

MINUTES

SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 23, 2013
TIME: 3:00 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk and Lacey
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 Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:00 p.m.

H 1 **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager for the Idaho State Tax Commission (Commission), to the podium to describe **H 1**, relating to income taxes and updating references to the Internal Revenue Code (IRC).

Mr. Chakarun said **H 1** is the annual bill to conform the Idaho Income Tax to the IRC that went into effect on January 1, 2013. This bill does have a negative fiscal effect this year of \$6 million on the general fund because of HR 8, the fiscal cliff bill that passed the United States Congress on January 1, 2013. HR 8 extended Section 179 expensing election at the \$500,000 level for tangible personal property used in a trade or business and the investment limitation at \$2 million through 2013. The maximum amount of the deduction was scheduled to drop to \$139,000 in 2012 and down to \$25,000 in 2013. Had the levels not been scheduled to drop in 2012 or 2013, and remained at \$500,000, the fiscal effect would be zero.

Mr. Chakarun said because future investment levels and utilization of the deduction cannot be estimated with any degree of precision, the fiscal effect is a fixed number set between an estimate range, somewhere between \$4 million and \$8 million. The Tax Commission split it down the middle and estimates about \$6 million. Part of the reason for that is the Commission doesn't know the level of investment that could occur, how many people will claim the Section 179 election, or what the income limitations will be, so \$6 million was the best guess.

When taxpayers claim a Section 179 deduction, they create a timing difference. Because a taxpayer can 'expense' all or part of an asset in the year of purchase, they cannot depreciate that asset over its tax life and this creates a higher tax bill in subsequent years, all else being equal. Likewise, the \$6 million negative effect in 2013 will reverse itself over the lives of those assets through foregone depreciation.

Mr. Chakarun said the Commission review of the other provisions of HR 8 did not indicate there would be other fiscal effects on the general fund.

Concern was raised about changing the effective date of **H 1** because the HR 8 legislation passed on January 1 and the President signed it on January 2. The concern was the timing difference may cause an effective date difference for Idaho. However, he said, the Commission looked at it and concluded that even though the bill was signed after the start of the year, the underlying provisions in HR 8 all have effective dates either on December 31, 2012 or they take effect in the future, so the Commission feels comfortable that it's not an issue.

Mr. Chakarun said there is one small thing that is different in this year's conformity bill. After the legislature passed the conformity bill last year, Congress passed a bill late in March and amended the Federal Aviation Modernization Reform Act. A small provision in it allows employees of bankrupt airlines who receive distributions from those airlines to roll those funds into IRA's and claim a deduction for those contributions even if those returns were out of statute. Since the federal conformity bill does not address the Idaho statute of limitations, this provision would allow those taxpayers to file an out of statute refund but they are only given until April 15, 2013 to do that. It only affects a handful of Idaho taxpayers with a very negligible fiscal effect, as it is part of the \$6 million figure. He said it is more of a fairness issue at this point. **Mr. Chakarun** asked the Committee to approve the bill with a do pass recommendation.

Senator Hill said it is unfortunate because the budget amount that the Joint Finance Appropriations Committee (JFAC) works towards, and what the economic outlook is that JFAC has to look at, is based on the way the law is at that moment in time. He said all this does is extend the provisions that Idaho has already had, but federal government also extended them, and Idaho waited to see what they would do, and Idaho has adopted them. It's just an extension of the Section 179 deduction and other things that Idaho has already been following the past few years. Unfortunately, now JFAC has to take that \$6 million amount and subtract it from what they were budgeting. **Senator Hill** said, "If we could ever get to the point of rolling conformity so we could assume we were going to conform, and then these numbers would already be in the budget, and we wouldn't have to short the budget by \$6 million, for a clerical purpose in my mind." **Mr. Chakarun** said that is correct.

MOTION: **Senator Hill** moved that **H 1** be sent to the floor with a do pass recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Siddoway passed the gavel to Vice Chairman Rice for the review of the pending rules.

Vice Chairman Rice introduced Alan Dornfest, Property Tax Policy Supervisor with the Idaho State Tax Commission (Commission), to present the pending rules for review relating to IDAPA 35.

DOCKET NO. 35-0103-1202 **Mr. Dornfest** approached the podium to review the Property Tax Administrative Rules in **Docket No. 35-0103-1202**. He said there are two rules, Rule 605 and Rule 620, listed in the descriptive summary that were subject of a hearing by the Commission in November 2012. After the hearing, The Commission decided it did not have enough to go on in statute and could not provide sufficient clarification for Rule 620 and therefore withdrew it.

