

Senator Stegner asked if "all settlements and decisions" and "all summaries" refers to those settlements relating to \$50,000 or more since they are related to Nos. 1-4 which are all those conditions for Section B. Line 34 under (c), says "the report should summarize settlement agreements." Does that mean every one or just those \$50,000 or more. **Mr. Youtz** said that is an open question but the intent is for \$50,000. **Mr. Spangler** agreed. The corrected copy of the proposed RS will show that distinction.

Senator Heinrich asked if these agreements are subject to the freedom of information requests. **Mr. Youtz** answered that there are specific exemptions from releasing personal information for public records that will apply. **Senator Kelly** said that the existing confidentiality that exists to protect taxpayer

information will not be changed in any way. The Tax Commission has recently adopted an internal policy that is available for review. These are not sweeping changes but it adds structure to the process. The annual report will allow the Legislature to monitor the situation to see if something needs to be changed next year.

Senator McKenzie stated that this takes a statute with a broad grant of authority and that prescribes certain specific procedural requirements and doesn't create any procedural rights in a party to the settlement or standing for one who is not a party to that settlement. It does create a duty that extends to the Legislature and the Governor. If these procedures are not followed, there is a remedy that is appropriate to ensure that the policy is followed without creating any private remedy or procedural rights on any of the parties. It does exactly what was intended, which is to create transparency.

Senator Kelly said that the original issue was specifically related to multi state corporate income tax compromise agreements. It is important to note that this legislation applies to all the settlements and closing agreements entered into for any kind of tax \$50,000 and over.

Senator Werk stated that he has an issue with the process before the point of entering into a settlement and closing agreement. There are no apparent standard policies and procedures associated with how to get to this point. The Tax Commission might take on the task of trying to construct those policies and procedures.

Chairman Hill said that if there is a motion to print this, it should include the leeway to allow for the clarifications that have been discussed as long as the intent is not changed.

MOTION: **Senator Werk** moved to request a privileged committee to send RS18728 to print with the modifications discussed by the Committee. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill outlined his report to JFAC for Committee approval.

1) Tax Auditors and the Tax Gap

Idaho has a tax gap, the difference between the amount of tax owed and the amount collected. Reducing the gap through adequate auditing and collections is crucial to Idaho's revenues. Forty-seven year-round, temporary, audit and collections positions were eliminated as part of the budget hold-back. **Senator Jorgenson** asked how many auditors were eliminated. **Dan John**, State Tax Commission, answered that the positions that were eliminated were not auditors but part time employees that participated in audit and collection activities.

Senator Werk stated that, according to a report from **Commissioner Chigbrow**, the savings were less than \$1.0 million in payroll but resulted in a loss of \$7.0 million in revenue.

Senator Bilyeu said it was important to put this before JFAC. If the tax gap was \$73.2 million in 1996, what is it now? **Chairman Hill** responded that there hasn't been a study since that time.

Senator Stegner asked why the 47 non-classified, temporary positions that are

significant to the audit and collection function of the state are employed as part time instead of full time workers. **Ted Spangler**, State Tax Commission, answered that the program was conceived as a less expensive way of conducting audits for uncomplicated business activities, teaching/training taxpayers, and collections. Under budget authority, the practice grew because it was cost effective and worked well to enhance the agency's reach into areas they were not reaching before. Although the job title is not auditor, that is what they were doing. When it came time to meet the hold-backs the Governor imposed, the concern was to maintain the highly trained, full time, classified employees so the number of temporary employees was reduced. **Senator Stegner** asked how long this practice has been in place. **Mr. Spangler** stated that it has been in use for a long time and has grown in recent years. **Senator Jorgenson** pointed out that the use of part time employees is not unique to the Tax Commission. It is a practice utilized by most agencies.

General discussion ensued regarding the number of full time employees that would be required by the Tax Commission, the cost, and the benefits of hiring those employees, and if this issue should be brought to the attention of JFAC.

2) Tax Legislation

Chairman Hill stated there were some bills in process that should be brought to JFAC's attention:

- HB 64 is the annual "federal conformance bill" that has a fiscal impact of \$2.0 million for 2008 and 2009.
- There is a bill that will clarify a law regarding credit for taxes paid to another state with a fiscal impact of \$500,000.
- The possible Streamlined Sales Tax Project bill relative to internet and catalog sales that would result in revenues of about \$25 million per year.

3) Compromise and Closing Agreements and the Tax Commission

The report will cover steps the Tax Commission and this Committee are taking to address recommendations made as a result of a review of the Tax Commission policies and procedures during the summer of 2008.

Chairman Hill asked if there were other items that should be brought before JFAC or is there something in these comments that should be omitted. There were no additions or changes.

PAGE PRESENTATION:

Chairman Hill presented page, Porter Chelson, with a letter of recommendation from the Chairman, a letter of gratitude from the Committee, and gifts for his service to the Committee. Porter gave a brief overview of his future plans.

ADJOURNMENT:

Chairman Hill adjourned the meeting at 4:10 p.m. until Tuesday, February 24, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 24, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senator McKenzie
- CONVENED:** **Chairman Hill** called the meeting to order at 3:10 p.m. with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- Chairman Hill** introduced Darcie Wonacott, the new page for this half of the session. **Ms. Wonacott** provided a brief description of her family and background.
- Chairman Hill** welcomed Representative Leon Smith to the Committee meeting.
- HB 83** RELATING TO TAXATION OF PERSONAL PROPERTY to reduce the reporting of personal property by small business owners for tax purposes.
- Representative Smith** said that HB 83 does three things:
- 1) Relieves small business owners of the onerous task of compiling the annual inventory. The change will allow this to be done in affidavit form under certain conditions and provides penalties for fraudulent use and reporting. The county assessor is afforded the right to inspect and verify the declaration, disallow the affidavit for erroneous or fraudulent information, and assess penalties. There is an appeal process.
 - 2) Establishes that the personal property tax exemption of \$100,000 will not occur until the state controller certifies that receipts to the general fund exceed the 2008 fiscal year receipts by 5% or more.
 - 3) Makes technical corrections and clarifications as recommended by the State Tax Commission.
- Senator Corder** asked what, from the personal property owner's perspective, is the difference between filling out the county assessor's form and the new affidavit indicating what the dollar value is. Wouldn't an inventory list be necessary in either case? **Representative Smith** responded that currently, the taxpayer must itemize each and every item

whether or not they are clearly under \$100,000. With the first application, that still must be done. After the original application for an affidavit is filed and approved, then the affidavit states that the dollar amount is under \$100,000. The Tax Commission will probably request other information on the form to represent the value of the property without the details of an inventory.

Senator Heinrich asked for an explanation of how this improves or simplifies what is happening now. An inventory will still have to be maintained. **Representative Smith** said there are 75-80% of the businesses that will qualify for the exemption so it is likely there will not be many changes from year to year

Chairman Hill stated that this is not a tax exemption, it is a matter of who pays the tax and the state will have to reimburse the counties for the tax. How will those payments be determined? **Dan John**, State Tax Commission, said they will know what the property is after the first application because it will be listed at that point in time. After that, an affidavit is filed showing that the property is still under \$100,000. Each year the original declaration will be attached when the affidavit is sent out and if the amount is still under \$100,000, only the increases or decreases in property and the total aggregate amount will be shown on the affidavit when it is sent to the Tax Commission. If the amount goes over \$100,000, a new declaration (inventory) will have to be submitted.

Senator Werk asked what would happen with decreases in the property. **Mr. John** responded that the property will be depreciated out and that information will be provided to the counties and they will do the depreciation. **Senator Werk** restated the way the process works and indicated that the up and down fluctuation will be very important. **Mr. John** said they are drafting rules for next year since there is no indication that this will be triggered in fiscal year 2009. **Senator Werk** asked if the seven year limitation window was standard. **Representative Smith** said that window came from another section of *Idaho Code* relative to taxing limitations.

Senator Jorgenson asked if the affidavit would be a standard form or could it come in a variety of formats. **Representative Smith** replied that it will be a Tax Commission form and everyone will use the same form.

Senator Stegner stated that this was not anticipated during the 2008 discussions. One of the aspects of the compromise last year was that the taxpayer would have to make these declarations as opposed to removing all personal property tax. By removing the onerous task of the inventory by the taxpayer, would it also remove the pressure for the state to give consideration to remove all personal property taxes? **Representative Smith** replied that issue had not been a factor. The testimony last year was all about the inventory that had to be submitted every year and this bill relieves them of that task.

Senator Stegner explained the current unusual circumstance where the taxpayer had every legitimate interest in reporting this property to keep valuations as low and reasonable as possible, make sure the depreciation

schedules were up to date, and the antiquated and obsolete equipment was removed from the lists so that their tax bill was kept as low as possible. Now, every incentive is given to the county to encourage the highest possible value on all of this property because the county gets more money because it is all made up from the State. There is a concern about any kind of apparatus in law now that will remove a written burden on the taxpayer to justify the list of equipment and its values because the State has the tax bill to pay. Has that been considered? **Representative Smith** said he has no knowledge of a county assessor trying to influence anyone to go up or down with their evaluations. The taxpayer has no personal benefit to exaggerate any values and the affidavit must be signed under oath with severe penalties attached for fraud or error.

Senator Werk commented that the provision of the \$100,000 exemption was meant to make people's lives simpler and the affidavit with penalty provisions is good. There is still the question of the seven year limitation.

MOTION:

Senator Werk moved to send HB 83 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.

Senator Stegner stated that he will be voting against this bill. The effort last year was not to make people's lives easier, it was to save them money. This is exposing the State to tax bills that are unverifiable.

Chairman Hill voted aye with the caveat that rules will be promulgated that will address **Senator Stegner's** concerns.

VOTE:

The motion carried by roll call vote with five ayes and 3 nays.

Ayes: Senators Jorgenson, McKague, Werk, Bilyeu and Hill

Nays: Senators Heinrich, Stegner and Corder

Excused: Senator McKenzie

ADJOURNED:

Chairman Hill announced that there would not be a meeting on Wednesday. Being no further business, the meeting was adjourned at 3:35 p.m. until 3:00 p.m., Thursday, February 26, 2009.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 26, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senators McKenzie and Stegner
- CONVENED:** **Chairman Hill** called the meeting to order at 3:02 p.m. on Thursday, February 26, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Werk** moved to accept the minutes of February 17, 2009. **Senator Jorgenson** seconded the motion.
The motion carried by unanimous voice vote.
- HB 102** RELATING TO COUNTIES to establish a statute of limitations for challenges to the creation of governmental districts under Idaho law. **Senator Jorgenson** explained that, in Idaho, all areas of the State outside a city or incorporated area, are considered to be open range unless the county commissioners make a determination of a herd district. The difference between open range and a herd district is very important. In open range, an animal is free to roam wherever it may choose and the owner has no liability. When a herd district is created, the animal owner has the responsibility to keep the animals fenced in and is liable for damages the animals may cause outside the fenced area. In cases involving a herd district, the validity of the district has been questioned due to the historical circumstances of the determination. This bill clarifies the issue of whether a district is either established or disestablished and that the duty of proof falls on anyone but the county. If the county has acted and gone through the process of establishing a district, it is a matter of law.
- Senator Werk** asked if the bill was about statute of limitation issues regarding whether or not the district was properly created. **Senator Jorgenson** concurred.
- MOTION:** **Senator Werk** moved to send HB 102 to the floor with a do pass recommendation. **Senator Heinrich** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote. **Senator Jorgenson** will sponsor this bill.

HB 51

RELATING TO INCOME TAXATION to provide for a state income tax deduction for donations of technological equipment to private elementary or secondary schools.

Senator Goedde stated that HB 51 expands the eligible recipients of technological equipment to include private elementary and secondary schools to qualify a donor for the income tax deduction. The total deduction in 2008 was \$82,000 and it is not anticipated that any change will occur with these additions.

Senator Corder said that those donating this equipment will continue to donate the same amount, this just increases the choices. **Senator Goedde** agreed. **Senator Werk** said that this delutes the pool. **Senator Goedde** agreed but those private schools do not draw from our tax base for the education of our children so it would help to encourage donations to those institutions.

Senator Jorgenson asked how many students attend private schools in Idaho and do those schools represent a savings to the State. **Senator Goedde** said he did not have the number of students but the State contributes \$4600/year/student for an elementary education. Nothing goes to the students attending private schools.

MOTION:

Senator Jorgenson moved to send HB 51 to the floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE:

The motion carried by unanimous voice vote. **Senator Goedde** will sponsor the bill.

HB 143

RELATING TO MUNICIPAL CORPORATIONS AND ANNEXATION to clarify intent and language related to implied consent.

Representative Luker explained that implied consent occurred when a homeowner signed up for water and sewer, it was implied that consent was given for annexation into the city. Effective July 1, 2008, implied consent was no longer valid. However, a court case raised questions about whether implied consent would still be applied to a "Category A" annexation where it is not a contested annexation. This bill clarifies that implied consent is allowed for "Category A" annexations. The bill sets up the primary rule that says in order to be annexed, there must be written consent with two exceptions: 1) The enclave (100 lots or less) in Category A, and 2) the implied consent for those who requested hookup before July 1, 2008.

Senator Bilyeu asked for clarification and provided an example when signing up for water/sewer that implied agreement to annexation.

Representative Luker said that would be true prior to July 1, 2008. Now if that hookup was requested, the city may say they wouldn't do the hookup unless the annexation consent was signed. The difference is, the property owner would know they were agreeing to any future annexation.

MOTION:

Senator Heinrich moved to send HB 143 to the floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE:

The motion carried by unanimous voice vote. **Senator Heinrich** will sponsor HB 143.

Chairman Hill outlined the agendas for next week:

Tuesday:

-Commissioner Coleen Grant - presenting part of the report on the Compromise and Closing Agreements.

-Senator Hill - tax ramifications of the American Recovery and Reinvestment Act of 2009.

Wednesday:

-Commissioner Royce Chigbrow presenting the rest of the report on the Compromise and Closing Agreements.

-S 1128 Relating to procedures and reporting for Settlement and Closing Agreements by the Tax Commission.

-Read Smith, 25x25 Renewable Energy Project.

Thursday:

-Five bills.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 3:25 p.m. until Tuesday, March 3, 2009, at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 3, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

CONVENED: **Chairman Hill** called the meeting to order at 3:06 p.m. on Tuesday, March 3, 2009, with a quorum present.

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

MINUTES: Minutes for February 18, 2009
Senator Heinrich moved to accept the minutes of February 18, 2009.
Senator Jorgenson seconded the motion.
The motion carried by unanimous voice vote.

Minutes for February 24, 2009
Senator Jorgenson moved to accept the minutes of February 24, 2009.
Senator Bilyeu seconded the motion.
The motion carried by unanimous voice vote.

RS 18776C1 RELATING TO LOCAL LAND USE PLANNING to provide for the effect on zoning when a part of a parcel is affected by a right of way.

RS 18787 RELATING TO LOW-INCOME PROPERTIES to provide guidance to county assessors and to outline procedures for valuing federal tax credits.

MOTION: **Senator Heinrich** moved for the Committee's unanimous consent to send *RS 18776C1* and *RS 18787* to a privileged committee with a request to print and return them to the Local Government and Taxation Committee.
Senator McKenzie seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill welcomed **Commissioner Coleen Grant**, Idaho State Tax Commission, to the Committee meeting.

IDAHO STATE TAX Analysis of Closed Dockets for Fiscal Year 2008 for the Idaho State Tax Commission. (Report on File) **Commissioner Coleen Grant**, Idaho State

**COMMISSION
REPORT-Part I**

Tax Commission explained that the purpose of this analysis was to provide information to this Committee, and have the opportunity to answer any questions, pertaining to the cases for which she had oversight responsibility, that were included in the State Tax Commission's comprehensive report which may not be completed before her retirement on 3/6/09. The tax types these cases relate to are individual income tax, pass through entities or Sub-Chapter S Corporations, and withholding. It covers all actions in fiscal 2008 with respect to those dockets or cases that went through the Legal and Tax Policy group. **Commissioner Grant** outlined the opening letter to the report and explained that the report is divided into the following two sections:

Legal and Tax Policy Cases

Section 1 contains cases involving settlement:

44 out of a total of 68 Compromise & Closing Agreements (65%).

36 out of 36 Closing Agreements (100%).

5 out of 7 in the Miscellaneous Category.

Out of a total of 111 cases in FY 2008, 85 (77%) were resolved by the Legal and Tax Policy group. Corporate cases are not included because those did not fall under this jurisdiction.

Section 2 related to other categories and there were 254 cases out of a total of 466 (55%) cases. The Legal and Tax Policy group resolved a total of 339 cases.

The Legal and Tax Policy group completed 12,721 audits with 339 protests involving the three tax types.

Commissioner Grant reviewed the balance of the report containing each compromise and closing agreement by docket number, tax type, Notice of Deficiency (NOD) amount, resolution amount, and comments outlining the basis of the issue. When Compromise Agreements were reviewed, three reasons were used as a basis; doubt as to liability, doubt as to collectability, or extreme hardship. The amounts used for the NOD's are not exact. They are the best the Tax Discovery Bureau (TDB) can estimate based on the information available at the time. The more reasonable amounts are those that are obtained during the process through tax returns that show the actual calculations to determine the correct liability.

Closing Agreements are handled in a similar manner as Compromise Agreements but generally, when a closing agreement is used, the issues have been resolved and agreed upon.

Senator Werk stated that several of the comments within the Closing Agreement Section said that tax liability was reduced because the legislature amended Idaho Code. Were those conformist bills with federal law or was the tax code amended to relieve taxpayer liabilities? **Commissioner Grant** referred to Docket #20261 on page 3 of the Closing Agreement Section as an example and explained the circumstances surrounding that agreement.

Chairman Hill explained that there are a number of cases contained in the reports that basically come from two bills this Committee passed last year. One had to do with credits on taxes paid to another state, and the other dealt with transfers of property into a pass through entity relative to the holding period provision.

**OVERVIEW OF
THE NEW
STIMULUS
PACKAGE**

Commissioner Grant continued to review the report section by section. **Chairman Hill** asked **Commissioner Grant** to explain cases throughout the report that were over the \$50,000 threshold to provide the Committee with a better understanding of why certain decisions were made.

Chairman Hill asked if **Commissioner Grant** was certifying to the Committee that, to the best of her knowledge, all the compromise and closing agreements of any significance during this time period are quoted in this report. **Commissioner Grant** replied yes, every single docket number or case that was subject to a compromise and close, to a decision, to a withdrawal and decision; anything that happened in fiscal year 2008 in tax types over which she has responsibility is in this report.

Senator Bilyeu asked if the report showed how many of these cases went to court and to elaborate on those cases. **Commissioner Grant** referred to the summary on page 1 under Other Categories, it includes the Board of Tax Appeals and the courts. There were a total of 12 cases out of all the tax types that went to the Board of Tax Appeals. Out of those, 10 were within the Legal and Policy jurisdiction. One case went to the Idaho Courts and none to the federal courts.

Chairman Hill thanked **Commissioner Grant** for her report and for her years of service to the citizens and the State of Idaho.

The American Recovery and Reinvestment Act of 2009 - Tax Provisions Affecting Idaho. (On File)

Chairman Hill related that Legislative Services Office (LSO) was working long hours to review the new stimulus act to determine the effects it would have on JFAC and other issues affecting the state and they accepted his offer to help, resulting in this report derived from the tax provisions of Title I, Tax Provisions Under Division B. **Chairman Hill** reviewed how these provisions will affect Idaho so, as questions and possible legislation come up, the Committee will be versed on that subject.

Chairman Hill explained the difference between deductions and exemptions, which are deducted from income to determine taxable income, and a credit that reduces the tax. A spreadsheet (on file) showed the section, provision description, effective dates, applicable phase out provisions, type of benefit, and whether or not the provision affects Idaho. If Idaho conforms to the Federal Internal Revenue Code it will affect the amount of taxable income that will be used to determine the amount of tax a taxpayer will pay. The objective is to conform with the tax law that defines what is income and what part of that income is not taxable. A credit will not affect Idaho, a deduction or exclusion will affect Idaho. **Chairman Hill** explained in some detail, the sections that have received the most questions:

- Making Work Pay
- Education Credit
- 1st Time Home Buyer Credit

Senator Stegner asked if the education credit included fees and **Senator Bilyeu** asked how the credit applied if someone went more than the four years. **Chairman Hill** responded that fees were included and that the benefit was only for four years but the student could choose which four years to use.

Chairman Hill pointed out that the public debt limit had to be raised somewhere within the bill and it appeared at the very end in Section 1604 in the amount of \$12,104,000,000,000.

Senator Heinrich asked if there was not enough tax liability to use the credits, can they be carried over? **Chairman Hill** said some are refundable and will be paid out but most credits do not carry over.

The major items that will affect Idaho if the state conforms to the federal code were covered in more detail.

Tax Provisions Affecting Idaho

-There is a tax exclusion of up to \$2400 of unemployment benefits for 2009. The estimated fiscal impact for FY 2010 will be \$4.7 million.

-Sales tax will be deducted on the purchase of a new vehicle up to a purchase price of \$49,500.

-The Section 179 deduction allows the taxpayer to elect to deduct the cost of new or used equipment in the year it is purchased rather than setting it up on a depreciation schedule over time. The cap will increase to \$250,000 for 2008 and 2009. The Act also extends bonus depreciation, allowing the remaining 50% cost of new equipment to be written off in the year of acquisition. This benefit is generally for small businesses and the Section 179 election cannot be used to create a loss.

-Net Operating Losses (NOL) may be carried back two years. The new provision for losses in 2008 allows the loss to be carried back up to 5 years for a small business with gross receipts of \$15.0 million or less. This is not an area Idaho needs to comply with, the State is already different and has been for many years.

-Cancellation of Debt Income for Small Businesses delays the tax due when debt is forgiven. As a general rule, the forgiven amount is taxable income. For 2009-2010 the tax is delayed for 4-5 years and then paid at 20% per year interest free.

-Small Business Capital Gains on stock in "C" corporations, under certain conditions, allows a 50% exclusion of the gain from the sale. The new law increases the exclusion to 75% for investments between the date of enactment and January 1, 2011.

-The law for "S" Corporations Built in Gains reduces the holding period to seven years from ten years after a conversion from a "C" Corporation for the sale of assets occurring in 2009 and 2010.

In summary, the fiscal impact to the State for conforming to this act as of February 18, 2009, plus the addition of the property tax to the standard deduction, will be an estimated \$14.1 million for FY 2010.

The consequences of non-conformity and refusing to address these issues until 2010 would have adverse results:

-Idaho citizens would not know the tax liability on their financial transactions for 2009 and financial planning would be nearly impossible.

-Incentives to stimulate the economy would be removed.

-These complex changes must be incorporated into the tax system prior to the 2010 legislative session for administration purposes.

-There are other consequences to non-conformity but these are the most important.

Chairman Hill stated he has pledged his support to help get this legislation through this year. The question is, how to proceed with the cost of a \$14.0 million fiscal impact? This is a tax decrease of \$14.0 million. A decision must be made as to whether the State can afford to do this and, if not, how those benefits will be paid for. Some alternatives are:

-A temporary surcharge of .1% on taxable income dedicated to education.

-Postpone the phase-in of the "Grocery Tax Credit."

These would be temporary for the same period of time the tax benefits are in effect. The tax benefits are going to individual taxpayers. These are ways the lost revenue to the State would be replaced from those same taxpayers that are reaping the benefits of this portion of the stimulus package. If the federal government extends the benefits, other decisions will have to be made to address those issues.

Senator Werk asked if the grocery credit was delayed one year, would it be picked up the next. **Chairman Hill** agreed.

Senator Bilyeu asked if there was any indication in the House if they would be receptive to making up the \$14.0 million. **Chairman Hill** said he received a good indication from the House Committee, who has always been a friend of conformity, that they would make the recommendation to conform. Whether or not they were in agreement about making up the revenue is unknown.

Senator Stegner thanked **Chairman Hill** on behalf of the Legislature, this Committee, and the State of Idaho for an expert analysis.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:26 p.m. until Wednesday, March 4, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 4, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:02 p.m. on Wednesday, March 4, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- 25x25 Renewable Energy Initiative** Renewable Energy and America's Energy Needs. **Read Smith**, National Co-Chairman, 25X25 Renewable Energy Initiative (25X25), provided an overview (on file) of what the 25X25 initiative is and its current activities. The initiative is funded through a series of foundations organized under the name Energy Future Coalition with an initial charge to explore agriculture and forestry's role in energy production. In 2004, a team was assembled with a vision that, by the year 2025, America's farms, ranches, and forests will provide 25% of the total energy consumed in the country while continuing to produce safe and abundant food, feed, and fibre. Focus is also on the production of transportation fuels, wind energy, converting biogas emissions, solar, biomass, and improve hydro power efficiency. This is not a food vs fuel, it is a food, feed, fibre, and fuel vision.
- Mr. Smith** reviewed the chronology and supporters of 25X25. **Senator McKenzie** noted that Idaho's State Energy Plan and the Legislature endorses the 25X25 concept. **Mr. Smith** said this is a national goal passed by Congress and signed into law by President Bush.
- Mr. Smith** addressed the objectives for 2009:
- Expand grassroots support and mobilize the 25X25 base.
 - Report and document national and statewide progress toward goals.
 - Aid the agriculture and forestry sector to identify and advocate for solutions on climate change.
 - Facilitate the development of consensus based action plans.
- The initiative provides an energy future that will displace fossil fuels, reduce greenhouse gas emissions, sequester carbon dioxide, and deliver renewable energy and climate change solutions. Sustainability is key and a set of principles has been developed.

**State Tax
Commission
Report**

The following actions can be taken at the state level:
-Develop a state-level action plan.
-Seek endorsement by governors and legislators.
-Establish roundtables to bring stakeholders together.
-Develop websites.
-Conduct media outreach on renewable energy topics.

Mr. Smith announced there is a website at www.25x25.org. The 2009 National Summit is March 31-April 2, 2009 in Washington, DC.

Senator McKenzie said that Northern Idaho has an interest in woody biomass because of forest growth. Communities can do a public partnership and establish an 8-10 watt generation to produce power. However, some of that resource is on federal land with limited access and would need some policy changes at the national level before the state could benefit. **Mr. Smith** agreed that policy changes are needed.

Senator Werk asked what the State could do about providing incentives or removing disincentives and will others make those decisions? **Mr. Smith** responded that Idahoans are best qualified to make those decisions, not someone from outside the State.

Report on Compromise and Closing Agreements for the Idaho State Tax Commission.

Commissioner Royce Chigbrow, Chairman, State Tax Commission, introduced Commissioners Tom Katsilometes and Sam Haws and proceeded with his report on the State Tax Commission's Compromise and Closing Agreements from July 1, 2007 to December 31, 2008. (Copies of report on file)

Commissioner Chigbrow said the Commission has reviewed the allegations from May 28th, the subsequent investigations, reports, and recommendations, as well as a 1996 Internal Control Report issued by the Legislative Services Office (LSO). As a result, Temporary Rule 500 was promulgated that clarifies and defines what the Commission considers when it receives settlement offers. The permanent Rule 500 incorporating more of the recommendations, will include transparency and communication provisions. It will be ready for the 2010 Legislative Session. The review identified the need to build written internal procedures into the settlement process that will avoid any implication of illegality or secrecy. A summary of the Settlement and Closing Agreements over \$50,000 will be included in the Commission's Annual Report to this Committee and the Governor. This has been a positive experience for the Tax Commission and has provided an opportunity to learn from the experience.

Commissioner Chigbrow continued with the analysis of the individual income tax, corporate income tax, and sales tax settlement agreements that occurred during the 18 month reporting period.

Senator McKenzie referred to Exhibit 5, the Management Policy that diagrams how the Notice of Deficiency Cases (NOD) and Closing Agreements will be administered and seems to replace guidelines that were updated in 1997, 2005, and 2008. How different is this formal process from

what has been in place? **Ted Spangler**, State Tax Commission, stated that the 1997 iteration focused only on issues where settlements of \$50,000 and over were under consideration and those required two Commissioners' signatures. The 2005 change updates that policy. The most recent update added procedures for the protest process. They also expanded the process for reviewing settlement agreements to reflect the current recommendations.

Senator Werk asked if tax liability protest trends are increasing and is the system being systematically utilized by taxpayers to decrease their tax liability? **Commissioner Chigbrow** responded that there are over 7,000 multistate corporations; 175 of those were audited; of these, 12 were appealed. It is difficult to get a trend from such a small number. When a Corporation is audited, it can file an appeal, that is the law. **Senator Werk** asked if, within this 2.5% audit rate, the appeals are occurring in a small category of settlements as opposed to all agreements. **Commissioner Chigbrow** answered that there is a broad range of dollar amounts and different issues. There are checks and balances on the 7,000, resulting in the 175 audits. The 163 correct audits is a very high success rate.

Senator Werk asked if the 2.5% audit rate is an industry standard and what is an adequate goal. **Commissioner Chigbrow** said the 2.5% is limited to larger, corporate audits. Over 700,000 individual tax returns are filed with less than 18,000 audits, a very small number; 1.5% would be more acceptable.

Chairman Hill stated that a certain number of multistate corporations are audited every year and not all of them show a deficiency, some are doing it right. Do you see a trend that more of those that are audited are considered in violation of the law because they think Idaho is an easy mark? **Commissioner Chigbrow** said there is a growing CPA industry that markets products on how to avoid paying state income taxes to large corporations. Tax laws must be updated to address today's way of doing business. Interpretation of the laws has changed and the Commission needs help to change the dictates of current tax laws. **Chairman Hill** responded that is an advantage to having an annual report so the Legislature can better understand policy problems that are in the statutes.

Chairman Hill initiated a review of the cases that were outlined in the report. Cases were settled for a variety of reasons, i.e. new information, legislation changed the requirements, and court rulings were followed. Dockets involving large differences between the claim and the resolution amounts were discussed in more detail.

Senator Jorgenson asked how many licensed auditors are on the Commission staff and are they assigned to cases based on experience? **Commissioner Chigbrow** answered that there are 200 auditors and expertise in a specific tax type is considered when assigning a case. **Senator Jorgenson** asked if there are senior auditors that handle the high profile/high value cases. **Commissioner Chigbrow** deferred to **Stan Howland**, Audit Staff, State Tax Commission. **Mr. Howland** said he could only speak for the multistate audit group. This is a very experienced audit staff. The senior auditors can do all cases. The newer members of the staff go out with the experienced auditors.

Senator Bilyeu asked, of the dockets just reviewed, are multi- state corporations with headquarters outside the state of Idaho included and are these business income tax cases? **Commissioner Chigbrow** responded positively to both questions. **Chairman Hill** asked if that was true for all cases. **Commissioner Chigbrow** answered that sales tax cases are Idaho businesses. **Senator Bilyeu** asked what changes will be made internally as cases come up where auditors do not agree with the Commission. **Commissioner Chigbrow** said one change is the openness of the discussions. Auditors and Policy Specialists are given a chance to read the final decision before it is published, provide comments, and sign off on it. **Senator Bilyeu** asked why, at the time of a hearing, wouldn't the auditor be there to provide information? **Commissioner Chigbrow** stated the objective is to get information from the taxpayer in a nonadversarial climate.

Senator Jorgenson asked, of the dockets just reviewed, how many of these were under the supervision of Mr. Howland? Are there other auditors that have voiced their opinions to the Commission?

Commissioner Chigbrow responded that six auditors signed a letter supporting Mr. Howland's position. **Senator Jorgenson** asked if Mr. Howland was still employed by the Commission and if there were any claims of retaliation. **Commissioner Chigbrow** affirmed that he was still employed and there have been no claims of retaliation.

Chairman Hill asked if Commissioner Chigbrow certified to this Committee that, to the best of his knowledge, all of the Compromise and Closing Agreements with amounts of \$50,000 or more are included in this report for the 18 month period ended December 31, 2008. **Commissioner Chigbrow** confirmed that statement.

Senator Heinrich stated that the 92% compliance rate was high for the 175 that were audited. Is the 8% reviewed to establish new benchmarks of who to pursue for audits and identify areas where people are more likely to be noncompliant? **Commissioner Chigbrow** stated he can't answer that question, but with the retirement of Commissioner Grant, he will assume more of those audit and collection responsibilities. The available technology does allow the selection of the best candidates for audit.

Senator Werk asked what, in your opinion, is the root cause of the issues that are being dealt with? **Commissioner Chigbrow** said there has been a change in the direction of the Commission from 15 years ago when auditors were always considered correct. In the 1990s, the atmosphere changed and taxpayers were treated more fairly. Tax laws are not black and white and are open to interpretation.

Senator Bilyeu asked if more cases should be litigated since there are accounting firms that challenge the tax laws, especially in Idaho.

Commissioner Chigbrow responded that litigation on most tax cases would be futile and costly. Good, solid, advice from the Attorney General's Office can keep them out of court where the best odds are 50-50. Anything dubious makes the chances of success much lower.

Chairman Hill thanked the Commissioners and invited them to stay for the discussions of S1128.

RELATING TO THE STATE TAX COMMISSION to amend the minimum standards of procedure when considering settlement or closing agreements and provide for annual reporting.

Senator Kelly provided a brief history of the development of this bill in response to the allegations by Stan Howland and the subsequent activity that occurred over the course of the summer and fall. The Tax Commission responded to the allegations. Responses from the Attorney General, and LaVern Gentry, an accountant appointed by the Governor, regarding illegalities concluded that there had been none but did include suggestions to improve the settlement processes at the Tax Commission. The Governor directed the Tax Commission to adopt rules and to file an annual report to the Legislature. A rule was adopted by the Tax Commission in November that defines the scope and nature of the authority under which they enter into settlement agreements but does not address internal controls. In January, the Tax Commission adopted a revised policy to handle protests and NODs.

The intent of the legislation is to provide structure to the process and codify policies so they will be legally solid allowing more transparency, consistency for taxpayers, and consistency for staff within the Tax Commission as recommended by all the parties involved in the investigations. Although concerns were primarily directed to multistate corporate income tax cases, this bill applies to all types of Compromise and Closing Agreements.

Jeff Youtz, Legislative Services Office, stated that LSO was requested to look at the issues involved in Mr. Howland's reports and criticisms of the process. Their objective was to come up with recommendations to help the Tax Commission, the process, the taxpayers, and the State. The common issues derived from these activities are contained in this bill to incorporate improvements for a standardized, fair, and equitable process.

Issues:

Standardization of procedures set in statute or rule.

Accountability by expanding the role of officials.

Communication to include the audit staff in the process.

Reporting and Transparency.

A name change to "Settlement and Closing Agreement" was made to remove the negative connotation. The primary amendments are in *Section 63-3048* to provide standard procedures for processing Settlement and Closing Agreements for tax liabilities over \$50,000. The change expands the process to a final hearing where a second commissioner will be required to be present and both commissioners will be required to sign the agreement.

Senator McKenzie asked if the intention of this bill expands the involvement of the second commissioner to be included in, not only the informal hearing, but the actual negotiations. Is the informal hearing where the summary written by a staff person is presented the same informal hearing where there is a second commissioner? **Mr. Youtz** responded that the current procedure remains the same with a primary commissioner involved with the negotiations. The second commissioner would attend only that final hearing. The summary would be presented at that final hearing

after negotiations have taken place.

Senator Kelly suggested that use of the word hearing is confusing. The second commissioner and other internal staff would be brought in to review the facts of the case at the final internal review and would sign off on the final agreement. The requirements of the statute are different from the Commission's internal Management Policy that was just adopted. That policy will be changed to comply with statute.

Senator Jorgenson asked if this issue is about pride of authorship or is there some implication of impropriety and, if so, what is the benefit and motive? **Mr. Youtz** responded that there was no accusation of impropriety. The issue is to reassure the taxpayer there are standard procedures and fairness, remove the perception of secrecy while maintaining the right to privacy, and ensure some reporting requirements.

Senator Stegner asked for clarification on several wording issues in the revised and new language:

1)referring to page 2, line 2 - the use of "or" versus "and." **Mr. Spangler** responded that either would be acceptable.
2) referring to page 2, lines 14-34 - clarification of the wording "amount in issue." Is that the original amount or the net amount? **Mr. Spangler** referred to Footnote 2 in the current Management Policy where the "amount in issue" is defined as the net amount of a deficiency, refund, or assessment which is still disputed after considering additional information..... **Mr. Spangler** explained that, under existing statute and practices, the "amount in issue" is not the original deficiency amount but the amount that is still in dispute.

Mr. Youtz continued to review the body of the bill and emphasized subsection (b)(3) where written summaries and recommendations are submitted by the audit staff.

Senator Jorgenson stated that the Statement of Purpose indicated there would be no fiscal impact. Wouldn't the additional layer of oversight incur some fiscal impact? **Mr. Youtz** said that existing staff will be providing a report they are already compiling only in a more formal manner.

Public testimony in opposition of S 1128

Stan Howland, Auditor, State Tax Commission (copy on file)

Senator Bilyeu asked if the \$30.0 million in sales that are in dispute are in the Commission's report. **Mr. Howland** replied that one came up in January, 2009 after the end date of the report.

Senator Stegner asked how do California and other states do this. **Mr. Howland** responded that California has a two tiered system:

- 1) There is a three party approval and there are small limits.
- 2) All compromises over a certain dollar amount must be published.

Idaho can't go public with that information unless the law is changed. The \$50,000 limit should be removed and all compromises should be reviewed for consistency. **Senator Stegner** asked what information was made public

in California. Idaho has strict privacy laws. **Mr. Howland** said the compromise and closes were published but didn't have the exact information.

Senator McKenzie referred to Mr. Howland's May 27th report that stated audit protests have been illegally settled. Which of the agreements listed in the report are those that were illegally settled and were they after July 1, 2007? **Mr. Howland** responded that he would have to go back and look at docket numbers and compare them. There were six illegal cases listed in his report but illegal settling of cases occurred with a lot of other cases as well. Referring to the Commission's report, p.13 of 16, Docket #19352, **Mr. Howland** totally disagrees with the comments. There was substantial precedent. Precedent set in another state does not apply to Idaho and could only be used if the facts were identical. **Senator McKenzie** voiced his concern about assertions without any specific case identification by docket numbers so they can be analyzed.

Chairman Hill clarified Mr. Howland's definition of illegality. Rule 500 had three criteria for making a compromise: 1)Doubt as to liability. 2)Doubt as to collectability. 3)Extreme hardship. Any compromise, irregardless of dollar amount, would be illegal. "Did Mr. Howland believe that, if there is little doubt regarding the liability, that any compromise, irregardless of dollar amount, would be illegal?" **Mr. Howland** said that was correct.

Chairman Hill thanked Mr. Howland for his 29 years of service to the Tax Commission and the State. He will be retiring in three weeks.

Senator Stegner provided information regarding California law. Any reduction in taxpayer liability over \$500 becomes public record containing the name of the taxpayer, the amount in dispute, the amount agreed to, and a summary of reasons for the settlement.

Public Testimony in opposition to S 1128
Robert Huntley, Attorney (Copy on file)

MOTION:

Senator Werk moved to send S 1128 to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion.

Senator Werk referred to the original comments of consistency and transparency. However, Commissioner Chigbrow did not mention those issues in his discussion of how they arrived at where they are now. This bill is a step toward that consistency and transparency.

Senator Jorgenson supports this legislation because some of the terminology used to describe the issues is inflammatory. The activities have been legal and changing parts of the statute is not tolerable.

Senator Bilyeu supports the legislation but agrees it does not go far enough. She is concerned that the auditors are not in attendance and giving input for the hearings. The rules might provide some improvement to the process.

Senator McKenzie found that Mr. Howland's testimony was disturbing

where documentation that is needed from the multistate entities is not forthcoming. There is a policy provision that the staff will identify outstanding information requests that need to be satisfied and address those requests before the hearing is scheduled. We may want to go further by forcing the taxpayer to District Court and use the procedures of discovery to get that information. Putting this statute in place creates a much higher degree of transparency and standard procedures when entering into these settlements. This is a good bill and he will support it.

Senator Heinrich supports this bill. It is disturbing that if there is a requirement for information and the taxpayer refuses to provide it, and the auditor doesn't get support to pursue that taxpayer. That needs to be addressed at another time. This is a great first step.

Senator Stegner agrees that the bill approaches what needs to be accomplished. The hearing has shed light on some other issues that may have to be addressed and remedied.

VOTE: The motion carried by unanimous voice vote.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 5:57 p.m. until Thursday, March 5, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 5, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:01 p.m. on Thursday, March 5, 2009, with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator** McKague moved to approve the minutes of February 26, 2009. **Senator** Jorgenson seconded the motion. The motion carried by unanimous voice vote.
- HB 121** RELATING TO INCOME TAX CHECKOFFS AND DONATIONS to add a check off donation for Idaho Food Bank to the Idaho Income Tax Form. **Representative Boe** commented about the current economy and that unemployment has doubled from last year. Many people are going hungry, 23% of Idaho families are on food stamps. One in eight children go to bed hungry at least once a month. Idahoans want to help and they have through food drives. HB 121 provides another opportunity to help alleviate the food crisis by donating to the Idaho Food Bank through an optional check off box on the Idaho State Income Tax Form. The Idaho Food Bank partners with 215 agencies. Last year, 6.1 million pounds of food was distributed. They leverage \$10 in food for every \$1 that is donated. There is no fiscal impact for this bill. The first \$3,000 donated goes to the Tax Commission to administer this fund.
- Public testimony in support of this bill.
Roy Lacey, Interim President & CEO, Idaho Food Bank (on file)
Annie Henna, Legislative Advocate Intern, Catholic Charities of Idaho
- MOTION:** **Senator Heinrich** moved to send HB 121 to the floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.
- Senator Corder** stated that he appreciated the efforts of the Idaho Food Bank and those who brought this legislation to the Committee. He will oppose the bill because he opposes the philosophy of adding check off

boxes to the tax form.

Senator McKenzie agrees in principle with Senator Corder. However, this policy has already been established and Idaho Food Bank is no less deserving than any other charity. Recent debates have occurred about this type of an organization taking care of community needs rather than the government. Until the Legislature puts a sunset or limitation on this practice, it is hard to tell this group they can't be on the form. He will support the bill.

Chairman Hill asked **Ted Spangler**, State Tax Commission, if there were any provisions about a minimum level of contributions. **Mr. Spangler** answered that if donations drop below \$25,000 in one year, notice is given. If they are below the second year, they are removed from the tax return.

Senator Jorgenson inquired if the \$3,000/year administration fund is enough to cover the cost. **Mr. Spangler** responded that the actual cost was unknown, but it did cost more than the \$3,000. **Chairman Hill** suggested that those costs might be analyzed for a potential recovery.

VOTE: Motion carried by a majority voice vote.
Senator Bilyeu will sponsor *HB 121*.

HB 119 RELATING TO THE SALES AND USE TAX to clarify and refine 2007 legislation allowing a method of funding under the Sales Tax Anticipation Revenue (STAR) module.

Senator Winder explained that the purpose of STAR is to provide a means for the State to get highway improvements completed while allowing private investment, under strict guidelines, to receive reimbursement using a portion of new sales tax collected from a new development. This legislation cleans up the 2007 legislation and allows the use of STAR to fund other State highway improvements, not just interchanges. This is applicable only to new construction. **Senator Winder** reviewed the contents of the bill which repeals and replaces *Section 63-3641*. Emphasis was made that this is for a retail complex to reimburse the developer for project expenses incurred for the installation of approved transportation improvements within certain criteria. Changing the minimum cost from \$8.0 to \$6.0 million was the only major change. The retailer must be qualified and meet certain requirements. There are controls in place to monitor how the project progresses. This is sound economic policy and will help alleviate some of the problems that local jurisdictions have in making major transportation improvements.

Senator Jorgenson asked how important this legislation is to the State's economy in respect to getting these economic developments without this assistance. **Senator Winder** believed this to be very important for the economic viability and investment within the State.

Chairman Hill stated that it appears there is a requirement in the existing bill that this doesn't "kick in" until the complex had taxable sales in excess of \$8.0 million and that requirement isn't in the new law. There is the \$4.0 million expenditure for development of the complex whose stores sell

tangible personal property or taxable services and has expended in excess of \$8.0 million for the installation of the project—just trying to reconcile those two numbers. **Senator Winder** said that the \$4.0 million is the amount they have to spend before they can make any kind of claim and there obviously has to be sales tax collected before a rebate can be made. **Chairman Hill** asked if there a “trigger” as to when the sales tax actually goes against the project? **Senator Winder** answered that they have to be certified to have spent \$6.0 million.

Senator Werk asked why there was an emergency provision. **Senator Winder** replied that there are potential projects underway and this will get people to work and investments going. **Senator Werk** stated if a store is moved from another location, that is just moving the sales from one location to another, not new sales. **Senator Winder** said that a project area would be considered the same location and the bill prohibits that the retail business could be operational in the same location.

Senator Werk asked if the licensing and permitting entities for the development need to approve the designation as a STAR project. **Senator Winder** said there is a requirement that to qualify as an approved highway improvement, the developer of a retail complex must enter into an agreement with the Idaho Transportation Board and/or political subdivision.

Senator Bilyeu asked if this bill expands the development of farm lands. **Senator Winder** answered that when communities are growing and are not redevelopment areas, land is taken that has been of lesser use like farm or industrial land.

Chairman Hill stated that the purpose of this bill is to clarify existing statute except for the \$6.0 million change. **Senator Winder** agreed.

MOTION:

Senator Jorgenson moved to send HB 119 to the floor with a do pass recommendation. **Senator McKague** seconded the motion.

Senator Jorgenson believed this is a good bill. If a developer is going to make a capital investment of this size, there has to be justification.

Senator Werk will support the motion with some reservations.

VOTE:

The motion carried by unanimous voice vote.
Senator Winder will sponsor *HB 119*.

HB 142

RELATING TO THE UNIFORM PRINCIPAL AND INCOME ACT to conform to the IRS' safe harbor provision and clarifies the required distributions of a pass through entity.

Michael Brassey, Commissioner, Uniform Law Commission, stated that this act is designed to tell the trustee or personal representative of an estate how to allocate principal and income from investments held in the estate or in the trust if the trust does not specify how the income will be apportioned. If the trustee follows the statute in absence of direction by the trust, the trustee will have done the right thing.

The current language gives the trustee the maximum possible flexibility to do what the creator of a trust wanted, which was to qualify for the estate tax deduction. A 2006 IRS ruling said this section was too general to allow a safe harbor assuring that the trust qualified for the marital deduction. The new section satisfies the IRS demand to give specific instructions to the trustee.

The second amendment relates to situations where the funds from a pass through entity are held in trust and authorizes the trustee to allocate the proceeds of the distribution so the beneficiary can pay the taxes that are assessed. Neither of the amendments change the meaning of what the statute does, they only add clarity.

Senator Stegner asked for an explanation of what the Commission means and what it does. **Mr. Brassey** said the Uniform Law Commission is 117 years old and was originally formed primarily by the American Bar Association as a means of creating an organization that could draft laws that could be adopted as uniform laws throughout the country. Each state has representatives totaling 248. Idaho has four commissioners.

MOTION: **Senator McKenzie** moved to send HB 142 to the floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator McKenzie will sponsor *HB 142*.

HB 10 RELATING TO SALES AND USE TAX ON AIRPLANES with modifications as it applies to sales and use tax on aircraft. **Chairman Hill** announced that HB 10 is back on the agenda after being held in committee pending additional information.

Mr. Spangler explained that HB 10 is a sales and use tax proposal from the Tax Commission to address when aircraft are subject to sales and use tax and when they qualify for exemptions. The purpose of the bill is to conform the statute to what is understood to have been the intention of the law. The first amendment provides that the personal effects of persons moving into the state are not subject to use tax if they have owned them for more than 90 days. It will include personally owned aircraft. It also strikes the word "motor" from motor vehicles. **Chairman Hill** asked if striking motor would broaden or restrict the definition. **Mr. Spangler** said it tends to broaden the exemption.

The next change is to delete "transport passengers or freight for hire" and replace it with "provide passenger or freight services for hire as a common carrier only if": a) the person operates the aircraft legally; b) provides services indiscriminately to the public; and c) transfers cargo from one location to another. Language pertaining to the exemption of repair and replacement materials and parts for this aircraft was moved from Section 63-3622GG (1) to a new Subsection (4). The Tax Commission does not propose to change the law, only to clarify it.

Senator Corder commented about the issue raised regarding the definition of a common carrier and whether, in the example of a plane

used for skydiving, would that plane meet any of the criteria for a common carrier. **Mr. Spangler** drew attention to “aircraft primarily used.” It would seem an airplane used for skydiving might be used in many other ways. Also, if an airplane took a skydiver up, dropped him out, and came right back down again, that would not meet the definition. That example would compare to a skier on a ski lift which is taxable. It compares to something recreational rather than a mechanism of transportation.

Public Testimony from Western Aircraft Relative to a Proposed Amendment (on file).

Russ Westerberg, registered lobbyist representing Western Aircraft, stated there was no quarrel with the bill before the Committee except that it needs to be amended to be a more complete package and in such a way as to encourage jobs and economic growth. The parts that Western Aircraft installs on nonresident, turbine aircraft, are not included as exemptions in this bill.

Chairman Hill asked why the proposed amendment was limited to turbine powered aircraft. **Mr. Westerberg** said Western Aircraft has unequal competition from other states who are not impacted by the sales/use tax for this type of aircraft. In addition, the intent is to keep the legislation as narrow as possible.

Chairman Hill asked the Tax Commission, based on this definition and limiting it to the turbine powered aircraft, do you have an estimated fiscal impact of what this amendment would do. **Dan John**, State Tax Commission, responded that they could not get data specifically on the turbines. Only titles that contained aircraft, airplane, and airplane repair were in the system and those companies, statewide, paid about \$1.5 million during the last fiscal year. That was piston as well as turbine aircraft and may have included items that were not purely airplane repair parts. This does not portray to this Committee that the \$1.5 million is all of the revenue, only from those companies meeting that criteria.

Senator Jorgenson referred to the language in the proposed amendment “turbine powered aircraft not registered in the state of Idaho.” Isn’t that a sales tax revenue the State wouldn’t have anyway? **Mr. John** stated that the State is receiving the revenue now when those planes come from out-of-state for repairs.

Allen Hoyt, President, Western Aircraft, a company based at the Boise Airport with 185 employees. They are the largest aircraft dealer, Fixed Based Operation (FBO), and Maintenance Repair & Overhaul Facility (MRO) between Salt Lake and the West Coast. The avionics and maintenance division has over 100 employees making an average of \$50,000 per year. The partners sold Western Aircraft to W. R. Berkley Company in 2007 who now have three facilities across the country. Berkely is actively investing for the future and has completed \$1.9 million in expansions and have a ten year plan for future expansions amounting to a capital investment of over \$15.0 million that will increase employment to 300. They have very strong competitors in Michigan, Nebraska, and Colorado that have been exempted from sales tax on installed spare parts

for out-of-state turbine aircraft. The competitors have a 6% advantage over Western Aircraft. This is important because over 90% of their business is from out-of-state. To grow and prosper, they need help with this exemption.

Mike Maynard, Vice President Business Administration, Western Aircraft, discussed their current employment activities. Western Aircraft has hired about 80% of the graduates from the Idaho State University Vocational School over the last three years. Other, more experienced people, must come from out-of-state.

Mr. Maynard distributed a Tax Facts and Impacts report and a Case for Sales Tax Exemption on Non-Resident Aircraft Parts and Services. (on file).

Senator Jorgenson understands the request for a sales tax exemption on the mainframe or engine, but what about the avionics. **Mr. Maynard** said that is the same kind of personal property when installed on this type of aircraft.

Senator McKenzie said that other states have passed similar legislation. How recent did they change their policy? Are there other tax policies in other states that would affect competition? **Mr. Maynard** responded that those changes had occurred in the last couple of years. Colorado changed in 2007. There haven't been any other apparent policies. The biggest competitive issue right now is the effective rate they are charging for the hourly maintenance time. The sales tax on parts has been an excuse given for lost jobs.

Chairman Hill asked what it would cost for fuel to fly a turbine powered plane, round trip, from Boise to Michigan. **Mr. Hoyt** said it would depend on the size of the plane; it could be anywhere from \$1,000 - \$10,000.

Senator Stegner stated that in conversations with an owner of a plane and the logic behind choosing a repair site, they would not take into consideration the amount of sales tax when the repairs/maintenance would be at least \$100,000. In addition, many times the plane must be repaired where it is grounded. This reinforced his decision not to approve the expansion of tax exemptions. This has nothing to do with the appreciation for a significant employer and for them to remain in Idaho. **Mr. Maynard** agreed that when a plane breaks down, it must be fixed on the spot. However, the repairs being talked about are planned repairs and upgrades. If a plane is going to pay \$16,000 in sales tax for a repair and can fly to Colorado for \$5,000 and save some of that—that counters the argument to some degree. This will have a fiscal impact now but the reward is in the growth of the business and the income tax and payroll it will generate.

Senator Jorgenson asked if aircraft generally are serviced on a maintenance program rather than a breakdown and is the nature of the work major overhauls. What is the approximate average cost of a work order? **Mr. Maynard** responded that is absolutely correct. For the \$3.0 -

\$4.0 million airplanes, the average work order is \$10,000 - \$15,000. On larger planes, a work order would be \$50,000 - \$1.5 million. A normal avionics bid would be \$200,000.

Mr. Hoyt answered Senator Stegner's question. There are 4-5 shops in the United States that they compete with. Most of their current customers are from California. It is no more expensive for them to fly to Grand Junction, Colorado, so a 6% differential does make a difference.

MOTION:

Senator Jorgenson moved to send HB 10 to the 14th Order for amendment. **Senator McKague** seconded the motion

Senator Jorgenson commented that this is not about a loss of revenue, it is about keeping an employer and increasing wages. The State of Idaho went to great measures to bring Empire Air from Spokane to Coeur d'Alene for the same motivations and there were considerations given to get them to come. On one side, we give concessions to get people to come to Idaho and then withholding them and don't make it inviting for them to stay. Idaho needs all the jobs it can get.

SUBSTITUTE MOTION:

Senator Stegner made a substitute motion to send HB 10 to the floor with a do pass recommendation. **Senator Corder** seconded the motion.

Senator Stegner stated that the exemption should be removed. The exemption was for common carrier parts with the promise that there would be a major repair center at the Boise Airport which never materialized. Now consideration is being given to an amendment with a narrow exemption that would exempt turbine parts for out-of-state aircraft for people who are not Idaho citizens. There are the arguments about job creation and that could be supported in other times but not these economic times when the effort is to maintain bills without fiscal impacts. He cannot support an amendment. The clarifications in the bill are appropriate.

Senator Werk agrees with Senator Stegner and is also concerned about process. If there is to be an exemption, go through the regular process. Make a case to a committee and determine the fiscal impact. They should come back to the Legislature next year and try to get the exemption through the process. He will support the substitute motion.

VOTE ON SUBSTITUTE MOTION:

The substitute motion carried by a majority voice vote.
Senator Werk will sponsor HB 10.

ADJOURNMENT:

Chairman Hill adjourned the meeting at 4:52 p.m. The Committee will reconvene at the call of the chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 11, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators McKenzie, Corder, McKague, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senators Stegner and Jorgenson
- CONVENED:** **Chairman Hill** called the meeting to order at 3:02 p.m. on Wednesday, March 11, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- S 1138** RELATING TO LOW-INCOME PROPERTIES to provide guidance to county assessors and to outline procedures for valuing federal tax credits.
- Chairman Hill** explained that this bill has to do with Section 42 low income housing and the evaluation of the credits that are given in regards to property taxes. The bill that passed last year excluded the credits from any value by the assessors. Meetings were held throughout the summer to work out some alternatives. The bill is being presented by the State Tax Commission but it is not a Tax Commission bill. They are only presenting what they have been instructed to present. The bill has been put together by using recommendations by this Committee, counties, and the tax commission members. It is not a compromise. The objective of the bill is to be fair and equitable. It meets the objectives of this Committee.
- Steve Fiscus**, State Tax Commission, provided a brief overview of what Section 42 low income housing projects are and how they are restricted. The developer receives a tax credit and, during the 40 year regulatory agreement, must keep the rents within the restricted range in exchange for those tax credits. The methodology provided today will use the income approach to determine how these tax credits will be evaluated.
- Scott Erwin**, State Tax Commission, provided the technical assistance to determine a way to value the tax credits of the Section 42 properties. **Mr. Erwin** distributed a handout Value and Tax Comparisons of Three Income Approach Valuations for 40 years and provided an explanation of how each of those would work. (on file)
- The traditional methodology that has been used by most appraisers to appraise these properties for financing is discounting the tax credits to present worth through a discounted cash flow analysis. This is a 10-year discounting process which has the effect of producing high values in the first 2-3 years of the project and then the values go down for a period of 10 years

and stabilize at the 11th year and stay stable for the remaining 30 years. Once the methodologies were laid out side-by-side to see how they compared as to whether or not the value of property was being overstated using one methodology versus another, the proposed method within S 1138, long term, produced a value very close to the traditional 10-year discounting method, but spreads the value of the credit over the 40-year regulatory period.

Senator Bilyeu asked if the low income housing might affect rents on other properties in the area that do not have subsidized rents. **Mr. Erwin** responded that is somewhat unknown. In some rural communities where these projects have been constructed, folks who are living in existing apartment houses will transfer to the new project. In some cases, other landlords must reduce their rents to keep renters. That is not true in metropolitan areas.

Senator Bilyeu asked if the rents are restricted for 40 years and the credits paid out in 10 years, why would the developer keep those properties after 10 years? **Mr. Erwin** responded that the tax credits are used as a financing tool as part of the construction of the project. The developers also receive a fee to put the project together. The money is made up front. **Chairman Hill** further explained that they have to. In order to earn those credits in the first 10 years, they sign a contract that they will provide the reduced rents for 40 years. They can sell the project but it will be at a reduced value because the buyers still are limited to charging the low rent for the regulatory period.

Mr. Erwin stated that the issue is that the methodology that is currently being used produces a very high value in the first 2-3 years and places a relatively high tax liability on the properties early on and then it goes down over a period of 10 years. The idea is to value the tax credits and there is a supreme court case to back that up. Approximately the same amount of tax is paid, it is just over a longer period of time.

Georgia Plischke, Assessor, Washington County, stated that the county assessors have not seen the final draft and there are some varied opinions but, in her opinion, this is a workable system.

Kirt Peterson, Horizon Development, stated that he has talked with other developers and they support this as an equitable and fair way to treat this situation.

MOTION: **Senator Werk** moved to send S 1138 to the floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 3:43 p.m. subject to the call of the chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 17, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

CONVENED: **Chairman Hill** called the meeting to order at 3:00 p.m. on Tuesday, March 17, 2009 with a quorum present.

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

ANNOUNCEMENTS: **Chairman Hill** announced that the Governor has signed the Tax Conformity Bill for 2008.

MINUTES: March 3, 2009
Senator Stegner moved to approve the minutes of March 3, 2009. **Senator McKenzie** seconded the motion.
The motion carried by unanimous voice vote.

March 4, 2009
Senator Heinrich moved to approve the minutes of March 4, 2009. **Senator Bilyeu** seconded the motion.
The motion carried by unanimous voice vote.

HB 160aa RELATING TO BONDS OF LIBRARY DISTRICTS to increase the cap on a library district bond within certain requirements.
John Watts, representing the Idaho Library Association, explained that HB 160aa increases the bond levy cap from .4% to 1% of the market value for assessment purposes less any aggregate outstanding indebtedness. **Mr. Watts** outlined the logic behind the change, provided a map showing the different types of library districts throughout the state along with a list of other types of entities that can levy and what those levy limits are, and a spreadsheet that projects the change in funding for libraries (on file).

The original cap was set in 1965 at 2% "of the assessed valuation of the property less the aggregate outstanding indebtedness." In 1978, there was the 1% initiative and, as a result, some of the code changed. This law changed in 1980 in regard to the value for assessment to ".4% of the market value for assessment" purposes..... At .4%, library districts are substantially lower than many of the existing levying districts in the State. **Chairman Hill** referred to "many of the districts" and asked if there were other districts that are lower than .4%. **Mr. Watts** responded that the list was the sum of the districts that have bond levy caps.

Mr. Watts explained the process used to arrive at the amount of funding required by each library district to build or expand library facilities and how much some of those districts would fall short if the cap was not increased based on the standard and based on the average price.

Senator McKenzie asked if the taxable value is the same as the market value used in the statute. **Randy Nelson**, Associated Taxpayers of Idaho, explained that market value less exemptions is the assessed taxable value and that is the amount referred to as the taxable value. **Senator McKenzie** was in agreement but the current .4% cap is based on the market value which is before all those exemptions come off the top. Is that correct? **Mr. Nelson** answered that was not correct. It is the taxable value. **Chairman Hill** quoted the statute as “percent of the market value for assessment purposes.” Is that after the exemptions? **Mr. Nelson** responded that it is for assessment purposes and that is the value that is left after deducting the exemptions.

Senator McKenzie asked if “market value for assessment purposes” is defined the same in other areas of the code. If this is an archaic term in this code section, it should be amended so it doesn’t engender this confusion. **Chairman Hill** asked to have the code books checked for other taxing districts to see what the language was in those sections.

Mr. Watts discussed the need to expand libraries. Idaho’s libraries are experiencing a steep increase in patron visits. Not only do libraries in rural communities provide traditional reading and study materials, they also serve as community gathering places. This bill is brought forward asking for the Committee to provide the authority to the library districts to ask their voters if they want to increase their bond levy cap to build a library. It will require a 66 2/3 vote to pass.

Chairman Hill asked if the bill was amended in the house. **Mr. Watts** said an amendment to restrict the election dates to May and November was passed in the House. **Chairman Hill** restated that it requires a 2/3 vote and the election has to be in November or May. That is now true for any library district bond election. **Mr. Watts** concurred.

Senator Stegner referred to the Kootenai County Joint District, this bonding authority for libraries could be as much as \$107.0 million. Isn’t that excessive? **Mr. Watts** pointed out that the cap is a ceiling and it does not mean the levy would have to be 1%. It could be much less.

Senator Werk compared the library district bond levies to the school district funding and noted that the ability to raise enough money in the poorest districts is always inequitable.

Senator Bilyeu asked why the 1% was chosen. That seems like a big jump from .4%. **Mr. Watts** stated that 2% was the original choice but advice from some legislators indicated 1% would be better.

Senator Jorgenson commented that there are districts that are short of funding and there are districts with a surplus of funding under the current formula. Is there another approach to this “over and under?” **Mr. Watts** said they have long discussed how to position libraries so they could get off the property tax roles but there is uncertainty as to how to finance them. To build a building would require a bond that would end up on the property tax

bill. The question: "How else to do that?" remains unanswered.

Dan John, State Tax Commission, reported back with language from other levying districts. They use the same or similar language. **Mr. Nelson** said this was done with school districts a couple of years ago and the same language is there "2% of the market value for assessment purposes." However, when looking at the actual definition, "market value for assessment purposes" means the amount of the last equalized assessment value of all taxable property and all property exempt from taxation. For schools only, it is changed to include the exempt value. **Chairman Hill** said now there could be two definitions in code for the same term. The language in HB 160aa is the same that is used everywhere else except for school districts.

HB 160aa

Senator Werk moved to send HB 160aa to the floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

S 1144

RELATING TO THE FIRE PROTECTION BOARD to delete certain residence requirements relating to fire protection district commissioners and to revise and clarify provisions for the oath of office.
Senator Andreason directed the Committee to Section 2 which strikes the words on the second Monday of and replaces them with at the first regularly scheduled board meeting in. This change allows the oath to be administered at a regularly scheduled meeting and removes the possible necessity of calling a special meeting.

The change in Section 1 required some additional information. At the request of the sponsor, the bill was held in Committee until further notice.

HB 141

RELATING TO FLOATING HOMES to revise the definition of floating homes and make technical corrections.
Representative Clark stated that the definition is changed by striking the reference to mode of power and the dependence on continuous connections from shore for utilities and sewer in both *Sections 55-2704 and 63-201* of the current law.

Since this bill was printed, additional information was received from home owners, the Department of Parks, the Department of Lands, and the Tax Commission. Therefore, an amendment has been prepared to address the issues that were raised. The amendment will delete *Section 1, 55-2704* from this bill and amends *Section 2, 63-20*, the property tax portion of the legislation. With these changes, this definition is listed in only one section of code and it fits with the decision of a Supreme Court case that says that it should be kept separate.

Chairman Hill asked if it is clearly real property or does it make it clear it is personal property. **Representative Clark** responded that it makes it clear it is real property and would not qualify under *HB 599* for the \$100,000 personal property exemption. **Chairman Hill** commented that now there are two definitions, in code, for floating homes.

Senator Jorgenson asked if the home owners exemption would be lost. **Representative Clark** explained they would lose the \$100,000 exemption for personal property for business. Floating homes would be assessed as

real property. **Senator Jorgenson** asked if there was a prohibition for new float homes to be added in the lake and is that the concern from the Department of Lands? **Representative Clark** said his interest is in the assessment portion. That question would go to the Department of Lands.

Senator Stegner asked for clarification of the amendment. **Chairman Hill** said the amendment removes the first section on definitions and this just redefines the float home for taxation purposes. **Representative Clark** added that *Section 2704* under *Title 55* will remain unchanged.

Mike Murphy, Bureau Chief, Department of Lands, stated that, with the amendment that the change is only for property tax purposes, there are no issues.

MOTION: **Senator Jorgenson** moved to send HB 141 to the 14th Order for possible amendment. **Senator Heinrich** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator Jorgenson will sponsor this bill with the amendment.

ADJOURNMENT: **Chairman Hill** announced there would not be a meeting on Wednesday but there would be one on Thursday. The meeting was adjourned at 4:05 p.m. until 3:00 p.m. on Thursday, March 19, 2009.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 19, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, and Jorgenson

MEMBERS ABSENT/ EXCUSED: Senators Werk and Bilyeu

CONVENED: **Chairman Hill** called the meeting to order at 3:00 p.m. on Thursday, March 19, 2009, with a quorum present.

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

MINUTES: March 5, 2009
Senator Jorgenson moved to approve the minutes of March 5, 2009.
Senator Corder seconded the motion.
The motion carried by unanimous voice vote.

March 11, 2009
Senator McKague moved to approve the minutes of March 11, 2009.
Senator Heinrich seconded the motion.
The motion carried by unanimous voice vote.

HB 205 RELATING TO ELECTION OF HIGHWAY DISTRICT COMMISSIONERS to add a new section to provide procedures in any election for a Highway District Commissioner if there is only one qualified candidate nominated.

Stuart O. Davis, Idaho Association of Highway Districts, explained that *when HB 528* was passed last year taking the election laws out of the *Highway District Code* and adding them to *Title 34* with all the other election codes, this section, *40-1305B*, was overlooked. *HB 205* remedies that oversight. The language is exactly the same as the language that was erroneously removed.

Senator Heinrich asked if this will have any effect on the election consolidation bill that is coming up. **Mr. Davis** answered that he is a strong supporter of that bill and this will have no effect.

MOTION: **Senator Heinrich** moved to send HB 205 to the consent calendar.
Senator Jorgenson seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator Heinrich will sponsor *HB 205*.

HB 206

RELATING TO HIGHWAY DISTRICT COMMISSIONERS to provide that Highway District Commissioners shall, prior to certifying a property tax levy to the commissioners and a county assessor, adopt a budget and cause a public hearing to be held on the budget.

Mr. Davis stated that this legislation conforms the *Highway District Code* to *Title 63, Revenue and Taxation Code* by stating that budgets shall be finalized not later than the Thursday prior to the second Monday in September for the ensuing fiscal year.

Senator Heinrich asked why a county assessor is included in this process. They have nothing to do with the tax levy. **Mr. Davis** stated that is in existing language and county assessor probably should be taken out.

MOTION:

Senator Jorgenson moved to send HB 206 to the consent calendar.

Senator McKague seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senator McKague will sponsor *HB 206*.

ADJOURNMENT:

Chairman Hill adjourned the meeting at 3:12 p.m. until Tuesday, March 24, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
JOINT MEETING
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE
AND
HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 23, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators, Corder, McKague, and Werk

MEMBERS ABSENT/ EXCUSED: Senators Stegner, McKenzie, Jorgenson and Bilyeu

CONVENED: **Representative Clark** called the meeting to order at 9:00 a.m.

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

Alex LaBeau, Idaho Association of Commerce & Industry, introduced the speaker, **Scott Hodge**, President of the Tax Foundation (bio on file).

PRESENTATION: **Mr. Hodge** provided an overview of global tax policies and how Idaho compared both nationally and internationally. The focus of the presentation was on how tax policy will affect the economic climate of the state and how the tax system can impact its competitive position. **Mr. Hodge** stood for questions from committee members and the audience. The full presentation is on file.

ADJOURNMENT: **Representative Clark** adjourned the meeting at 10:15 a.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 24, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Heinrich
- CONVENED:** **Chairman Hill** called the meeting to order at 3:05 p.m. with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Jorgenson** moved to approve the minutes for March 19, 2009. **Senator McKague** seconded the motion. The motion carried by unanimous voice vote.
- S 1144** RELATING TO THE FIRE PROTECTION BOARD to delete certain residence requirements relating to fire protection district commissioners and to revise and clarify provisions for the oath of office.
- Tim Vargas**, President, Idaho State Fire Commissioners Association, explained that *S 1144* deals with equal representation on the 3-5 member board of a fire district. When a fire district contains all or a portion of two or more counties, such as the Middleton Fire District which covers a portion of both Canyon and Gem counties, under current law, one commissioner must come from Gem county no matter what its proportionate share of the population of the district. In the example of the Middleton Fire District, Canyon County represents 96.5% and Gem County 3.5%, but Gem County gets 1/3 of the representation on the Commission.
- This bill would eliminate the county line designation. The district would continue to be divided into subdistricts between the number of commissioners involved but that division would be based on the total population within the boundaries of the district, crossing county lines. The population would be divided equally between those subdistricts.
- S 1144* also changes when the oath of office is administered. Currently, the oath must be administered on the second Monday in January. This bill changes the date to the first regularly scheduled board meeting in January.
- Senator Bilyeu** asked if Gem County in the Middleton District has one commissioner on the board. **Mr. Vargas** responded that technically, they are supposed to. **Senator Bilyeu** inquired how the counties with small

percentages would be represented. **Mr. Vargas** answered that the population in those counties would be combined with the population in the rest of the district, the population base would be split into geographic subdistricts as uniformly as possible, each represented by a commissioner.

Senator Werk asked how this bill allows for the establishment of the subdistricts. **Mr. Vargas** stated that the subdistricts are already set up in the current law.

MOTION: **Senator McKenzie** moved to send S 1144 to the Senate floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator Heinrich will sponsor the bill.

RS18760C1 RELATING TO TAXATION to add a new section to create the Idaho Tax Review Commission to review exemptions to the sales and use tax.

Chairman Hill welcomed **Representatives Jaquet and Burgoyne** and explained the process an RS must go through to get printed at this point in the session.

Representative Jaquet stated that this legislation allows the creation of an Idaho Tax Review Commission as recommended by the Interim Committee in 2007. The 16 member commission would evaluate the sales and use tax exemptions one or more times every eight years and report back to the Governor, and the Senate and House tax committees. The establishment of this commission would ensure that the exemptions were viable and would hold the users accountable. **Representative Jaquet** outlined the details of the bill, the makeup of the commission, how commissioners are selected, and their responsibilities. This legislation is patterned after similar law in Utah and meets the criteria set forth by the Interim Committee.

Senator Stegner asked why this bill is being introduced in the Senate rather than in the House. **Representative Jaquet** responded that the process in the House was somewhat daunting so it was brought to this committee to be printed. **Senator Stegner** inquired if this was printed, would it get a hearing in the House. **Representative Jaquet** stated it would probably not get a hearing. The benefit is having it on the internet for the summer, garnering some support, and bringing it back next year.

REQUEST: **Senator Corder** asked for unanimous consent that RS 18760C1 be sent to a privileged committee of the Chairman's choice for printing.

Hearing no objection, **Chairman Hill** so ordered.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 3:25 p.m. until Thursday, March 26, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 26, 2009

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, McKague, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senators Jorgenson and Corder

CONVENED: **Chairman Hill** called the meeting to order at 3:04 p.m. with a quorum present.

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

HB 232 RELATING TO INCOME TAXATION to amend existing law to revise procedures for taxation of an estate or trust for state income tax purposes.

Ken McClure, Counsel, Idaho Society of Certified Public Accountants, introduced **John McGown**, Attorney, Hawley Troxell Ennis & Hawley LLC. **Mr. McGown** stated his background and qualifications in relationship to HB 232.

Mr. McGown explained how states administer income taxes when a state resident earns income outside the state and pays taxes in both states. In these cases, the resident state gives credit for taxes paid in the non-resident state. The statute, 63-3029, specifically refers to resident individuals and the common belief has been that it also applied to trusts and estates. Prior to 2008, the tax return trusts and estates file each year for income earned out of state had a line item for giving credit for taxes paid out-of-state. That line item does not appear on the 2008 form. The Tax Commission reviewed the statute and found it did not explicitly state that trusts and estates could receive the credit. *HB 232* restores the status quo and allows the credit for taxes paid by a trust or estate in a non-resident state.

In prior years, the tax credit amounted to \$500,000 so there would be no decrease in tax revenues compared to those years. The Tax Commission estimated the state would have collected an additional \$500,000 had it been allowed to implement the new interpretation.

Chairman Hill asked under what circumstances does a trust or estate pay taxes for income from out-of-state. The tax liability is generally passed through to the beneficiaries. **Mr. McGown** responded that there are situations where the money stays in the estate or trust, and is not actually

distributed. Then the estate or trust would be taxed. **Chairman Hill** said it is eventually distributed to the beneficiaries so, because they are individuals, they would get credit for taxes paid to another state. If that income is left in the trust or estate, under the new interpretation, it is being taxed in both states without a credit. **Mr. McGown** agreed and said it would be double taxation.

Chairman Hill drew attention to line 30, page 1 of the bill. The sentence wasn't clear. **Mr. McGown** agreed that the word "for" should be added after the word "section".

Senator Werk said that the fiscal note indicates approximately \$500,000 in additional taxes would be collected under the new interpretation and now, if the credit is allowed, won't that have a negative effect? **Mr. McGown** said that for 2007, the amount of credit given was about \$500,000. In 2008, there is a significant question that the system will allow double taxation. Revenues may be questioned if the Tax Commission does not allow those credits for 2008 or if this correction is not made. **Chairman Hill** explained that this is a tax that has not been collected by the State Tax Commission. If the new interpretation is not corrected, it is additional revenue that would be collected in the future. By passing this bill, it would have a negative fiscal impact in that the State would forego that increase.

Senator McKenzie asked for clarification about how *Section 3 (a) (i) and (ii)* are written. **Chairman Hill** said that in existing codes, *3 (a) (i)* references adjusted gross income which is only used for individual returns. *Section (3) (a) (ii)* was added to address income in general so it could apply to estates and trusts.

MOTION: **Senator Stegner** moved to send *HB 232* to the 14th Order for possible amendment. **Senator Werk** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Chairman Hill will sponsor the bill.

HB 242 RELATING TO THE IDAHO SMALL EMPLOYER INCENTIVE ACT to extend the sunset and project date to year 2020.

Representative Erik Simpson brought *HB 242* before the Committee for consideration. The purpose of the bill is to extend the sunset date of the current Economic Development and Small Employer Incentive program from December 31, 2010 to December 31, 2020. When employers and jobs are needed, this represents a strategy with minimal impact to help communities attract businesses and jobs.

Senator Werk asked if anyone has used this program. **Representative Simpson** answered that the Tax Commission has confirmed that one business is using the program and there are 3 or 4 additional businesses that have put the Tax Commission on notice that they would qualify. Also, other businesses have been identified that could benefit from this program. **Senator Werk** asked if consideration has been given to the requirements of capital investments and salaries that may be increased because of the time extension. **Representative Simpson** responded that this bill is a

compromise and extending the sunset date was the best proposal.

Senator Stegner asked how long the credit lasts and how the expiration date affects the credit. **Mr. John** replied that the credits in the bill can be earned in one year and can be carried forward. The investment credit and real property credit has a 14 year carryover period. The new jobs provision has a 10 year carry over provision. If the bill sunsets, the carryover provisions stay in effect until the carry over period runs out.

Representative Simpson stated that energy-related businesses would benefit from these provisions but they have a long licensing period. That is one of the justifications for the ten year extension. **Senator Stegner** said that the wages that are required to qualify are not being indexed. This has been an effort to attract higher valued manufacturing or technical jobs and it is a concern that there might be an erosion of that principle.

Representative Simpson responded that there has only been about a 1% growth in salaries and the \$40,000 requirement is an average so there would be some over and some under that amount.

Public Testimony

John Watts, representing Idaho Chamber Alliance, testified in support of HB 242.

MOTION: **Senator McKague** moved to send HB 242 to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

Senator McKague said it makes sense to continue this program since it is just starting to work.

Senator McKenzie recalled that there had been earlier discussions about the wage figures and these amounts were reasonable. This is a good tool to bring businesses to Idaho and help existing businesses grow.

VOTE: The motion carried by unanimous voice vote.

MINUTES: Minutes for March 17, 2009
Senator Heinrich moved to approve the minutes for March 17, 2009.
Senator Stegner seconded the motion.
The motion carried by unanimous voice vote.

Idaho State Tax Commission Annual Report - 2008 **Mr. John** presented the 2008 Annual Report from the Tax Commission. The report is on file.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 3:45 p.m. and will reconvene at the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** April 1, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** **Chairman Hill** called the meeting to order at 3:01 p.m. with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator Corder** moved to approve the minutes of March 24, 2009. **Senator Werk** seconded the motion.
The motion carried by unanimous voice vote.
- RS 18881** RELATING TO ALCOHOLIC BEVERAGES to delete provisions relating to an official seal or label attached to packages of liquor sold; delete the requirement that a container of alcoholic liquor has an official seal or label to be sold; and to revise provisions relating to the illegal possession of certain alcoholic liquor.
- Senator Jorgenson** explained that the Idaho Liquor Dispensary currently handles over 9.7 million bottles of liquor a year. By law, a small, 3-part, state liquor stamp must be attached to each individual bottle. Seventy percent of all liquor is purchased through state stores and 30% is sold through clubs and restaurants. Liquor inventory at clubs and restaurants must have the sticker attached. Financially, there is little incentive for a club or restaurant to purchase bootlegged liquor because legal purchases are cheaper in Idaho and they get a discount. This change results in an estimated savings of \$500,000.
- Senator Werk** asked if 30% of the alcohol is purchased outside the store system and the state doesn't affix the label, how would there be any enforcement in using the state system? **Senator Jorgenson** responded that the method that is currently used is old and outdated and there is better technology such as bar codes and distribution records. Financially, it is not worth the risk to bring products in from another state because club and restaurant owners are getting the discount when they purchase their products from the State. There is far more wine sold and it doesn't have the stamp attached.

Senator Bilyeu asked for an explanation of what is happening now and what would happen if the bill was passed. **Senator Jorgenson** said that each bottle had to be handled by an individual at the store level to apply the sticker. This is a time-consuming endeavor that provides very little value and those stickers do fall off. This bill will eliminate the physical handling of each bottle and would save in labor and the cost stamping machines and stickers. The Liquor Dispensary was in favor of this change.

Senator Stegner inquired if the Liquor Dispensary wanted to pursue this effort and was there any concern about the lack of control. The purpose of the stamp is to trace a bottle back to the State. **Senator Jorgenson** said Dyke Nally, Idaho State Liquor Dispensary, was very enthusiastic and endorsed the idea. The stamp is not a device of inventory control, it is only a stamp of recognition that the bottle was purchased through the State. There are much more efficient and better types of technology available. There was not a threat of loss of revenue because liquor is cheaper in Idaho than in neighboring states.

**UNANIMOUS
CONSENT
REQUEST:**

Senator Heinrich asked for unanimous consent that *RS 18881* be referred to a privileged committee for printing. There being no objections, **Chairman Hill** so ordered.

HB 203aa

RELATING TO TAXATION OF RENEWABLE ENERGY PROJECTS to make the method of taxation consistent for producers of renewable energy and to define renewable energy.

Representative Jacquet stated that *HB 203aa* changes the method of taxation for renewable energy producers from property tax to a production tax. Wind energy and geothermal currently use the production tax method. This bill would add bio mass, solar energy, and landfill gas power. Hydro is not included in this legislation due to the multiple types of hydro energy. These properties will not be added to the new construction roles. The bill will provide for a 3% energy tax on a producer's gross renewable energy earnings. The owner of an existing renewable energy project, which is not exempt from property taxation, shall make an election between property tax and the renewable energy tax. Administration will be easy and it will provide jobs in rural Idaho.

The amendment to the engrossed bill clarifies the election, and when the operation is qualified for the production exemption, adds other clarifying language.

There were questions and concerns from the Committee members regarding:

- The tax election process; who could and couldn't take advantage of those elections and if the election was permanent.
- Changing the date from February 1, 2009 to December 31, 2008.
- Who has responsibility for doing the assessments; the Tax Commission or the county.
- Lack of statistical data supporting the bill.
- The viability of treating all renewables the same.
- Where the production tax revenue would go; counties or others.

Public Testimony

Georgia Plischke, Assessor, Idaho Association of Counties (IAC), testified in opposition to *HB 203aa*. IAC supported fee in lieu of property tax for wind and geothermal. The Legislative Committee opposes this legislation for the following reasons:

- Appropriate data was not collected, analyzed, and shared with the stakeholders.
- Potential benefits must be adequately considered.
- Proper policy for the state needs closer scrutiny.
- Some options create inconsistent application for certain exemptions.

Jim Riley, President, Intermountain Forest Association, testified on behalf of current and potential investors in biomass operations in Idaho.

- There are potential large and small projects for Idaho.
- The goal is equal treatment for all renewables - easy to say, complicated to obtain.
- Tax policy structure should be comparable to adjacent states.
- Tax policy should be fair to existing investors as well as new investments.
- There is still the challenge of what is fair to new and existing projects and if they all should have the option of property vs production tax and the analysis of how the changes would affect each renewable energy type.

Kerry Ellen Elliot, Legal Advisor, IAC, testified in opposition to *HB 203aa*.

- IAC's objective is consistent, uniform policy in relationship to renewable energy projects.
- There needs to be predictability to how those properties are assessed.
- IAC supports the fee in lieu system concept and has a policy that supports renewables.
- IAC is not against this legislation. They just need more information and a chance to be involved in the process.

Jeremy Pisca, representing Potlatch, applauded Representative Jacquet for getting the legislation this far along and establishing the definitions so there is consistency among the renewable energy products.

- As the bill was being amended in the House, existing energy generation facilities were identified where a tax increase would occur if they used a production type tax rather than paying property tax. That is the reason for the election.
- Objective is to attract renewable energy facilities to Idaho.
- Concern is that a production tax would be far greater than paying property tax and becomes a disincentive to locate in Idaho.
- Everyone recognizes the benefits of renewable energy. This is a policy decision that should be made carefully and deliberately.
- If this bill goes to the amending order, consideration should be given to allow new facilities the election to pay property or production tax or it could be held for a time to allow all the details to be worked out by all parties involved.

Chairman Hill commented about the lack of analysis and data to clearly

state the effect on the projects and the counties. The bill can go forward as it is presented or further work can be done over the interim and bring it back at a later date.

Senator Corder stated that there are complexities in the current system and questions have been raised that existing facilities may not be using the correct type of tax. We may need to set the basis for taxation by considering production and up front investment. More information is needed before making a decision.

Senator Werk suggested going to the Interim Energy Committee.

Senator McKenzie asked that the legislation be presented to the Interim Committee and they would send out recommendations to the germane committees.

Senator Bilyeu asked if there were any potential investors that would be affected if this is held over the summer. **Representative Jacquet** responded that this one item would not affect the decision of an investor.

Senator Heinrich stated that the rate should be comparable to property taxes and if it is, there would be no reason to have an elective option.

Representative Jaquet elected to hold the bill until the next session and work with the counties and the industry on improvements.

Chairman Hill and the Committee members commended Representative Jacquet for her work on this legislation.

HB 244aa

RELATING TO THE LOCAL ECONOMIC DEVELOPMENT ACT to provide code references, revise provisions relating to certain limits and to provide correct terminology.

Representative Hart stated that *HB 244aa* deals with urban renewal agencies and affects the revenue allocation areas. These areas are in effect for 24 years at which time they are dissolved. Idaho Code is silent on whether or not the 24 year limitation can be extended if a revenue allocation area were to be expanded. Would the new part go on for 24 years or would it expire at the end of the original 24 years? *HB 244aa* provides that if the revenue allocation area is expanded, that expanded area will expire within the same time frame as the original 24 year period. This would eliminate the possibility of the revenue allocation area to continue in perpetuity. The alternative would be to establish a new revenue allocation area for the expanded area.

Senator Bilyeu asked if the existing 10% limit stays in code and does that increase as the property valuation increases? **Representative Hart** said the 10% limit remains in code at the initial amount unless the revenue allocation area is expanded. There is no reporting requirement so no one is checking to see if this is true and this bill does not address the reporting issue.

Chairman Hill asked if there had been any negative comments on this bill

from the Association of Idaho Cities. **Representative Hart** said there had not.

MOTION: **Senator Heinrich** moved to send *HB 244aa* to the floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator Bilyeu will sponsor the bill.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 4:45 p.m. until Thursday, April 2, 2009 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** April 2, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators Stegner, McKenzie, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senator Corder
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m. with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** **Senator McKenzie** moved to accept the March 26, 2009, minutes. **Senator McKague** seconded the motion. The motion carried by unanimous voice vote.
- HB 253** RELATING TO COOPERATIVE SERVICE AGENCIES to provide an increase in the levy limit, limiting time periods, and designating when construction would commence.
- Senator Goedde** stated that in February of 2009, the Office of Performance Evaluation issued a feasibility study on School District Services Consolidation. The study identified the Canyon-Owyhee School Service Agency (COSSA) as one with unique elements that could be applied in other areas. COSSA is made up of five school districts and its alternative school programs focus on special education and gifted and talented programs. The special education portion reported a savings of \$2.0 million for the 2005-2006 school year.
- HB 253* would help Cooperative Service Agencies by copying the section of *Title 33* dealing with traditional school district facility levies and adding it as a new section established for Cooperative Service Agencies with the following changes:
- 1) The period would be for three years as opposed to ten years in *Section 1*.
 - 2) Construction cannot begin until funds are collected. This will avoid paying interest.
 - 3) The levy limit would be increased from .1% to .4% in *Section 1 and Section 3*.

Senator Goedde explained that the .4% of market value for assessment purposes is the maximum and anything less than that could be voted in by a 55% majority for less than .2%, 60% for .2% up to .3%, and 2/3 for .3% or more. This is not imposing a tax burden, it is just a tool that can be used.

Senator McKenzie commented that COSSA has been a great asset providing assistance from gifted and talented to professional and technical for alternative schools.

Public Testimony

Mark Cotner, Director, COSSA, testified in support of HB 253. **Mr. Cotner** stated that COSSA is the oldest consortium in the State, implemented in 1969 for the delivery of high cost professional and technical programs for college level credits. The increased maximum of the levy to .4% does not mean it has to go that high. Since 1969, not one levy has failed and the lowest was a 72% approval rate.

Senator Bilyeu asked if the process was coordinated between all school districts. **Mr. Cotner** responded that the consortium operates as a district within the school districts. It is a consolidation of services that leaves the member school boards in tact. He went on to explain the mechanics of the consortium.

Senator Jorgenson asked if this would be a mandate on all school districts or only another option. **Senator Goedde** said it would only be another "lure in the tackle box."

Senator Werk referred to the construction of a facility and if it would fall under the auspices of all other facilities such as the maintenance fund set-aside. Would the member districts manage those things together? **Mr. Cotner** stated that they do fall under those guidelines and they set aside money for the maintenance match.

Senator Werk asked if one or more districts fail to approve the levy, what happens to the district(s) that doesn't pass the levy. **Mr. Cotner** answered that if the levy is not approved by all districts, a district may choose to use funds from another account or may run a subsequent election. The other districts would not be penalized by one non-participating district. If a student from the non-participating district wanted to attend the school, a per head charge could be paid by that school district.

Senator Werk inquired about *Subsection 3* on page 2, referring to construction and maintaining facilities of a cooperative service agency and why are these sections required? **Senator Goedde** responded that *Subsection 3*, page 2 outlines the bonding provisions and the new Section 2 is the school plant facility levy. The difference is interest.

MOTION:

Senator Jorgenson moved to send *HB 253* to the floor with a do pass recommendation. **Senator Heinrich** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator Goedde will sponsor the bill on the floor.

ADJOURNMENT: **Chairman Hill** adjourned the meeting at 3:22 p.m. subject to the call of the chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** April 9, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Heinrich, Senators McKenzie, Corder, McKague, Jorgenson, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senator Stegner
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m. on Thursday, April 9, 2009 with a quorum present.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** Minutes for April 1, 2009
Senator Heinrich moved to accept the minutes of April 1, 2009. **Senator Werk** seconded the motion.
The motion carried by unanimous voice vote.
- Minutes for April 2, 2009
Senator McKenzie moved to accept the minutes of April 2, 2009.
Senator Heinrich seconded the motion.
The motion carried by unanimous voice vote.
- Chairman Hill** relinquished the gavel to **Vice Chairman Heinrich**.
- HB 281** RELATING TO INCOME TAXES to update references to the Internal Revenue Code (IRC) and to delete language providing that the additional standard deduction does apply.
- Chairman Hill** explained that *HB 281* is an additional conformity bill resulting from changes made to the IRC by the American Recovery Reinvestment Act between January 1, 2009 and February 19, 2009. The most costly of the six areas outlined in the fiscal notes are:
- to exclude the first \$2400 of unemployment benefits in 2009;
 - to extend the elections for bonus depreciation and increased Section 179 deduction; and
 - to add the sales tax deduction for vehicles.
- Lines 22-25 are redundant and have been deleted since the additional standard deduction for property taxes for 2009 went into effect with the passage of the first conformity bill.
- MOTION:** **Senator Jorgenson** moved to send *HB 281* to the floor with a do pass

recommendation. **Senator Werk** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Chairman Hill will sponsor the bill.

Vice Chairman Heinrich returned the gavel to the Chairman.

**PAGE
PRESENTATION**

Chairman Hill presented Page, Darcie Wonacott, with a letter of recommendation, a letter of appreciation signed by the Committee members, a book, A Matter of Principle autographed by the author, Chairman Hill, and a memories album. **Chairman Hill** commended **Darcie** for her work at the Senate and for the Committee. **Darcie** has been accepted by University of Idaho and will be studying in the field of architecture.

ADJOURNMENT:

Chairman Hill announced that this may be the last meeting of the year and adjourned the meeting at 3:10 p.m. subject to the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary