

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE  
COLLINS SUBCOMMITTEE**

**DATE:** Thursday, January 19, 2012

**TIME:** 8:30 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Collins, Representatives Barbieri, Bayer, Ellsworth, Burgoyne

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Bill Myers, Steve Young, Clients of Holland & Hart; Mike Lindstrom, Eide Bailly, LLP; Brad Hunt, Office of Administrative Rules Committee (OARC); Rick Smith, Idaho Bankers Association (IBA); Dan John, Cynthia Adrian, Chelsea Kidney, State Tax Commission

**Chairman Collins** called the meeting to order at 8:31 am.

**DOCKET NO. 35-0103-1104:** **Chairman Collins** requested discussion or a motion for **Docket No. 35-0103-1104**.

**MOTION:** **Rep. Barbieri** made a motion to recommend approval of **Docket No. 35-0103-1104** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 35-0101-1102:** **Cynthia Adrian**, Tax Commission, asked if there were any questions regarding Rule 171, liquidating or non-liquidating distribution. If property is not part of a partnership, it is not eligible for the partnership holding period. Liquidating distribution is not eligible for capital gains. Non-liquidating distribution is allowed to keep the partnership holding period if held 12 months. This is clarification of current practice. Rule 250 Section 04A has been amended to address interest and dividend income that is received by a part-year resident and receipt of pass-through items for an entity where the income passes through to the individual (uses an individual income tax return).

**Ms. Adrian** stated Rule 253 is a companion rule that ends conformity to bonus depreciation, as is Rule 254. Rule 263 Section 4 and 5 is a change to be consistent with Federal Code regarding guaranteed payments. The tax is on the Idaho source portion of that distributed income.

In response to Committee questions, **Ms. Adrian** stated that the purpose of guaranteed payment is to be included in gross income or to get a deduction; it is distributed income or guaranteed payment and that is how it is treated.

**Bill Myers**, Holland & Hart, introduced **Steve Young** from the Holland & Hart, Salt Lake City, Utah office. Mr. Young spoke in opposition to Rule 263 and stated that the problem is that under Federal Code 61, gross income from a partnership is treated as guaranteed payment on a federal return, but this rule refers to the same income as a distributed share of partnership. Senate hearings on this subject voted to reject the rule due inconsistency with Federal Code. Entities are taxed on where they do business. Individuals only pay tax where they work. This rule discriminates against LLC corporations from other states.

In response to Committee questions, **Mr. Young** stated that he believes that treatments from an LLC would be treated as if they were a C-Corporation. He believes measurement of taxable income is the key issue, rather than the treatment of taxable income. There is an additional Federal statute, but it also conflicts with an Idaho-specific statute which discusses withholding of pass-through income. He encouraged members to reject the rule as the Senate did. He believes Rules 290 and 877 should also be rejected.

**Mike Lindstrom, CPA**, Eide Bailly, LLP spoke in opposition of the rule. Eide Bailly has 19 offices in nine states. He believes partnership tax rules are allowed to be flexible. They define how income can be allocated and pay partners for their services. He believes the rule under discussion subjects non-Idaho partners to Idaho taxes.

**Chelsea Kidney**, Tax Commission Deputy Attorney General spoke in favor of the rule. She believes this is sourcing issue and stated that it was to guarantee income earned in Idaho stays in Idaho. Treasury regulation is clear that this is not salary income.

In response to Committee questions, **Ms. Kidney** stated this is not contrary to statute. Rather, the statute says to use it as a starting point. **Ms. Adrian** was unable to provide a figure for the fiscal impact. **Mr. John**, Tax Commission, stated that they are following the interpretation of the statute.

**Ms. Adrian** said that Rule 266 is being amended to be consistent with **H 008**. Rule 267 provides clarification of how much someone could deduct on their taxes. Rule 270 is being amended to provide what constitutes an Idaho workday. Rule 275 addresses investment income of non-residents and what does or does not qualify. Rule 290 is being amended to be consistent with **H 008**.

**Mr. Young** stated that there is language which suggests guaranteed payments should be moved to wages.

**Ms. Adrian** said that Rule 570 is being amended to address the sale of stock. Rule 582 is being amended to make presumptive definitions consistent. **Rick Smith**, Idaho Bankers Association, was recognized and he asked for an effective date. Ms. Adrian stated that she had no effective date, but there was no intent to start before taxable year 2012. Mr. Smith said he does not object to the rule. He would entertain discussions about whether it is a substantive change or not, but does not object to the rule.

**Ms. Adrian** stated that Rule 705 is being amended to be consistent with **H 230**. Rule 711 clarifies current practice. Rules 712 and 713 are obsolete rules being repealed because they have expired.

**Ms. Adrian** said that Rules 745-748 are being amended consistent with **H 297** to revise the tax credit allowed for qualifying new employees. Rules 755-759 are being amended consistent with **H 297**. There are also new clarifying provisions that have been added. Rules 761-762 are obsolete rules. Rule 771 is the yearly update, adding year 2011 to the table.

**Ms. Adrian** stated that Rule 815 is being amended consistent with **S 1079** an extension of time to pay tax. Rule 877 is being amended consistent with **H 008** and changes the due date for filing backup withholding.

**Mr. Young** was recognized and stated that Section 1 3rd line, guaranteed payments, should move to subsection D2.

In response to Committee questions, **Mr. Young** stated that the Senate rejected Rule 263 subsection 4.

**Ms. Adrian** stated that Rule 880 is being amended to be consistent with **S 1079**.

In response to Committee questions, **Ms. Kidney** was recognized and said that federal treatment in Rule 263, subsection 4 cannot be followed because there is no federal treatment.

**Mr. Young** was recognized and said the Legislature needs to make any modification, not the administrative body; they would be doing so without authorization.

- MOTION:** **Rep. Ellsworth** made a motion to recommend approval of **Docket No. 35-0101-1102** to the full committee with the exception of **Rule 263 subsection 4**.
- SUBSTITUTE MOTION:** **Rep. Barbieri** made a substitute motion to recommend approval of **Docket No. 35-0101-1102** to the full committee with the exception of **Rules 290 and 287**.
- ROLL CALL VOTE ON SUBSTITUTE MOTION:** A roll call vote was requested. **Substitute motion failed on a vote of 2 aye and 3 nay. Voting in favor** of the substitute motion: **Reps. Barbieri, Bayer. Voting in opposition** to the substitute motion: **Reps. Collins, Ellsworth, Burgoyne**.
- VOTE ON ORIGINAL MOTION:** Chairman Collins called for a vote on the original motion to recommend approval of **Docket No. 35-0101-1102** to the full committee with the exception of **Rule 263 subsection 4**.
- ROLL CALL VOTE ON ORIGINAL MOTION:** A roll call vote was requested. **Original motion carried on a vote of 5 aye and no nay. Voting in favor** of the original motion: **Reps. Collins, Barbieri, Bayer, Ellsworth, Burgoyne**.
- DOCKET NO. 35-0107-1101:** **Cynthia Adrian**, Tax Commission, said that Rule 030 is being amended to make the change from monthly to quarterly filing.
- MOTION:** **Rep. Ellsworth** made a motion to recommend approval of **Docket No. 35-0107-1101** to the full committee. **Motion carried by voice vote**.
- DOCKET NO. 35-0108-1101:** **Cynthia Adrian**, Tax Commission, stated that Rule 010 is being changed to include definitions of valuable minerals.
- MOTION:** **Rep. Barbieri** made a motion to recommend approval of **Docket No. 35-0108-1101** to the full committee. **Motion carried by voice vote**.
- DOCKET NO. 35-0201-1101:** **Cynthia Adrian**, Tax Commission, said that Rule 310 is the yearly update to interest rates, adding the year 2012. Rule 705 is being amended to be consistent with **H 680**.
- MOTION:** **Rep. Ellsworth** made a motion to recommend approval of **Docket No. 35-0201-1101** to the full committee. **Motion carried by voice vote**.
- DOCKET NO. 35-0102-1101:** **McLean Russell**, Tax Commission, said that Rule 43, is being amended to comply with **H 213**. In response to Committee questions, Mr. Russell gave some examples of gratuity payments.
- Mr. Russell** said Rule 73 is being amended to comply with **H 214**. Rule 85 is being amended to refer taxpayers to Rule 094 due to preemption. Rule 94 is being amended clarification purposes. Rule 98 addresses recent changes in the diplomatic exemption card system. Rule 107 is being amended to comply with **H 214** and **S 1052** use tax exclusion. Rule 109 is being amended to change the definition of currency operated amusement devices and include a section regarding permit locations.
- MOTION:** **Rep. Ellsworth** made a motion to recommend approval of **Docket No. 35-0102-1101** to the full committee. **Motion carried by voice vote**.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 10:38 am.

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Representative Gary Collins  
Chair

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Janet Failing  
Secretary