

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 12, 2012

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Corder, Vice Chairman Johnson, Senators Hill, McKenzie, McGee, Hammond, Siddoway, Werk, and Bilyeu

**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.

Chairman Corder called the meeting to order at 3:05 pm. **Chairman Corder** introduced **Cynthia Adrian** of the Idaho State Tax Commission.

DOCKET NUMBER: 35-0101-1101
Rule 756 will inform employers of the requirements to qualify for the income tax credit of the Hire One Act.

Senator Siddoway asked if the costs outweigh the benefits in real dollars for the insurance program. **Ms. Adrian** said she was not sure. **Chairman Corder** asked about the conversation that occurred to make the determination of 80% and 70% of the qualifier for employer-provided insurance. **Ms Adrian** replied that was actually part of the individual and group disability supplemental standards rule that was used for these standards.

Chairman Corder turned the gavel over to **Vice Chairman Johnson**.

DOCKET NUMBER: 35-0101-1102
Rule 001 is being amended to add the reference to Idaho Code, section 63-3039 and subsections 001.03 through 001.05, which address the effective date, closed years or issues, and transactions before an effective date of the rules in this chapter. **Senator Hill** asked when "shall" versus "will" is used in a rule. **Ms. Adrian** said most rules had been changed to "will" for consistency, this was an oversight.

Rule 030 is being amended to include the reference to Rule 032 with regard to the safe harbor exception and military servicemembers and their spouses.

Rule 032 is being amended to conform to changes to the Servicemembers Civil Relief Act, which changes the Idaho terminology to match the federal terminology used. **Senator Hammond** asked for the definition of safe harbor. **Ms. Adrian** said when a person may not meet residency requirements, such as military members transferred on duty.

Rule 033 is being amended for a name change to match the terms in federal law.

Rule 075 is being amended to add the tax brackets for calendar year 2011, and remove the information for the calendar year 2006 so only five years of historical data is retained in the rule.

Rules 105, 120, 125, 253 & 254 are being amended consistent with House Bill 102, which was passed by the 2011 Idaho Legislature. **Senator McKenzie** asked for a historical context of the progressive tax code; it is currently at 7.8% and starts at \$26,000. When was it changed to the current amount. **Senator Hill** replied it is changed annually by statute.

Rule 121 is being amended to remove information related to the standard deduction for tax year 1999.

Rule 171 is being amended to clarify that real property must be held 12 months to qualify as required by the statute. The amendment also addresses the differences in computing the holding period of property received in liquidating vs nonliquidating distributions from partnerships and S corporations.

Rule 250 is being amended to address when interest and dividend income is received by a part-year resident. **Senator Bilyeu** asked if there had been problems in the past with pass-through entities. **Vice Chairman Johnson** introduced **Dan John**, of the Idaho State Tax Commission, who replied no.

Rule 263 is being amended to specifically address the sourcing of guaranteed payments and distributions in excess of basis that a nonresident individual partner would report to Idaho.

Rule 266 is being amended consistent with House Bill 8, to change when a nonresident is ineligible to make the election to have a pass-through entity pay his tax on such income. **Senator Hill** asked if this rule change was a policy change or simply codifying current policy. **Ms. Adrian** said this change was based on House Bill 8.

Rule 267 is being promulgated to address the amount of a suspended passive activity loss a part-year resident is allowed to deduct on their Idaho return.

Rule 270 is being amended to provide more information on what constitutes an Idaho work day.

Rule 275 is being amended to provide clarification as to what does and doesn't qualify as investment income for nonresidents.

Rule 290 is being amended consistent with House Bill 8, to change when a nonresident is ineligible to make the election to have a pass-through entity pay his tax on such income.

Rule 570 is being amended to address how the receipts from the sale of stock in another corporation will be sourced for purposes of the sales factor numerator when it represents the sale of operational assets of a business.

Rule 582 is being amended to eliminate the "presumption" language included in the rule and state unequivocally that the entities listed are financial institutions.

Rule 705 is being amended to be consistent with House Bill 630 to limit the qualifying contributions to monetary donations.

Rule 711 is being amended to address how the investment tax credit may be shared in the year a corporation with ITC is acquired.

Rules 712 and 713 are being repealed because the maximum carryover period on the years covered in these rules has expired.

Rules 745-748 are being amended consistent with House Bill 297.

Rules 755-759 are consistent with House Bill 297 to revise the income tax credit allowed for qualifying new employees.

Senator Hammond asked if anyone had taken advantage of the Hire One Act yet. **Ms. Adrian** replied there are no returns for 2011 yet.

Rules 761 and 762 are being repealed because the statute of limitations has expired on the tax years covered in these rules.

Rule 771 is being amended to add tax year 2011 and the applicable grocery credit amounts to the table. This update is done annually.

Rule 815 is being amended consistent with S1079 which provides an individual serving in the Armed Forces or in support of the Armed Forces serving in a combat zone or contingency operation with an extension of time to pay without interest if an extension of time to file was allowed under Internal Revenue Code section 7508.

Rule 877 is being amended consistent with House Bill 8, to modify the base on which backup withholding is computed from actual distributions to distributive or pro rata income.

Rule 880 is being amended consistent with S1079 to provide individuals who receive an extension of time to file a tax return with additional time to receive a refund of withholding.

Vice Chairman Johnson introduced **Bill Myers** of Holland and Hart who testified in opposition to Rule 263 and Rule 275 of Docket Number 35-0101-1102. **Mr. Myers** said the rule is in contradiction to the IRS code and it discourages investment in Idaho by partnerships. **Senator McKenzie** said it is fairly common in a partnership to have income that is both dividends and employment income. What would be the change from current law where guaranteed payments are taxed as regular income. Mr. Myers said there are guaranteed payments without taxability in partnership shares. **Senator Hill** asked if the argument is with the statute or the rule. **Mr. Myers** said the statute is fine, the issue is with the rule. **Senator Werk** asked if the Idaho Tax Commission agrees if the rule is in violation of the law. **Mr. John** said the rule is current practice, not because of new law. There was a decision in 2005 in favor of the Tax Commission's interpretation. There are pending appeals, however. **Senator Werk** asked if the rule is in violation of federal law. **Mr. John** replied not in the view of the Tax Commission. **Mr. Myers** stated that non-resident income is discriminated against in Rule 275. **Chairman Corder** said the statute is not contrary to federal code, just the rule. **Mr. Myers** replied correct. **Senator Hill** stated that he has had a concern with this rule for some time.

Vice Chairman Johnson introduced **John McGown** of Hawley Troxell, who testified in opposition to rule 171-06. **Mr. McGown** said there is no rational distinction for holding periods of liquidated and non-liquidated property related to capital gains. **Mr. John** said he does not know the genesis of the rule. Senator Hill asked for an example of the practical affect of what this rule does. **Mr. McGown** said if a group of people form a partnership and purchase real estate and then decide to sell the real estate; the holding period for the real estate would depend on whether it was all being sold or not.

Chairman Corder stated voting on this docket will be suspended until the meeting on January 18, 2012, when the questions can be addressed. **Senator McKenzie** stated there are three questions to be answered at the next meeting: are the rules in violation of statute or federal code, what is the policy purpose and what are practical examples.

**DOCKET
NUMBER:
35-0107-1101**

Rule 30 is being amended to make the change from monthly to quarterly filing of the kilowatt hour tax return discretionary, subject to Tax Commission approval.

**DOCKET
NUMBER:
35-0108-1101**

Rule 10 is being amended to include additional examples of what constitutes a valuable mineral typically found in Idaho subject to the mine license tax. **Senator Siddoway** asked that in the next version of the rules, there would be a clear definition of cinders. **Ms. Adrian** replied that could be done.

**DOCKET
NUMBER:
35-0201-1101**

Rule 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2012 to the table that identifies this information by year.

**DOCKET
NUMBER:
35-0102-1101**

Rule 704 is being amended consistent to House Bill 680. The bill provides an exchange of information agreement between the State Tax Commission and the State Treasurer.

Rule 43 is being amended to comply with House Bill 213 exempting from sales and use tax all gratuities, whether voluntary or mandatory, if the gratuity is given for services provided as a supplement to the income the service provides. **Vice Chairman Johnson** introduced **McLean Russell** of the Idaho State Tax Commission.

Rule 73 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in the state of Idaho.

Rule 85 is being amended to clarify that the Red Cross's sales and use tax responsibility should be addressed in the federal government section of Rule 94 rather than its current location.

Rule 94 is being amended to explain that the State of Idaho cannot require the federal government to collect sales tax on any sales and that the Red Cross is an instrumentality of the federal government for the purposes of sales and use tax. **Senator Hill** said the exemption used to be only for sales to the federal government, but now it includes by the federal government. Does that mean if there is travel to a federal park and souvenirs are purchased, they are not subject to sales tax. **Mr. Russell** replied that is correct. **Senator Hill** asked if we are codifying what has been in use, or is this a recent change in the federal law? **Mr. Russell** said it is a clarification.

Rule 98 is being amended to reflect the altered appearance of the diplomatic exemption card system.

Rule 107 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in Idaho.

Rule 109 is being amended to change the definition of currency operated amusement devices to include credit and debit card machines.

Vice Chairman Johnson stated that Docket Number 35-0101-1102 will be suspended.

MOTION:

Senator Bilyeu moved to approve Docket Number 35-0101-1101, Docket Number 35-0107-1101, Docket Number 35-0108-1101, Docket Number 35-0201-1101 and Docket Number 35-0102-1101. **Chairman Corder** seconded, and the motion carried by Voice Vote.

Vice Chairman Johnson turned the gavel back to **Chairman Corder**. **Chairman Corder** reminded the committee of the presentations that will be made at the meeting on January 17, 2012.

ADJOURNMENT: The meeting was adjourned at 4:10 pm.

Senator Corder
Chairman

Jo Ann Bujarski
Secretary