

MINUTES

SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 29, 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 3:01 p.m.

GUBERNATORIAL APPOINTMENT: **Chairman Siddoway** said the gubernatorial appointment of Leland "Lee" Heinrich is before the Committee.

MOTION: **Senator McKenzie** moved to send the gubernatorial appointment of **Leland "Lee" Heinrich** to the Idaho Board of Tax Appeals to the floor with the recommendation that it be confirmed by the Senate. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

Chairman Siddoway asked the Committee's permission to amend the agenda as Senator Pearce had yet to arrive, so the Committee could hear the next item first.

RS 21706

Chairman Siddoway invited **Senator Guthrie** to the podium to discuss **RS 21706**, relating to Eminent Domain. **Senator Guthrie** explained the change he is recommending will add exclusions for takings of "trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use, unless adjacent to a highway, road or street." He said this is a private property rights issue, something he cares about deeply. He said around the country, there are more and more of these takings and legislation is being passed in many other states, including the 2008 Utah legislation which is almost identical to this **RS 21706** proposal. **Senator Guthrie** said he ran this bill through the House in 2011 but couldn't get a hearing on it in the Senate, so he appreciates the hearing today.

Senator Guthrie said the Attorney General opinion at the time it was in the House was that the determination of public use for which the power of eminent domain may be exercised appears to be a policy choice left to the legislature's discretion. **Senator Guthrie** also mentioned a Supreme Court case in which the court ruled against the property owner and allowed the property to be taken. On the heels of that decision, the highest court also said that states are free to make their own laws. **Senator Guthrie** asked for the Committee's favorable support for this proposal.

Senator Werk asked for clarification by giving an example. He said if there was an instance where a street was being redone, like in Ada County where they are trying to accommodate pedestrians and cyclists for multi-use roadways, and everyone around a small piece of property was willing to allow them to do the project, but one person was not willing.

Senator Werk asked if the 'one' person who was not willing would cause the project to come to a stop or cause the bike lane or sidewalk to go all the way across except for that one person's section. **Senator Guthrie** said the intent is if public infrastructure is being built, that if the need arose to take extra for a bike lane, this legislation would not prohibit that. It is to allow at least some opportunity for those kinds of activities if they're consistent with other roadways. He said in other words, if the county came in to take some property for a new road, and they wanted an extra ten feet, they would have the option and this would keep that in place.

MOTION:

Senator Vick moved to send **RS 21706** to print. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**.

RS 21794

Chairman Siddoway invited Senator Pearce to the podium to discuss **RS 21794** relating to Garnishment for Payment of Income Taxes. **Senator Pearce** offered some background on the issue with a story about a business in his district who lost an employee because the state was going to garnish his entire wages. He said the employee quit the job and went across the river to Oregon and got a job there instead. He said he has encountered several people who have run into the same problem. **Senator Pearce** said he thinks this is kind of a merciful bill because it limits the ability of the state and the federal government collectively to take 25 percent of a person's wages on a monthly basis. He pointed out the first page of the proposal is updating code that hasn't been updated in a while.

Senator Hill said he thought the 25 percent was going to be for the state to collect taxes and penalties, but now it appears it is federal and state together will be limited to 25 percent, so if federal takes all 25 percent, does that mean the state won't get any. **Senator Pearce** answered that he is not sure of the exact law as to how that works, but he said he imagines federal is first with garnishment, and the state would wait until that is done and then collect. He said he thinks the issue and problem is that people are struggling and who knows why they have fallen behind or into trouble, but when 50 to 75 percent of their income is taken, how are they going to make the house payment and car payment and keep food on the table. He said they have to leave and go find someplace else to get the income. **Senator Pearce** said the fiscal impact is really unknown at this point, but he thinks eventually it will bring in more than less.

Senator Werk said if Senator Werk is reading the language correctly, it could imply that what is being done is limiting the state 'and' federal government garnishment abilities to 25 percent, and he said he is going to assume the state does not have the authority to limit the federal garnishment ability in state code. **Senator Pearce** said federal garnishment is already limited at 25 percent, and that is federal policy. When someone earns wages, the most the federal government can garnish is 25 percent.

Vice Chairman Rice said since he is an attorney, he has a different reading of the proposal. He said his understanding is it limits the combination to 25 percent total, so if federal takes 25 percent, then the state will not take anything until federal is done collecting. **Vice Chairman Rice** asked if the Tax Commission interprets its authority as allowing them to take up to 100 percent, even if statute limits everyone to 25 percent, except in cases of child support. **Senator Pearce** said the problem is that code allows the Tax Commission to take 100 percent of the wages.

Senator Johnson pointed to the existing Section 11-207 that refers to an individual's 'aggregate disposable earnings' but the language added in this proposal refers to 'gross wages.' **Senator Johnson** asked if there is a difference between disposable earnings and gross wages. **Senator Pearce** said he would have to defer to someone more knowledgeable on that because he would not want to misrepresent anything, but he said he believes that section mainly deals with child support and those are different than state income tax penalties and interest.

Senator Werk said he looked it up on his computer at his desk and gross income is before any deductions including anything deducted before being paid and disposable income is income after taxes and fixed expenses. Disposable income will be a lesser number than gross.

MOTION: **Senator Hill** moved to send **RS 21794** to print. **Senator Werk** seconded the motion. Motion carried by **voice vote**.

H 2 **Chairman Siddoway** invited Michael Chakarun, Tax Policy Manager for the Idaho State Tax Commission, to the podium to present **H 2**, relating to Idaho Income Taxes to allow certain deductions. **Mr. Chakarun** said he is here to speak in favor of **H 2**. He said under current law, some losses such as theft losses, Ponzi scheme losses and some other losses are deductible only as part of an itemized deduction and are not allowed as part of an Idaho Net Operating Loss (NOL), even though it is allowed as a federal NOL. He said this means these losses may be fully deducted over one or more years on the federal returns but only fully deducted to the Idaho taxpayer if the taxpayer has sufficient income that year to fully absorb the loss.

Mr. Chakarun said a problem arises when the taxpayer receives a recovery for part or all of that loss in a subsequent tax year. The loss recovery is fully taxable on the federal return, as it should be. Then the recovery flows into the Idaho tax return and will be taxed as well, even though that underlying loss might not have been deducted in full or in part on the Idaho return. In effect, Idaho is taxing "phantom income." **Mr. Chakarun** said this bill corrects this unfairness by allowing a deduction for Idaho purposes an amount equal to the amount of the recovery if the taxpayer did not receive a deduction for the loss on a prior Idaho return. He said, in other words, the Tax Commission does not want to tax the loss recovered if no benefit of the loss has been claimed. He said the bill does not increase the amount of the loss deducted on the Idaho return. The fiscal effect will reduce general fund revenue by \$250,000.

MOTION: **Senator Werk** said he is trusting the bill will do what it says it will do. **Senator Werk** moved that **H 2** be sent to the floor with a do pass recommendation. **Senator Hill** seconded the motion. Motion carried by **voice vote**. **Senator Werk** said he would carry this bill on the floor.

H 3 **Mr. Chakarun** presented information about **H 3**, relating to certain tax information in cases of identity theft. He said everyone knows identity theft is a serious and growing problem across the country and here in Idaho. An identity thief can steal a social security number, use that number to gain employment and then file an Idaho income tax return and despite the best efforts of the Tax Commission, the return could process through the system and a refund be issued. He said when the true owner of the social security number files their return, the return will be rejected because a return using that number has already been accepted. **Mr. Chakarun** said if the true owner of that social security number contacts the Tax Commission to complain, the Commission staff cannot assist. Current law Idaho Code § 63-3076 prohibits the Tax Commission from disclosing a tax return or tax return information except as provided by statute, court order or Commission rule. Identity theft does not fall into one of these categories. **Mr. Chakarun** said obtaining this information is needed to file a police report, which is the first step in the process to recover one's identity.

Mr. Chakarun said to assist victims of identity theft, the bill will give the Tax Commission the ability to release certain tax information to the victim if that person can verify their identity to the satisfaction of the Commission. The Commission will proscribe by rule what type of information a victim will need to provide to verify their identity.

He said as part of the rule making activity, the Commission will work closely with law enforcement, the Internal Revenue Service (IRS) and such groups as the Idaho Coalition Against Identity Theft, to develop safeguards to prevent release of information into the wrong hands. **Mr. Chakarun** said the bill will only allow the release of the identity thief's name and address. It will not allow release of other information on the return, such as income, deduction or W-2 information. This provision also will apply to any business that is a victim of identity theft. **Mr. Chakarun** said reclaiming one's identity is a daunting and difficult task and this bill can make the task a little easier.

Chairman Siddoway asked about valid written information and what declares validity. He said, "if someone has stolen my identity and they have everything from social security numbers on down, what do I have to go through to have a valid application for that information?" **Mr. Chakarun** answered that is why the Commission would work with law enforcement and other groups that work on preventing identity theft. He said he personally does not know what the Commission would do, but the IRS is working through its process to come up with a mechanism. He said the problems with the IRS are even greater than it is in Idaho. **Mr. Chakarun** said the Tax Commission could model a plan after what the IRS does.

Vice Chairman Rice said he noticed the bill is limited to just the identity of the individual that has apparently stolen their identity and asked if there is a process in place for verifying whether the other deductions for children or spouse may also be stolen or fictitious. **Mr. Chakarun** said the objective is not to release more information than necessary. He said there may be information on that tax return that may not be part of the identity theft itself. He said the Commission may want to limit it to just information as the name and address and not get into details of children. He said he recognizes a victim may have their family's identities stolen as well, but that may be further down the road than the Commission can go right now.

Vice Chairman Rice said he had a client who had his identity stolen, and the thieves were targeting the elderly. **Vice Chairman Rice** said the IRS is exceptionally slow to follow up on these cases, in spite of the fact that there are groups getting large amounts of refunds. He said part of his concern is that the Commission should also follow up to make sure that the Commission isn't getting similarly scammed for refunds that are not due by scammers. These individuals are taking the federal government for hundreds of millions of dollars every year. **Mr. Chakarun** said the Commission takes great pains with the number of edits to make sure they catch that kind of thing on returns. He said Idaho is a small enough state that can address these issues more quickly than the IRS can.

Senator McKenzie said he thinks this is a good policy. He said he has been seeing more identity theft issues all over and he's glad this body is taking steps to create policies that allow victims to regain control of their financial lives.

MOTION:

Senator McKenzie moved to send **H 3** to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

H 4

Mr. Chakarun presented **H 4**, relating to income taxes and certain technical corrections. He started with Section 1 and said H 634 from the 2012 session clarified the credit for taxes paid to other states, Idaho Code § 63-3029, includes the Texas margins tax. This change adds a cross reference from § 63-3029 to § 63-2011 to link the two provisions to be consistent with other taxes that qualify for the credit.

Mr. Chakarun said Section 2 is changed pursuant to H 364 from the 2012 session, which clarified the deduction for retirement benefits paid to certain retired police officers and revised the definition of disabled and replaced the word "widow" with "widow and widower." However, not all the references were changed. This bill corrects Idaho Code § 63-3022A to replace all mentions of the word "widow" with "widow and widower" and adjusts other gender references. There is no change to the intent or application of the statute.

Section 3 is changed pursuant to H 485 from the 2012 session, which revised the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrades to existing residences. Through an oversight, the drafters omitted a requirement that the residence be located in the state of Idaho and that the residence be the primary residence. **Mr. Chakarun** said the Commission discovered the omission during its rule writing process and discussed it with bill sponsors. **Mr. Chakarun** said both agreed that this change is needed. Otherwise, property outside of Idaho could qualify for the deduction. The bill inserts the word "primary" and words "in the state of Idaho" with respect to residences that qualify for the energy efficiency deduction. The change is retroactive to January 1, 2012 to prevent abuse.

Mr. Chakarun said the change in Section 4 clarifies that the deduction for technological equipment donations is limited to the lesser of fair market value or cost of the donation. Some taxpayers are buying this equipment at a substantial discount below fair market value and then claiming the higher fair market value as a deduction. He said this change is consistent with other deductions that are limited to the lesser of cost or fair market value.

Section 5 is changed to modify Idaho Code § 63-3072 relating to the statute of limitations for claiming a refund to include reference to new Idaho Code § 63-3036B enacted in 2012 relating to pass-through entities backup withholding. Section 6 provides a January 1, 2013 effective date, except for Section 3 is retroactive to January 1, 2012, the effective date of the provision being amended.

Senator Vick asked about Section 4 and if there is any concern that the bill would reduce number of deductions for charitable purposes? **Mr. Chakarun** said he wouldn't think so, but that would be up to an individual taxpayer to decide if they were looking for the charity to the school or the tax deduction.

Chairman Siddoway said many of these items look familiar because this Committee just covered them in the pending rules review. He said he questions the need to do this now and if there is a bunch of overlap. **Mr. Chakarun** said the Commission tried to conform the rules to the way they hoped statute would turn out.

Senator McKenzie asked about Section 6 and making the technological donations retroactive. He said his concern is for the people whose tax returns are being prepared now and they may not know about that change. He asked since there is no fiscal impact, is there really a need for an emergency clause and could it just go into effect January 1, 2013 to give people time to adjust to the change.

Mr. Chakarun said the Commission has gone on a CPA Practitioner road tour and every time they meet with a group, they educate them about this particular change, so he said he feels comfortable that practitioners in Idaho are aware the change could be coming. He said if the provision was not changed retroactively now, there would be a negative fiscal effect on this technical corrections bill.

Senator McKenzie asked if there was a figure available for what that fiscal effect might be. **Mr. Chakarun** asked if Senator McKenzie was referring to the fiscal effect of the entire bill, or the window that would be opened up for the 2012 year. **Senator McKenzie** said he is referring to the change in Section 3 combined with the emergency clause and what the dollar difference would be for making that change. **Mr. Chakarun** said it would be difficult to asses that, and they are trying to nip the problem in the bud by cutting it off at January 1, 2012. He said with the fiscal effect at zero right now, the Commission is comfortable, but if there were to be a change prospectively, he would need to try and estimate what would be the risk this year. **Senator McKenzie** said he might be misunderstanding but if changes are made to deductions for technological equipment to now say that, regardless of the fair market value, the deduction cannot exceed the amount of taxpayers cost, it seems like that would have a fiscal impact. **Mr. Chakarun** said he thought **Senator McKenzie** was referring to the energy efficiency bill. **Senator McKenzie** said he understands and had the sections flipped and sees they were talking about apples and oranges.

Senator Johnson said he had some information to share that he received from Cynthia Adrian at the Tax Commission about the technological equipment deduction. He said that since 2002, the average claim is \$52,000 per year. The average number of tax returns claiming that deduction is 1,595 for an average of about \$32 per return.

MOTION: **Senator Werk** moved to send **H 4** to the floor with a do pass recommendation. **Vice Chairman Rice** seconded the motion. Motion carried by **voice vote**. **Senator Werk** said he would carry this bill on the floor.

Vice Chairman Rice volunteered to carry **H 3** on the floor.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:41 p.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary