

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 15, 2014

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, Johnson, Vick, Bayer, Werk, and Lacey

ABSENT/ EXCUSED: Senator McKenzie

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) to order at 3:08 p.m.

MINUTES: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to approve the Minutes of January 8, 2014. The motion carried by **voice vote**.

Chairman Siddoway introduced Cynthia Adrian, Tax Policy Specialist with the Idaho State Tax Commission (Commission) to introduce the first set of rules relating to income tax administration and enforcement.

DOCKET NO. 35-0101-1301 **Ms. Adrian** presented Rule 195 in accordance with H 2, which allows a deduction for recovery of amounts from a "Ponzi scheme." She explained that originally, an individual did not receive a Net Operating Loss (NOL) deduction for certain Ponzi-type losses, but the taxpayer was asked to include a recovery from those losses on their income tax, which did not seem fair. H 2 was written to correct that.

Ms. Adrian stated that Rule 201 was being amended in accordance with H 201, which modified Idaho Code § 63-3022, stating that an individual must file an amended return to have it carry back. **Ms. Adrian** stated that Rule 263 pertained to guaranteed payments which are now treated as compensation for services in the state in which they are performed up to \$250,000 and that payments over that amount are apportioned back to Idaho, concurrent with the partnerships apportionment factor. **Ms. Adrian** explained that Rule 872 pertained to the change in split monthly filings for individuals that have withheld revenue from their paychecks. She stated that if the withholding occurs on the first day of the month and ends on the fifteenth, then the payment would be due by the twentieth. She said if the withholding occurs from the sixteenth to the end of the month, the payment is due by the fifth of the following month.

Senator Vick inquired about the adjustment of \$250,000. **Ms. Adrian** responded that the adjustment was in statute and made in accordance with the Consumer Price Index.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Hill**, to approve **Docket No. 35-0101-1301**. The motion carried by **voice vote**.

Ms. Adrian presented Rule 40, which pertains to part-time residence. She stated that the change addressed the "place of abode" in order to avoid confusion with the federal foreign income exclusion. She said the "place of abode" in the rule only applied for Idaho purposes. **Ms. Adrian** stated that Rule 45 was a change in the heading of the rule, in which a code reference was added. She said the other change addressed pension income and certain guaranteed payments amended for consistency with H 139.

Senator Hill stated his concern for the pension income and guaranteed payments rule and asked if the Idaho statute was in accordance with the procedures of other states. **Senator Hill** also stated his concern that an individual, living in Idaho and receiving a pension from California, which may have a different rule stating that the pension is taxable, might come into conflict with Idaho's rule that the pension is only taxable in Idaho. **Ms. Adrian** responded that, as the rule related to other states, they were presenting the federal guidelines. She said in response to Senator Hill's concern about the differing pension tax rules among states, that even if the individual paid tax on the same income in California and Idaho, they could take a credit for taxes paid in California. **Senator Hill** requested that information be included in the minutes.

Ms. Adrian presented Rule 75, relating to tax brackets. She stated that "oldest year" was struck and includes the new 2013 tax bracket, adjusted as per statute. **Ms. Adrian** presented Rule 105, to be amended in accordance with a House bill stating that taxes, paid to another state on which a credit for taxes paid is allowed, are to be added back to income. **Ms. Adrian** presented Rule 120 which addresses several different issues, including income from lost recoveries being listed as a subtraction available to taxpayers and a technological equipment donation change, which now states it is the lesser cost or fair market value.

Chairman Siddoway asked about the carry back and why it only covered two years. **Senator Hill** responded that it was in accordance with federal law.

Ms. Adrian presented Rule 121 which states that Net Operating Losses for estates and trusts must be on an amended return in order to carry back. **Ms. Adrian** presented Rule 125, which states that the word "or" is changed to "and." She then presented Rule 140, which was amended consistent with H 4, which clarified that to qualify for the energy efficiency upgrade, primary residence must be in Idaho. **Ms. Adrian** continued with Rule 180, which states that it is the lower of cost or fair market value for tax subtractions. She presented Rule 194, which is consistent with an Internal Revenue Code change and states a change to the limitation of deductions for medical expenses that are not compensated for by insurance.

Ms. Adrian presented Rule 251 concerning the addition of the word "federal" in front of "income." She continued with Rule 252 which states that an individual with a part year residence in Idaho can include certain deductions for Idaho purposes, which is computed with a ratio of Idaho income to total federal income. **Ms. Adrian** presented Rule 254, concerning loss recoveries and technological equipment donation. She then presented Rule 270, which adds the word "partner" in subsection one. **Ms. Adrian** stated that Rule 280 added a code reference to the heading. Rule 291 removed paragraph "a" from the rule. She then presented Rule 710, which is consistent with the amendment to a House bill that states there is no investment tax credit on an amount that was claimed under bonus. Rule 714 clarifies that for investment tax credit purposes, the qualifying property must remain in Idaho during the recapture period and not during the carry over period.

Ms. Adrian presented Rule 771, the grocery credit dictated by statute and increased by \$10 until each credit equals \$100. Rule 801 clarifies the election for pass-through entities. She then presented Rule 855, which is the permanent building fund tax and clarifies when the change takes place. **Ms. Adrian** stated the last rule in the docket is Rule 880, regarding credits and refunds that pertain to H 4, which states that an overpayment would be any excess amount that a pass-through entity withholds.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Werk**, to approve **Docket No. 35-0101-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0101-1303 **Ms. Adrian** presented Rule 10 pertaining to definitions, which defines marriage according to Idaho Code. Rule 805 pertains to a joint return and references married couples as defined in Idaho Code § 32-201. **Chairman Siddoway** invited testimony from the audience.

First to the podium was Idaho resident **Steven Martin**, who married Jim Smith in Seattle, Washington. **Mr. Martin** said they chose this time to get married because the United States Supreme Court rulings regarding same-sex marriage demonstrated the country was changing in favor of marriage equality. He stated the Internal Revenue Service (IRS) decided that all same-sex marriages would be recognized and treated equally, regardless of place of residence. He said the proposed rule changes by the Commission not only put an undue burden on same sex marriages, but implies that their legal union is not due the same level of respect that all married couples in Idaho deserve.

Tim Walsh approached the podium and stated that the rule is "blatant discrimination" and that hiding behind the fact that it is Idaho law ignores Idaho's history. He cited that Mormons were barred from voting until the Constitution was amended in the 1980s. He said that voters approved term limits which the legislature overturned. He said that in August, they will take their friends, family and money to Washington where they will marry in a state that does not discriminate against same-sex couples. He said that if same-sex couples are required to file jointly for a federal return, why should they not be able to file jointly for the State. He asked that if the Committee believed discrimination is wrong and an issue of fairness under the law, then they should allow all legally married people to choose their own filing status.

Next to the podium was Idaho resident and law student, **John McCrostie**. **Mr. McCrostie** stated the Committee was being asked to approve a rule that fails to permit same-sex married couples to file their taxes jointly. He stated the rule has numerous disadvantages. For example, same-sex married couples that file federal taxes jointly have to file a separate federal tax return with the Commission when filing their state taxes. He said this creates the burden of having to file taxes three times instead of once. He said this rule also places an unnecessary burden upon the resources of the Commission. He said he implores the Committee that the rule stands on the wrong side of history, and that if it is approved, another generation of lawmakers will have to return to this room and correct that mistake.

Senator Johnson asked Mr. McCrostie about the costs incurred by the Commission and if there was a study on the issue. **Mr. McCrostie** answered that he did not have a study, but the costs of processing more returns seemed self-evident.

Monica Hopkins, Executive Director of the American Civil Liberties Union (ACLU) of Idaho, approached the podium. **Ms. Hopkins** said she urges the Committee to reject this rule. She asked that all legally married, same-sex couples in Idaho be treated equally, for tax purposes, by mirroring the IRS income tax rules. She said it was an undue hardship and that, in reference to Senator Johnson's question about the cost of the rule change, the separate forms would have to be on paper to the Commission.

Vice Chairman Rice asked if it was the position of the ACLU that the Committee ignore the restrictions of the State Constitution. **Ms. Hopkins** responded that there is another option, in which other states have said, due to the burden, for the purposes of taxes, they have allowed same-sex couples to file the same way the federal government files. **Senator Werk** said there was a constitutional amendment that disallows same-sex marriage and that is not a de facto recognition of marriage. He asked if that is what Ms. Hopkins was trying to convey and she answered that it was.

Idaho Resident and business owner, **Kim Baswick**, approached the podium. **Ms. Baswick** said she and her partner will have to file five different tax returns: a joint federal return, two joint mock federal returns, and two separate state returns. She said this is an incredible amount of work and represents considerable cost. She said that since her partner's income fluctuates and hers does not, they have an opportunity to "game" the system. **Chairman Siddoway** asked about her company, and she answered that she runs Memjet, a printing technology company, and her gross income is larger than the average Idaho income.

Next to testify was Idaho resident **Ben Wilson**, who said it is incumbent upon the Committee to act in accordance with the equal protection laws of the Fourteenth Amendment. He said the rule change is a burden on the taxpayer and the higher cost for state employees to review and process additional returns.

Senator Johnson asked Ms. Adrian if paid tax preparers would need to collect anything else from taxpayers in order to file for the State. **Ms. Adrian** replied that the federal tax return originally filed would not be recognized by Idaho and that same-sex couples would have to split it and file two separate returns.

MOTION:

Senator Vick moved, seconded by **Senator Hill**, to approve **Docket No. 3501-0101-1303**.

In discussion, **Senator Werk** thanked the Commission for their work while being put in a difficult situation and he said he regretted the difficult situation the Committee was in as well. He stated there was no good to be found anywhere and he would vote against the motion. He stated that he held the same line of thought regarding Ms. Adrian's testimony, that a rule regarding how the Committee handled the filing of taxes does not define marriage and that state legislators conform with federal law on issues with which they sometimes disagree. **Senator Werk** said he stands with the people he believed were being treated unfairly and he would vote to reject the rule.

Vice Chairman Rice said he does not have any ill will and according to his understanding of the law, State law prohibits the recognition of same-sex marriage. He said his understanding of the rulings of the Supreme Court is that federal law states that marriage is defined within each state by that state. He said the Commission had no choice and the rules must conform with the Constitution and laws, and for that reason he is going to support the motion.

Senator Bayer asked about the cause and effect of some of the situations that were proposed before the Committee regarding income tax returns, and if the rule reflects current Idaho practices. **Ms. Adrian** replied that this has not been enacted yet, so there is not a current practice to reference.

Senator Lacey said he agrees the rule change is burdensome and verges on discrimination and he is torn both ways. He said he asked the Attorney General for a position, and the response was that the Commission must change the rule in order to comply with state law. **Senator Lacey** stated it is a bad situation, but the statute should be changed.

Senator Hill clarified that there is a difference between married filing separately and two people each filing a single return. He said if both people have a higher income, it is better to file as single due to various tax rates. He said if you are married, there is no option to file as a single person, only married filing separately, which generally is not beneficial. He said that same-sex couples must file separate, single tax returns, which could be an advantage or a disadvantage, depending on the situation.

Chairman Siddoway said this is a difficult issue and he tries to be fair to everyone. He said he disagrees with the verbiage used by the Vice Chairman when he said the Constitution prohibits same-sex marriage. **Chairman Siddoway** said he would prefer to use the term that the Constitution does not allow the Committee to recognize same-sex marriage. He said he would support the rule.

MOTION: **Chairman Siddoway** said the motion to approve **Docket No. 3501-0101-1303** is before the Committee. The motion carried by **voice vote**. **Senator Werk** asked to be recorded as voting no.

DOCKET NO. 35-0201-1301 **Ms. Adrian** said Rule 705 is presented to be consistent with H 3, which allows the Commission to release information to an individual whose identity has been stolen.

MOTION: **Senator Werk** moved, seconded by **Vice Chairman Rice**, to approve **Docket No. 35-0201-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1302 **Ms. Adrian** presented Rule 310. She stated the interest rate is changed yearly according to statute, and for 2014 will be set at four percent. **Senator Johnson** asked how the interest rate is determined. **Ms. Adrian** replied the calculation is two percent plus the rate determined under the Internal Revenue Code by the Secretary of the Treasury.

MOTION: **Senator Werk** moved, seconded by **Vice Chairman Rice**, to approve **Docket No. 35-0201-1302**. The motion carried by **voice vote**.

DOCKET NO. 35-0201-1303 **Ms. Adrian** presented the final docket concerning Rule 10 and definitions. She stated this rule defines marriage in the state of Idaho.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Johnson**, to approve **Docket No. 35-0201-1303**. The motion carried by voice vote. **Senator Werk** asked to be recorded as voting no.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:35 p.m.

SECRETARY'S NOTE: These minutes were originally recorded by Committee Secretary Marchelle Fias. Upon her departure, Majority Staff Assistant David Ayotte assisted with them.

Senator Siddoway
Chair

Christy Stansell
Secretary