

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Tuesday, January 14, 2014

**TIME:** 9:00 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Collins, Vice Chairman Wood(35), Representatives Barrett, Moyle, Raybould, Denney, Anderson(31), Anderst, Dayley, Hartgen, Kauffman, Trujillo, Burgoyne, Erpelding, Meline

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Gary Peters, Tim Walsh, Steven Martin, Nikki Tangent, Becca George, Amy Curtis-Schaeffer, Sarah Curtis-Schaeffer, Mistie Tolman, Guy & Vicki Anderst, self; Monica Hopkins, ACLU; Cynthia Adrian, McLean Russell, David Langhorst, Idaho State Tax Commission; Jack Lyman, Idaho Mining Assoc.; Dennis Stevenson, Rules Coordinator; Phil Skinner, AG's Office; ; Benjamin Davenport, ATI; Brody Aston, Lobby Idaho; N.L. Clayville, DFM; Alicia Eshbach-Ugalde; Julie Hart, Russ Westerberg, Raeleen Welton, Westerberg & Associates.

**Chairman Collins** called the meeting to order at 9:00 am.

**DOCKET NO. 35-0101-1303:** **Cynthia Adrian**, Tax Policy Specialist, Idaho State Tax Commission, presented **Docket No. 35-0101-1303**, Income Tax Administrative Rules. Section 10, provides for Idaho income tax purposes, the definition of marriage, as noted in the Idaho Constitution.

**Gary Jay Peters**, self, spoke in **opposition** to this rule change stating that his \$6,000 IRA contribution will be taxed twice if this rule is adopted, since Idaho does recognize his partner.

**Tim Walsh**, self, spoke in **opposition** to this proposed change. He believes couples should have the option to decide whether to file single or married tax returns. Mr. Walsh covers his domestic partner on his health insurance and the employer is required pay taxes on both the employee and employer portion of the premium. Mr. Walsh stated he pays a higher tax on the same income as a heterosexual couple would pay and should not be required to file a completely different tax return. This rule places an unconstitutional burden on his family.

**Steve Martin**, self, testified he has lived in Idaho more than 30 years and has been with his partner for 17 years. He stated that the Internal Revenue Service has decided, for federal tax purposes, all same sex marriages will be recognized and treated equally. This proposed change places an undue burden on select Idaho residents by requiring them to prepare two sets of tax forms. Mr. Martin believes passage of this rule will be costly to taxpayers.

**Nikki Tangent**, self, stated she and her partner **Becca George** have a complicated financial situation. Together, they own three businesses, two residences, and have two dependents with college savings accounts. Due to the complex nature of their personal finances, they were looking forward to filing a joint tax return. Ms. Tangent stated the cost of following different guidelines and filing different tax returns will be a burden. She urged the committee to follow other states that don't recognize same sex marriage and to treat Idaho taxes the same as federal tax returns.

**Monica Hopkins**, Executive Director, ACLU, urged rejection of this rule. She stated that Idaho should mirror the United States Supreme Court ruling where all same sex marriages should be recognized for tax purposes. This rule creates undue hardships, will be more costly, necessitate a paper filing of tax returns and ultimately result in more work for everyone. Ms. Hopkins stated that a federal return filed with the Department of Treasury will not match that filed with the State of Idaho. Ohio and Kentucky are currently being sued over this same situation by taxpayers. Ms. Hopkins asked the committee to follow federal tax guidelines in spite of an Idaho constitutional ban on same sex marriages.

**Amy Curtis-Shaffer**, self, spoke in **opposition** to this proposed change. She feels it is unethical as the designation options available on the Idaho State tax form does not allow filing as a joint income earner, thereby not matching the designation on the federal return. She stated it will be more costly to prepare the additional tax returns and believes that money would be better spent adding to her child's college fund.

**Misty Tolman**, testified she and her partner live in Meridian and are raising four children together. Ms. Tolman urged a no vote on this discriminatory tax law, which will create a financial burden and treat some of Idaho's citizens differently in terms of taxes.

**Alicia Eshbach-Ulgade**, self, testified she and her partner were legally married in the state of Washington. Ms. Eshbach-Ulgade stated she is required by the federal government, under the Affordable Care Act, to file a joint federal return. This proposed change will force her to lie on the Idaho tax return. She does not want to perjure herself by signing the tax form, which essentially denies her marriage exists.

**Ms. Adrian** responded to a question by reading from Idaho Code 32-201 and 32-209, dealing with the definition of marriage. She deferred to **Phil Skinner**, Deputy Attorney General and legal counsel to the Idaho Tax Commission, who provided an overview of his legal analysis. Mr. Skinner stated the first review was of existing law and Legislative intent, which clearly outlines a marriage as being between a man and a woman. His conclusion was the Idaho Tax Commission had no other choice than to apply this definition to tax policy. The next step was to determine if there was judicial precedent, which would overrule Idaho law. Mr. Skinner stated the Windsor case was the only federal case available. In looking at the Windsor case, the United States Supreme Court ruled that section 3 of the Defense Of Marriage Act was unconstitutional and that the federal government could not discriminate against same sex couples for purposes of determining federal benefits or protections. However, this case also focused on the rights of states to determine and regulate the definition of marriage. If a state recognizes same sex marriage, the federal government does not have the right to interfere. Conversely, the opposite must also be true in that if a state does not recognize same sex marriage, the federal government must remain silent. Mr. Skinner stated the Attorney General's direction was to follow the Legislative intent. It is his opinion that the Tax Commission does not have the authority to go against what the Legislature has set. Mr. Skinner acknowledged that while there are currently many challenges across the nation that could establish a judicial precedence, at this point, only the Windsor case is available.

In response to a question, **Mr. Skinner** stated Section 28 of the Idaho Constitution, which defines marriage between a man and a woman as the only legal union, reinforced but did not influence his legal analysis.

**Ms. Adrian** responded to a question on a 'marriage penalty', stating some married individuals with a certain income level, may pay more tax than if they filed separate tax returns.

- MOTION:** **Rep. Burgoyne** made a motion reject **Docket No. 35-0101-1303**. A roll call vote was requested. **Motion failed by a vote of 2 AYE, 13 NAY. Voting in favor** of the motion: **Reps. Burgoyne, Erpelding. Voting in opposition** of the motion: **Reps. Wood(35), Barrett, Moyle, Raybould, Denney, Anderson(31), Anderst, Dayley, Hartgen, Kauffman, Trujillo, Meline, Collins.**
- DOCKET NO. 35-0201-1303:** **Cynthia Adrian**, Tax Policy Specialist, Idaho State Tax Commission, presented **Docket No. 35-0201-1303**, Administration and Enforcement Rules, which provide a definition of marriage, for tax purposes.
- MOTION:** **Rep. Trujillo** made a motion to accept **Docket No. 35-0201-1303. Motion carried by voice vote. Rep. Erpelding** requested to be recorded as voting **NAY**.
- DOCKET NO. 35-0102-1302:** **McLean Russell**, Tax Policy Specialist, Idaho State Tax Commission, presented **Docket No. 35-0102-1302**, Idaho Sales and Use Tax Administrative Rules, Section 36, which deals with signs and billboards. The sale of advertising signs may consist of materials and labor that are part of the taxable sales price. Mr. Russell clarified that subsection 4 speaks to road signs which typically include signs belonging to governmental entities. While governmental units are tax exempt, this rule applies to contractors and their obligation to pay use tax for materials utilized in the construction of signs. Private contractors working for the State of Idaho making improvements to real property are not exempt from use tax. This rule applies to any sign that becomes part of the real property. The proposed rule change reflects how the Idaho Department of Transportation is currently administering tax on sign construction and intended to provide clarity.
- In response to a question, **Mr. Russell** stated this rule change is not reflective of the personal property tax exemption. Determining real property from tangible personal property has been debated back to 1965, when personal property tax was initiated. Mr. Russell stated the sales tax law was designed to collect taxes on materials that go into real property, regardless of the end user, and there is no exemption for contractors. In response to a question Mr. Russell said there has been some confusion and this rule is an attempt to clarify that a sign may have real property elements. He stated sales tax code and rules are very different than real property tax code and rules.
- MOTION:** **Rep. Trujillo** made a motion to reject **Section 036**. A roll call vote was requested. **Motion carried, by a vote of 8 AYE, 6 NAY, 1 Absent/Excused. Voting in favor** of the motion: **Reps. Wood(35), Barrett, Moyle, Raybould, Denney, Dayley, Trujillo, Collins. Voting in opposition** to the motion: **Reps. Anderson(31), Anderst, Hartgen, Kauffman, Erpelding, Meline. Rep. Burgoyne was absent/excused.**
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 10:24 am.

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Representative Collins  
Chair

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Kathleen A. Simko  
Secretary