

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Wednesday, February 05, 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 3:03 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Siddoway** invited the Committee to consider the vote for the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission. **Senator Werk** said he thought the hearing was very substantive and appreciated the Committee for having it.

**MOTION:** **Senator Werk** moved, seconded by **Senator Hill** to send the gubernatorial appointment of Ken Roberts to the Idaho State Tax Commission to the floor with the recommendation that it be approved by the Senate. The motion carried by **voice vote**.

**H 381** **Chairman Siddoway** invited Tamara Mackenthun, Deputy Administrator at Idaho Division of Veterans Services, to the podium to present **H 381**, relating to income tax and the option to donate to the Veterans Support Fund. **Ms. Mackenthun** said this legislation gives nonresidents of Idaho the option to donate to the fund, just as residents already have the option. She said the fund is used to provide a variety of information, training programs, equipment, ceremonies, recreational activities and social rehabilitation programs that support veterans. The fund brings in about \$40,000 each year, and most of the grants average \$1,000 to \$2,000.

**Senator Hill** asked why the options would be listed differently on the 40 and 43 tax forms, and expressed concern that the problem may be on the forms for other funds as well. **Ms. Mackenthun** answered that she did not see any other optional funds that were not already listed on both forms.

**MOTION:** **Senator Lacey** moved, seconded by **Senator Bayer**, to send **H 381** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

**H 384** **Chairman Siddoway** invited Bill Roden, who represents the Coeur d'Alene Tribe, to present **H 384**, relating to income tax and income earned on an Indian reservation. **Mr. Roden** expressed appreciation to the Idaho State Tax Commission (Commission) for their efforts on this bill. He gave some history of the bill, saying that in 1974, the Commission adopted a rule that provided that a member of an Indian tribe who was employed on a reservation would be exempt from income tax on income earned from that employment.

**Mr. Roden** shared that the rule came about after a 1972 Board of Tax Appeals case in which a member of a tribe in Oklahoma had been employed by the tribe on the reservation. He paid taxes through withholding, and when that employment ended after four years, he applied for a refund, which the state did not grant. The Board of Tax Appeals decided it did not make a difference if he wasn't a member of "that" tribe as long as he was employed and resided on that reservation. The Oklahoma District Court ruled that the tax commission was incorrect and affirmed the Board's ruling and a refund was ordered and paid.

**Mr. Roden** said since that time, the law has followed that ruling. He said however, in 2011, the Commission engaged in some changes to income tax rules and the process that had been used for decades was changed without any negotiated rulemaking around the issue. He said the new rule was that a person had to be a member of the tribe on whose reservation he was employed and earning income, and it passed in the Legislature without any background information on the issue.

**Mr. Roden** shared that following the rule change, after erroneous instructions were sent out to employers about withholding, the issue was brought to the attention of the Commission, which has cooperated to get the rule back to the original meaning. **Mr. Roden** said this bill **H 384** implements HCR 32, which rescinded the 2011 rule. He said it affects only a couple hundred wage earners in Idaho and there is no fiscal impact because the tax has not been being paid and the Commission has withheld enforcement of the rule pending this vote.

**Senator Vick** asked if the date on the bill is intended to be January 1, 2013. **Mr. Roden** said yes, that is the intent, because there was agreement that the rule did not apply to 2012 and the Commission did not enforce it. The same principle applies for 2013 income, which would be due now in 2014, and since it would not be affected, the bill did not need to be retroactive.

**Senator Hill** commented that the bill seems to read that one must still be a member of "a" tribe, which he understand to mean one can't move onto a reservation and receive this exemption, and he asked if that is correct. **Mr. Roden** said tribal members pay tax on all income earned "off" the reservation, so they may still have taxable income. He said the person has to be a member of a federally recognized tribe, reside on the reservation and earn the income on the reservation.

**Senator Hill** asked for more explanation on how this rule will be interpreted if a member of a tribe lives and works on a reservation and then moves off the reservation but keeps the job. He asked if the income would be prorated. **Mr. Roden** said his understanding is the portion of the income earned during the residency would be exempt, but if someone moves off the reservation and earns income off the reservation, it would not qualify for the exclusion.

**MOTION:**

**Vice Chairman Rice** moved, seconded by **Senator Werk**, to send **H 384** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

**RS 22745**

**Chairman Siddoway** invited Senator Sheryl Nuxoll to the podium to present **RS 22745**, relating the counties' ability to lease a hospital or hospital facility. **Senator Nuxoll** stated the bill would increase the cap on a county's ability to lease a hospital or hospital facility without public auction from 20 years to 35 years. She deferred to Clayne Tyler, prosecuting attorney for Clearwater County, for further description.

**Mr. Tyler** said he'd like to address two provisions in Idaho Code § Section 31-836, one which requires that any hospital leases into which a county enters cannot exceed 20 years or it goes to public auction, and second is the statutory cap on all leases at 30 years. He said the request is to make both provisions 35 years. He said the reason why is that Clearwater County owns a hospital facility that is the only hospital on the Highway 12 corridor between Lewiston and Lola, Montana. He described it as a critical hospital in the area.

**Mr. Tyler** shared some history on the hospital, noting that when the county exceeded its financial ability and expertise to run the hospital, the Sisters of Benedictine Services agreed to take it over at a critical point. He said the county entered into a long term lease for the hospital and equipment, and it is now run by Essentia Health System. **Mr. Tyler** clarified that the county owns the hospital but does not run it. He said the county has a very good relationship with the operators.

**Mr. Tyler** said the lease is coming to its conclusion, so the county is in possession of an old facility that is in dire need of infrastructure improvements and it has a group that wants to use private funding to make those improvements, which are estimated to cost several millions of dollars. He said the county does not have taxpayer funds to invest, but the hospital operators do and are willing to make the investment. He said the analysis shows the county and the operators need a long enough term lease to recoup the value of those improvements. **Mr. Tyler** said the operators are willing to run the hospital without county taxpayer dollars as long as they can lease it long enough to realize their investment. He said this is a shift from taxpayers to private enterprise so the county can continue ownership of the facility that taxpayers purchased.

**Mr. Tyler** commented that Section 31-3115 requires that for a county to lease or sell any public property, it must have voter approval for that sale. He said he thinks that is appropriate, and is not asking for amendment to that. He said the public should have a say in what happens to public property. He said with respect to this issue, it went on the ballot and support went above 92%.

**Senator Johnson** asked if Clearwater County is a hospital district or if this hospital receives property tax dollars. **Mr. Tyler** replied, no there is no district. The county formerly owned and operated the hospital, and it does not receive property tax dollars. He said it operates entirely independent of taxpayer money, and the lease is the pay for the operation.

**Senator Werk** asked how many facilities are affected. **Mr. Tyler** said he didn't have exact figures, but he said any small or rural county that continues to own and operate a hospital may eventually have to make this type of decision. He said health care is getting so expensive and those smaller counties will find themselves in similar situations.

**Vice Chairman Rice** asked if 35 years will be adequate for the general rule, or is this time frame geared specifically for this one circumstance in Clearwater County. **Mr. Tyler** answered 35 years was chosen based on the actuarial analysis that Essentia Health System went through for Clearwater Hospital specifically. He said the original draft requested in excess of 35 years to allow for flexibility, because the more flexibility the better. He said the length was reduced because they thought too big of a bite may have been a bad thing. **Mr. Tyler** said 35 years was chosen as the smallest increase that would be necessary to accomplish the goals of the hospital in Clearwater County.

**Vice Chairman Rice** said his concern is that the bill is only going the minimum for this one hospital, and perhaps it should go out far enough to be a better general rule, and they may want to consider that in the hearing for the bill. **Mr. Tyler** said there are other provisions the State uses which allow for leasing for up to 99 years without requiring public auction. He said his concern is this is such a critical facility for North Central Idaho and he doesn't want to risk having an auction. He said, "It's too critical to the area."

**MOTION:**

**Senator Johnson** moved, seconded by **Vice Chairman Rice**, to send **RS 22745** to print. The motion carried by **voice vote**.

**RS 22701**

**Chairman Siddoway** invited Senator Les Bock to the podium to present **RS 22701** relating to income taxation and to provide for relief from joint and several liability on a joint return if certain conditions occur. **Senator Bock** said this proposal relates to what is called an "innocent spouse." He said he has been working on it since last spring and it includes suggestions from the Commission.

**Senator Bock** said he would describe for the Committee what an innocent spouse is and how this is important to individual taxpayers. He said it doesn't affect anyone else. He said it arises in situations where a husband and wife have filed a joint tax return which has an understatement of income, and now the couple is separated or divorced. He said the spouse who did not know about or receive any benefit from the understatement of income on that joint return is the innocent spouse.

**Senator Bock** shared an example from early on in his law career. He said in that case, a husband and wife filed a joint return and then divorced, but unfortunately the husband, unbeknownst to his wife, had cashed in an IRA of \$25,000. **Senator Bock** said without some relief, the wife would be liable, even though she was in the dark and innocent of having the understatement, and he said it would be unfair to charge her the tax on that income. He said he took the case to the Commission and it turned down the request for relief, so he filed a petition in court and the wife was relieved of the tax.

**Senator Bock** said Idaho does not have any rules that relate to the innocent spouse. He said this proposal simply conforms Idaho law to the Internal Revenue Code provisions. He said the Commission said if the taxpayer receives relief at the federal level, it will grant it at the state level.

**Senator Hill** thanked Senator Bock for bringing this issue to the Committee's attention. He said in all his years of doing taxes, he didn't know the State didn't have this provision. He said he would like to sit down with the Commission to find out what it didn't like about the provision. He said he thinks it is much needed as a fairness issue, and he hopes the Legislature in the future does not have to conform with individual sections of the Internal Revenue Code to be compliant.

**Senator Bock** called the Committee's attention to a handout with a copy of the Commission's decision (see attachment 1).

**MOTION:** **Senator Hill** moved, seconded by **Senator Werk**, to send **RS 22701** to print. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 3:40 p.m.

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Senator Siddoway  
Chair

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Christy Stansell  
Secretary