Rule 605 is a new rule that clarifies part of the exemption that exists for either real or personal property used for nonprofit educational purposes. **Mr. Dornfest** said some issues arose after discussions with county assessors who work to implement all these sections of law. He gave an example of a strip mall that is not owned by a school but has a nonprofit charter school as one of the lessees. Because the education exemption for property taxes is written in such a way as to be contingent upon exclusive use, the legal staff felt to give that meaning, that portion of the mall used for the school would qualify for the exemption. **Mr. Dornfest** gave another example for the personal property exemption as it relates to computers used by children at schools. He said the school district may own the computers or they may be privately owned and leased to the schools. The Commission felt there needed to be a clearer test because the law requires exclusive use to receive the exemption. Rule 605 spells out a procedure in which the owner can make application and get proof from the lessee that the computers are to be used exclusively at a nonprofit school or charter school or that its use is constrained in such a way that it can

only be used for educational purposes. For example a student could not take the computer home.

Mr. Dornfest said the Commission held a hearing on this rule in November 2012 because the Commission had received an objection by the Ada County legal staff regarding the Commission's interpretation of "exclusive use." Ada County felt it could be argued that in the case of the strip mall, the use of the property was to make money for the owner of the strip mall. However, the Commission's legal staff felt strongly in reviewing the statutes and the history of the statutes showing how uses had been added to what originally had been statutorily constrained. **Mr. Dornfest** said to make meaning of the rule, it would have to be use and abuse, not that it was generating income for someone else. The Commission's legal staff sent a written opinion to the Ada County legal staff, and Ada County did not appear at the hearing. **Mr. Dornfest** said it is his belief that Ada County does not have any objection to this rule. He said there were no other objections filed either.

Vice Chairman Rice said he can think of a couple different ways to interpret "exclusive use" that would still leave a charitable use for a strip mall. He asked, for example if a piece of real property is owned by one charity and they use it only for educational purposes, would that be given an exemption. **Mr. Dornfest** said it would depend on which exemption Vice Chairman Rice would be seeking, because there are two different exemptions. The charitable exemption requires ownership by the charitable corporation. The education exemption does not require ownership because it has different sections in statute. **Mr. Dornfest** said the Commission looked at the history of the statute regarding the education exemption, and it originally did not require anything about use, it only hinged on ownership. In review of the statutes, **Mr. Dornfest** said, this rule is now the interpretation.

Vice Chairman Rice asked if there has been a situation where the Commission was taxing computers that a company donated the use of those computers to the school. **Mr. Dornfest** said he is not aware of any such situation.

MOTION:

Chairman Siddoway moved to approve **Docket No. 35-0103-1202**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
35-0103-1203**

Mr. Dornfest reviewed **Docket No. 35-0103-1203**, beginning with Rule 131, which he said updates a section on the use of ratio values, which are statistical studies used to make sure counties are appropriately assessing property at market value. Rule 131 is amended to give guidance to county assessors on how to handle foreclosure sales. This proposed change adopts the International Association of Assessing Officer's (IAAO) "Standard on Verification and Adjustment of Sales." **Mr. Dornfest** said in the last couple of years, the IAAO has addressed a situation of great concern to Idaho. **Mr. Dornfest** said the studies are based on samples of sales from each community and each county around the state. The issue of what constitutes a valid sale, a valid arms length transaction, has been a serious question in the past few years considering the amount of foreclosure related sales. In speaking recently with some assessors, in Canyon County for example, it was indicated that up to 60 percent of those market sales were foreclosure sales. **Mr. Dornfest** said the question is are they usable or not usable, market sales or not market sales. The IAAO recognized this issue and addressed it in their published standards. The Idaho Tax Commission adopted those standards to say if foreclosures are one or two sales in the whole community, then don't include them in the statistical study. However, if it is 20 percent or more of that marketplace, then those sales should be used, provided there wasn't any vandalism or other reason to believe a particular property is not representative of value in the study. **Mr. Dornfest** said this issue has been discussed at length with county assessors and they are supportive of this rule.

Mr. Dornfest said Rule 608 relates to the Homeowners Exemption. The rule conforms with provisions of H 584a and provides that the homeowner's exemption continues for one year after the death of the individual who has previously qualified. The new proposed rule explains that the homestead must continue to the claimant's estate without change in the owner of record and that property that are in life estates will not continue to get the exemption. **Mr. Dornfest** explained that normally upon the death of the homeowner and occupant, the exemption would be lost, because the requirement of occupancy would no longer be fulfilled. The legislation changed the rule so that the exemption will be retained for one year after death provided the property is still in the estate and not moved on to someone else.

Mr. Dornfest said this change created two issues the Commission needed to resolve. One relates to "ownership of interest" particularly in the case of life estates. He described a life estate as someone who owns property and grants ability for someone else to live there for the remainder of their life, and as soon as that "remainder life" individual dies, the property returns to the original owner. In the case of life estates, there will not be a continuation for the year following death.

Mr. Dornfest said the second issue was "occupancy." He said obviously there is no occupancy requirement since the original applicant is deceased, but debate raised the question of what to do about renters. The property is still in the estate, but is rented out during the ensuing year. As there was nothing in statute to address the issue, **Mr. Dornfest** said the Commission wanted to promote clarity and uniformity to the extent possible among the counties for the administration of such laws. The Commission decided occupancy is not relevant, which means whether there is no occupant or there is a renter, the extension of the exemption would not be jeopardized for one year.

Rule 630 relates to the tax exemption for new capital expenses. The rule conforms to provisions of H 356 and requires that an annual application be submitted to the county in order to claim the property tax exemption under Idaho Code § 63-4501.

Mr. Dornfest said this rule is about very large investments along the lines of a billion dollars in order to qualify for the exemption that lowers the taxable value of the property to no more than \$400 million. The rule outlines the description of what must be included when applying for the exemption for the first year, and limited the inclusions for subsequent years. **Mr. Dornfest** said the rule also addresses the concern about if a taxpayer changing their mind about three years into a seven year agreement, the taxpayer has the option to inform the county and the exemption would be removed for the following year. **Mr. Dornfest** said the Commission worked closely with Micron on this provision.

Mr. Dornfest explained Section 05, which states that once a taxpayer meets the criteria and makes the investment as necessary, the taxpayer will continue to receive the exemption forever with no expiration date in statute. This rule makes sure there is proper notice that the exemption will continue without additional notice. The exception is if a taxpayer owns multiple properties, the taxpayer needs to notify the county annually which property the taxpayer wants to hold the exemption. If the taxpayer fails to give notification, the county will put the exemption on the highest valued property.

Rule 995 relates to the distribution of sales tax. **Mr. Dornfest** said the distribution has been based primarily on information from the Census Bureau's calculation of the population of cities and counties. However, the Census Bureau doesn't just provide numbers every ten years, but also estimates every two years, as well as 'preliminary' estimates, **Mr. Dornfest** said, to "to the chagrin" of the Commission. He the Commission accidentally used the preliminary estimates one year, and caused a lot of disruption to the counties and the Commission was very apologetic.

Mr. Dornfest said now the Commission wants to be very clear on which tables from the Census Bureau will be used from now on. Additionally, Section 04 had a definition of "Incorporated City" as having a mayor and council and also being recognized for the distribution of federal revenue sharing money. **Mr. Dornfest** said that is not appropriate anymore as the federal program has ceased to exist, so there is no longer that requirement for cities.

Mr. Dornfest described how Section 05 stated that two different estimates used as the basis for the distribution of the monies would be updated at least annually and the Commission would name when that would occur. He said that can be done with valuation of properties, but not population, because it is not a number that is self-generated so the Commission cannot guarantee when it is going to come out from the Census Bureau. Now there is a general rule that says the Commission will update the following quarter once the information is released.

MOTION: **Chairman Siddoway** moved to approve **Docket No. 35-0103-1203**. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

DOCKET NO.
35-0103-1204

Mr. Dornfest continued the rules review with a description of **Docket No. 35-0103-1204**, relating to Property Tax Administrative Rules. He said Rule 600 is a very general rule about property exempt from taxation. It is amended to comply with H 356 which requires applicants for certain property tax exemptions be notified of the decision to grant or deny the application by May 15. It also set up new procedures for granting exemptions by separating exemptions that are applied for by operating property companies that are assessed by the Commission from those applied for by locally assessed taxpayers, such as homeowners, businessmen and the like. **Mr. Dornfest** said the procedures are very different. For example, it does not do any good for a centrally assessed railroad to apply to a county commissioner for an exemption. The main point is to carry forth the theme of a separate process, as in notice of decision, to carry forth the process of having county commissioners grant or deny an exemption application.

Section 03 relates to confidentiality. Section 9-340d provides case examples where there should be confidentiality. **Mr. Dornfest** said one of those cases is when information about a company is turned over to the assessor and later passed along to county commissioners, it is considered confidential. Statutory change flipped that process around, and said that the exemption is not applied for with the assessor, but rather with the county commissioners. Since the information is now submitted to the county commissioner before it's turned over to the assessor, the Commission felt that information should still be considered confidential.

Rule 83 is amended to comply with Idaho Code § 63-1305A, pursuant to H 697 which provided a special levy ability for certain taxing districts that had very large judgements against them and subsequently had an election to further authorize a special levy for paying off these judgements. **Mr. Dornfest** described how a provision of the bill said before a taxing district could levy under the special provision, it had to use up all other budget capacity. Each district had a certain amount it was allowed to levy each year and the Commission wanted to make sure it was being used. However, he said, in some instances, it is simply impossible because besides the budget limit, there is also a rate limit and if the rate limits have all been met, there may still be excess budget that cannot be used, which would have negated the goal of the legislation. The Commission addressed this issue in Section 13 by saying districts have to budget the maximum amount permitted and that requirement would be deemed met. Districts would not be required to levy in areas they do not have, meaning a county without an airport would not levy for an airport district. The Commission clarified that districts have to use additional funds if they have restricted themselves unnecessarily and could create new funds. **Mr.**

Dornfest said the Commission felt this rule was important to help districts not find themselves in impossible situations.

MOTION: **Senator Werk** moved to approve **Docket No. 35-0103-1204**. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

DOCKET NO. 35-0103-1205 **Mr. Dornfest** described **Docket No. 35-0103-1205** in the Property Tax Administrative Rules relating to the Assessor's Plat Book. He said this rule is amended to update a 1973 edition manual the Commission uses for maintenance of plat maps to the 2009 edition. He said the rule also updates that maps may be maintained digitally or in other formats. **Mr. Dornfest** said the Commission finds it is better when it refers to publications to try and move those publications to one master rule called 006. **Mr. Dornfest** apologized and said in the rule, there is also a minor error of duplication of a sentence and if this rule is approved, the State Department of Administration Rules Coordinator will automatically correct the sentence. **Chairman Siddoway** said in his review of the rules, he noticed the error and showed it to Commissioner Ken Roberts.

MOTION: **Chairman Siddoway** moved to adopt **Docket No. 35-0103-1205**. **Senator Bayer** seconded the motion. Motion carried by **voice vote**.

DOCKET NO. 35-0103-1207 **Mr. Dornfest** pointed out another small error in the descriptive summary of **Docket No. 35-0103-1207** of the Property Tax Administrative Rules. He said in Rule 509, a reference to Idaho Code should be § 63-602 and not § 63-902. The first rule in this docket is Rule 000, which is a legal authority rule that states the Tax Commission's authority for promulgating rules when needed to update statutes and statutory references and additional germane chapters. This rule had not been updated for a long time until now.

Rule 003 is amended to update and correct reference to administrative appeals and which sections of Idaho Code provide for administrative appeals.

Rule 006 is amended so the Tax Commission can incorporate by reference national publications and other reference material. It is amended annually to include current versions or updates or new materials. Section 02a updated the Standard on Digital Cadastral Maps and Parcel Identifiers from the 2009 to the 2012 publication. **Mr. Dornfest** noted it is not updated annually but on an irregular cycle. He said the Commission also wanted to make sure that there are online references available since many publications are no longer printing hard copies. Such references include a date on which the online version was last accessed and verified.

Mr. Dornfest described Rule 225 as providing for various types of documentation that taxing districts, counties or urban renewal agencies must furnish when they form, when they amend boundaries or when they dissolve. He said the previous requirement suggested if a dis-incorporated or dissolving entity can provide a map, then a map should be included in the documentation. He said it was a requirement without any meaning because the Commission does not use that map. He said the Commission already has a map on file, so it does not need a map if an entity is to dissolve. This rule removes that requirement.

Rule 313 is about the assessment of transient personal property, which consists 'only' of construction, mining and logging equipment. **Mr. Dornfest** said typically this is equipment that moves around between states or between counties. He said there are many sorts of proration systems for this equipment. He said the Commission did not feel the rules were entirely clear about when the property in question was out of state for part of the year and then came in to Idaho.

Mr. Dornfest said the statute provides that if the property is taxed in another state, it will be prorated for its time in Idaho. If the property is not taxed in the other state, then there is no clear direction in the statute. This rule clarifies that in that case, tax the property as if it were in Idaho for the full year, and prorate the time that it was out of state as if it were in its home county, and then prorate the time it was in other counties. **Mr. Dornfest** said the Commission felt that is consistent with statute.

Rule 404 has to do with the Commission responsibilities for assessing operating property, which is primarily public utilities and railroads. The rule is amended pursuant to H 462 which placed gathering lines for oil and gas properties under the Public Utilities Commission (PUC) for rate setting. He said once a property is under the PUC, the Commission is required to assess it, instead of being locally assessed by the county assessor. **Mr. Dornfest** said this rule adds that responsibility beginning in 2013.

Mr. Dornfest shared about the changes in Rule 509, which describes how counties need to provide abstracts and certain information on abstracts of value. It is being amended to account for a new exemption in H 519, commonly known as the Developers Site Improvement Exemption. He said Idaho Code § 63-602W(4) had a requirement that if there is a reduction in value of property due to the granting of the exemption, that it is shown as a negative number on the county's new construction roll, which is used to compute annual budget capacity for taxing districts. In order to accommodate that figure, the Commission needs to have that amount reported somewhere. This reporting requirement is added to the list of reporting requirements in Section 02. **Mr. Dornfest** said the counties are all aware of this rule.

Rule 510 is a listing and description of some of the different categories of land that counties use and report to the Commission. **Mr. Dornfest** said the particular use of this section number has not been in effect since 2006. He said the Commission left it there in case something came up, but it hasn't so now it is being removed.

Rule 511 is similar to Rule 510 in that it lists other categories for improvements that are now obsolete descriptions. **Mr. Dornfest** said the items listed have been moved to other categories and these sections will be removed. He said the counties are all on board with this change and no one has been using the obsolete categories for at least two years.

Rule 612 is amended to clarify that recreational vehicles wider than eight and a half feet are subject to property tax. The way the law is written, if a vehicle is licensed then it is not subject to property tax. The Department of Transportation has notified the Tax Commission that they don't license those oversized vehicles. **Mr. Dornfest** said the Commission was concerned about inconsistencies among counties on how to treat these items, so the Commission decided to create a rule for it. The rule describes that a license fee must be paid or the vehicle must be included on the assessment roll and therefore be subject to property tax.

Rule 619 pertains to the process by which a qualified taxpayer would apply for an exemption under pollution control exemption, which is provided for facilities for water or air pollution control. **Mr. Dornfest** said there was some confusing language in that the rule said the owner should 'petition' the assessor for an exemption. He said the Commission's legal staff said 'petition' is not the right language. One does not 'petition' for exemptions, one 'applies' for them. **Mr. Dornfest** said during the discussions about this rule, operating property companies recognized the dates in the rules did not work for them. For example, March 15 corresponds with applications for personal property declarations that taxpayers are required to submit, but centrally assessed operating property does not file anything with the Commission until April 30. Therefore, **Mr. Dornfest** said, the rule separates the process for personal property and operating property.

Rule 802 is a lengthy rule that describes how the maximum budgets of taxing districts are calculated annually under the three percent cap new construction rules. **Mr. Dornfest** said this became more complicated under H 519, which provided for the Site Improvement Exemption. He described that the value captured on new construction roll is the value due to a change of land use classifications, as when farm land becomes residential. When that happens, the land typically goes up in value. That difference, even without a building on it, was considered construction and generated more budget capacity in determining the maximum amount that any taxing district could levy in a year. **Mr. Dornfest** said part of that value change could be due to the site improvements, like grading the site or adding utilities, that are now exempt. He said it is possible that a taxing district had captured an additional amount in their budget, but then it is not there because of the exemptions, and that creates a tax shift to other taxpayers. The statute required a deduction in subsequent years, but then it will roll back on once the building begins when the exemption goes away. **Mr. Dornfest** said the Commission worked closely with county administrators on how to implement this rule and created examples to help counties and taxing districts understand the process. He said the Commission plans to hold workshops for counties and taxing districts in spring 2013 to further explain and clarify this rule.

Chairman Siddoway asked about the administration of the transient personal property and how is it tracked and enforced. He asked if it is left to the Commission or if the counties take that information when someone is coming in to work on a construction project. **Mr. Dornfest** said that is a very good question and that the Commission does not do the tracking. He said they write the rules and try to help the counties administer them. He said his understanding is that taxpayers are required by law to file every November a list of their transient property and their home county. He said beyond that, he does not know how it is enforced.

Vice Chairman Rice thanked Mr. Dornfest for a very well done and informative presentation of all the points in these rules, which is reflected in the lack of questions by the Committee.

Chairman Siddoway moved to approve **Docket No. 35-0103-1207**. **Senator Vick** seconded the motion. Motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Rice passed the gavel back to Chairman Siddoway.

ADJOURNED:

Chairman Siddoway also thanked Mr. Dornfest for his presentation.

There being no further business, **Chairman Siddoway** adjourned the meeting at 4:09 p.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary