

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Thursday, January 30, 2014
- 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:** None
- 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** convened the meeting of the Local Government and Taxation Committee (Committee) at 3:01 p.m.
- Chairman Siddoway** informed the Committee that the pending rules that were not acted upon earlier in the session are still pending. A date for consideration has not yet been set, but he would tell the Committee when it is set.
- S 1239** **Chairman Siddoway** welcomed Seth Grigg of the Idaho Association of Counties to the podium to present **S 1239**, relating to the duties of public administrators. **Mr. Grigg** said the bill proposes two changes in the handling of a situation whereby the treasurer comes into possession of property from a deceased individual with no heirs to claim the property. In those cases, the treasurer is required to create an inventory of items and auction them off. The first change allows the treasurer to deduct any debts of a decedent, as well as the projected costs of the proceedings. He said the second change is to increase the minimum estate amount required for publishing and notifying creditors from \$1,000 to \$5,000.
- Mr. Grigg** noted that when the bill was originally printed, there were some inconsistencies with the Statement of Purpose (SOP). The Committee has been given a copy of the corrected wording and can include the amended version with the bill when it is processed. That is the recommendation consistent with procedure approved by Secretary of the Senate, Jennifer Novak. **Chairman Siddoway** asked **Mr. Grigg** to give the Committee a moment to review the corrected SOP.
- Senator Hill** asked about the meaning of "inventory" and if it was referring to gross inventory or net inventory. **Mr. Grigg** said his understanding is it refers to gross inventory. **Senator Hill** thanked him for the clarification.
- MOTION:** **Senator Lacey** moved, seconded by **Senator Hill**, to send **S 1239** with the corrected SOP to the floor with a **do pass** recommendation. The motion carried by **voice vote**.
- H 369** **Chairman Siddoway** invited Michael Chakarun, Tax Policy Analyst with the Idaho State Tax Commission (Commission) to present **H 369**, relating to income taxation criteria for determining residency of an estate or trust. **Mr. Chakarun** said in Idaho code, there is no definition of what a resident trust or estate is. He said the definitions are in rules, and the Commission would like them to be codified by moving the rule into a statute, because they belong in statute instead of rules. He said there is no change to the existing rule.

Vice Chairman Rice asked if this is the same test that is used by the Internal Revenue Service in the Internal Revenue Code. **Mr. Chakarun** answered he is not entirely sure.

Senator Bayer asked Mr. Chakarun to share the history of the rule, as he would like to know more about when the rule was put in place and under the premise of correlation to what code, because he thinks it sounds like the Commission is trying to rectify that there was not a code authorization on which to hang the rule. **Mr. Chakarun** said looking back through the rules, the last time it was noted was in 1997, but he believes it was there earlier than that. **Mr. Chakarun** said the underlying issue is that the definitions addressed in H 369 belong in statute, not just in a rule.

Senator Bayer asked if there are any issues of controversy for having this in the rule. **Mr. Chakarun** replied no, he is not aware of any controversies.

Senator Hill asked Mr. Chakarun to explain why this rule is important to residency, as there is not an estate tax or inheritance tax in Idaho. He asked if what is being dealt with here is the income tax of these estates. **Mr. Chakarun** replied yes, it is. He said residency is important because if it is an Idaho trust and not distributed out, all the income will be taxable to Idaho. If it is a nonresident trust, then only the Idaho source income would be taxed by Idaho.

Vice Chairman Rice asked about the section where it reads, "The estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of death. Then it says if the estate is the estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho." **Vice Chairman Rice** asked if there was a reason for it to be stated two different ways. **Mr. Chakarun** answered it is to distinguish between other types of estates, like bankruptcy estates, versus someone's demise. **Mr. Chakarun** said it does sound a little confusing.

Vice Chairman Rice commented that Mr. Chakarun's comment makes it more confusing to him, because both sentences deal with decedents, so he's really not sure now why both sentences are included. **Mr. Chakarun** said that may be something that can be changed in a technical correction next session.

Senator Vick asked why there is a retroactive date back to January 2013. **Mr. Chakarun** said it is probably because it is a mistake. He said he doesn't feel it will have any effect on the bill, because the bill does not affect any current process.

Senator Hill asked if there are any ongoing audits that will be settled in favor of either party because of this bill. **Mr. Chakarun** replied that no, he is not aware of any and this is existing rule, so it would be settled the same way anyway.

Senator McKenzie commented that there is no fiscal impact because what is in the bill is current practice. **Senator Bayer** asked if the language in the bill is identical to existing rule. **Mr. Chakarun** answered, yes, it is.

MOTION: **Vice Chairman Rice** moved, seconded by **Senator Lacey**, to send **H 369** to the Amending Order.

DISCUSSION: In discussion, **Senator McKenzie** asked Vice Chairman Rice to speak to the specific language or position he has for taking this bill to the Amending Order.

Vice Chairman Rice said the paragraph should be clear from the beginning rather than write a whole new bill to remove redundant language, as well as fix the date in Section 2, as he doesn't see a reason to go back two years on an emergency clause.

Senator McKenzie asked Mr. Chakarun to clarify if Section 1 is trying to identify two different situations where an estate is treated as a resident estate, or are Section 1 and Section 2 addressing the same issue. **Mr. Chakarun** said there are cases where an estate is domiciled in Idaho but the decedent could have died outside of Idaho. He said he is not certain of the effectiveness of this because he is not an estate attorney. As for domicile, one could have a domicile in Idaho, but be a resident of Nevada or elsewhere. Domicile and residency are related but are not quite the same. Someone could be a domicile of Idaho but a resident of another state, or someone could be a domiciled in another state, but be considered a resident of Idaho and pay taxes in Idaho.

Senator McKenzie asked if those two sentences are relating two different situations where an estate would be treated as a resident estate. **Chairman Siddoway** said that is the way he initially read the wording, but he said he doesn't know if he has the in depth experience to distinguish between the first and second sentences and the different situations that may arise from that. **Senator McKenzie** commented that the language is clear to him if it is intended to address two different situations where there could be an estate treated as a resident estate. If it's trying to address the same thing, then it is confusing, and it should be sent to the Amending Order.

Mr. Chakarun said the Commission would be happy to work with the Committee on clarifying the language, because they can bring in the people who know the details of this information better. **Chairman Siddoway** commented that if this goes to the Amending Order, it could be a while before it's addressed.

Senator Hill commented that he will support the motion, and then, if the bill is in the Amending Order, and the body decides no amendments are needed, it will be easy enough to get it back to the 13th Order.

MOTION:

Chairman Siddoway repeated that the motion before the Committee is to send **H 369** to the 14th Order for amendment. The motion carried by **voice vote**.

H 370

Chairman Siddoway invited Mr. Chakarun to continue with **H 370**, relating to cigarette and tobacco tax statutes. **Mr. Chakarun** said the bill amends Section 63-2511 to remove references to vending machine operators. Cigarettes may no longer be sold using vending machines, so the Commission wants to strike that language from the statute. The second change relates to the collection enforcement provisions of Sections 63-2516 and 63-2563, to clarify language. He said when product tax statutes were written, they were modeled according to collection statutes used in the Income Tax Act. He said in the Income Tax Act, the reference is always to annual periods, because that's when tax returns are filed. He said the product taxes are collected on a monthly basis. **Mr. Chakarun** said this change would reflect simply a "filing period" for the tobacco and cigarette tax. There is no change to the code other than making the language sound better.

Vice Chairman Rice asked if there will be times, with this amendment, when taxable year would actually mean taxable month. **Mr. Chakarun** said, for the cigarette and tobacco tax, yes, rather than having to duplicate that lengthier language in the cigarette and tobacco statute. **Vice Chairman Rice** asked if it was considered doing this another way, instead of having the term "taxable year" mean "taxable month." He asked if there was another way to do it so year doesn't mean month in one place and year in another. **Mr. Chakarun** replied that the excise tax specialist probably thought this was the most efficient way of doing it without extra wording in the statutes.

Senator Hill said he'd like to further understand why the wording is created this way. He said even though it is a little bit confusing, what he understands is there are many references in the code that deal with many different types of taxes, including the cigarette tax, that talk about the taxable year. For purposes of the cigarette tax, it is not a full year, so it is being defined here as a different period, but if it were to be made more clear, the code would have go back through each one of those other items and write, "except for cigarette tax, which would be a shorter period," every time the term "taxable year" was used. **Mr. Chakarun** said yes, otherwise all of that language would need to be incorporated into the tobacco and cigarette tax statutes. This is a way to say the underlying income tax statutes will be used, but where an annual period is stated, it's meant as a taxable period in relation to cigarettes.

Senator Hill asked Mr. Chakarun to explain further. **Mr. Chakarun** said when the statues were originally drafted, the writers thought why doesn't this just refer back to the enforcement and collection statutes under the income tax code. However, if that is done literally, it doesn't make a lot of sense, so this is a shorter way to clarify that annual means annual under income tax, but when it's written under product tax, including tobacco and cigarettes, it means taxable period.

Senator Hill said if this language isn't accepted, the statutes for cigarette and tobacco would have to include a whole bunch of other laws that are identical for every other entity and tax, but they'd have to be restated in the cigarette and tobacco sections, when the only difference between the two is the taxable period.

Mr. Chakarun said, yes, that is correct.

Vice Chairman Rice asked if someone has made sure this bill doesn't multiply the penalties so that the penalty is per month. **Mr. Chakarun** said the penalty would be on that particular return, so there is no compounding. If there was a situation of an underpayment or non-filing, the penalty would be whatever the penalty is within the tobacco and cigarette tax statute.

Senator Hill said he doesn't like the way it sounds either, because it sounds like a chicken is a dog if we define it that way, but he can't think of a better way to accomplish the effect without a lot of other verbiage, which he feels would be even more confusing.

MOTION: **Senator Hill** moved, seconded by **Senator Vick**, to send **H 370** to the floor with a **do pass** recommendation.

DISCUSSION: In discussion, **Vice Chairman Rice** said he thinks it is confusing and he doesn't like confusion so he will not support sending this to the floor. He said he thinks it could be done easier by something that says for penalties, instead of using annual periods of income tax, the periods for which returns are filed on cigarette taxes will be used. He thinks doing an exception for that piece would be fairly easy.

Chairman Siddoway asked if it would solve the problem to send this bill went to the Amending Order and change the reference to a taxable period instead of taxable year. **Mr. Chakarun** answered possibly, but he'd have to check and make sure there were not other impacts. **Senator Hill** said he sees what is trying to be done, and maybe there is another way to do it, so perhaps it ought to be held in Committee.

MOTION: **Senator Hill** moved, seconded by **Senator Vick**, to **hold H 370** in Committee subject to the call of the Chair. The motion carried by **voice vote**.

H 374

Chairman Siddoway invited Mr. Chakarun to present **H 374**, relating to income taxation and net operating loss carryback. **Mr. Chakarun** said this is a technical corrections package with four changes. The first change clarifies that the net operating loss (NOL) deduction is limited to \$50,000 in the case of an individual filing as married filing separate in the year of the loss. This keeps the amount consistent with those who file married filing jointly. The second change is cosmetic, in which there is a reference to the Internal Revenue Code (IRC), but the lead in phrase says passive losses, so it is changed to capital losses, not passive losses.

Mr. Chakarun said the third change adds a reference to IRC Section 6033(j) so that if a non-profit organization loses its tax exempt status because it failed to file the required information returns for three years, it will lose its Idaho exempt status, as well. **Mr. Chakarun** said the question arose during the hearing in the House Revenue and Taxation Committee about the reinstatement of a nonprofit's status, and the Internal Revenue Service does have a mechanism in place through an application process, and can be reinstated back to the date of revocation in certain cases. **Mr. Chakarun** said the fourth change simply repairs a cross-reference error.

Senator Hill stated as clarification on the first change about the NOL, that this is nothing new, because for many years, Idaho has limited NOL carryback to \$100,000 per year. That means a single taxpayer can carryback \$100,000, and married filing jointly can carryback \$100,000, but for all purposes, for federal and state purposes, when there is a return of married filing separately, that NOL must be split in half, as with any other standard deduction. This is especially true in a community property state like Idaho. **Senator Hill** said all this change does is make clear that a married couple cannot file married filing separately and double the NOL.

Vice Chairman Rice asked to understand further, that if a couple files separately, they each claim half of each others income or take only theirs, so a situation could arise where the married couple filing separately is limited to \$100,000. **Mr. Chakarun** said the couple would split their income because Idaho is a community property state, but the point is to prevent a couple from each taking \$100,000 NOL. **Vice Chairman Rice** asked if this bill applies only to carrying it back, but going forward they'd be able to use whatever they have. **Mr. Chakarun** answered, yes.

MOTION:

Vice Chairman Rice moved, seconded by **Senator Werk**, to send **H 374** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 375

Chairman Siddoway invited Mr. Chakarun to present **H 375**, relating to income taxation and internal revenue code clarifications. **Mr. Chakarun** said this is the annual conformity bill, in which Idaho conforms state tax statutes with the Internal Revenue Code statutes effective January 1, 2014. Performing this process relieves the Legislature from having to duplicate the entire law. This bill has no fiscal effect because Congress did not change the tax code this year. One small change is the Commission was asked to include a statement to make clear that Idaho is not conforming to same sex marriage couples. There is also a severability clause because there will be lawsuits filed, and if those prevail, that clause could be removed and the bulk of the bill will stand.

Senator Werk asked who asked the Commission to place subsection c in the bill. **Mr. Chakarun** replied it was entered with guidance from the Governor's office. **Senator Werk** then stated Mr. Chakarun said he's anticipating lawsuits associated with the rule or bill or both, and asked if the fiscal note should reflect what those potential costs could be. **Mr. Chakarun** said the idea that lawsuits will be filed was meant to state only his personal opinion of what he is expecting could happen, and he has no way of estimating cost in defense of that. **Senator Werk** said he imagined if a lawsuit was filed, it would be the Attorney General defending the lawsuit, not the Commission. **Mr. Chakarun** replied he's not a lawyer so he presumed so, but it would depend on where that lawsuit fell.

Senator Werk said one thing he is confused about is placing in statute restrictions on married filing jointly. He said his impression is when a return comes in to the Commission, and the Idaho return doesn't match the federal return, it raises a flag for the people working on it. If the federal return is a joint return and the state return is filed separately, the auditor would need to know why there is a discrepancy. **Mr. Chakarun** answered the Commission would not see the federal joint return, but rather a proforma, and as long as their return matches the state proforma, it would not be noticed. **Senator Werk** said he doesn't understand that because he doesn't understand proforma. **Mr. Chakarun** said the tax software will take a federal return and have some questions of what income goes where for two single returns, so data taken off the individual returns will not be linked together in any way. He said they won't know if it is a same sex couple or not.

Senator Hill commented about his frustration with the way the federal government processed the tax code, and noted the Commission did the fiscal impact the right way, but there is a good chance Congress will make changes next year that will change the fiscal impact then, and the Joint Finance Appropriations Committee has to interpret it, so it can be misleading on what the fiscal impact really will be.

MOTION: **Senator Hill** moved, seconded by **Vice Chairman Rice**, to send **H 375** to the floor with a **do pass** recommendation. 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 3:52 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary