

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Thursday, February 20, 2014

TIME: 9:00 A.M.

PLACE: Room EW42

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

**ABSENT/
EXCUSED:** Reps. Trujillo, Burgoyne

GUESTS: Alan Dornfest, Idaho State Tax Commission; Bas Hargrove, INC; Russell Westerberg, Raeleen Welton, Rocky Mountain Power; Benjamin Davenport, Associated Taxpayers.

Vice Chairman Wood(35) called the meeting to order at 9:01 am.

Rep. Dayley requested a point of personal privilege regarding a clarification in the minutes of February 19, 2014 stating, on page two, the last line of his presentation on **RS 22888**, he intended as "Even though the focus of this proposed legislation is agriculture production, donations made by entities like Albertson's, who donate products off the shelf, could qualify".

MOTION: **Rep. Dayley** made a motion to approve the minutes of February 19, 2014. **Motion carried by voice vote.**

Vice Chairman Wood(35) introduced **Rep. Rynearson** who is serving as a substitute for **Rep. Denney**

RS 22756C2: **Rep. Hixon** presented **RS 22756C2** which is designed to remove the current limit of \$2,000 for Medical Savings Accounts (MSA's). Medical and indigent costs continue to rise. This proposed legislation is an update on a 1995 Medical savings account statute. **RS 22756C2** would be retroactive to January 1, 2014 and allows contributions to MSA's and interest earned on them, to be tax deductible. Currently, there is a cap on MSA's of \$2,000 which is not sufficient to keep pace with actual costs. This proposed legislation is intended to provide incentives to make contributions to MSA's. Employers would be provided a credit, against income tax, of 7.4% of their contributions to an employee's MSA. **Rep. Hixon** stated this would also put more buying power in the hands of the individual. Any amount in an individual's MSA must be exhausted before they would be eligible for any state benefits such as county indigent funds or Idaho Medicaid. **Rep. Hixon** stated there is no known opposition to this bill. The fiscal impact is dependent on the amount of utilization. With the escalation of health care related costs, this proposed legislation gives the individual more buying power for expenses such as deductible and co-pay amounts or insurance premiums.

In response to a question, **Rep. Hixon** stated there is no limit in **RS 22756C2** on contributions since current statute addresses withdrawals at specific age or conditions as well as potential taxes imposed. Contributions going into MSA's are after tax amounts. **Rep. Hixon** said the fiscal note does not take into consideration any amount local taxing entities might save.

MOTION: **Rep. Raybould** made a motion to introduce **RS 22756C2** with the following changes to the RS on page 1, Section 1, subsection 2 to read "For taxable years beginning on or after January 1, 2014, the annual contributions to a medical savings account may not be limited. Both interest earned and all contributions to medical savings accounts shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income", and the addition in the fiscal note of "Because this legislation requires that medical savings accounts are exhausted before state assistance is offered for medical programs, there may be decreases in program utilization resulting in a positive fiscal impact to the indigent and CAT funds, and other programs that offer state assistance for medical care".

In response to further questions, **Rep. Hixon** stated this proposed legislation could potentially save Catastrophic Medical Funds (Cat funds) since any balance in a MSA would be required to be spent prior to application and use of county or state Cat funds. Rep. Hixon clarified any MSA funds can be used for costs over and above what any health insurance policy covers, including dental and vision services. MSA's can be held year to year and earn interest on fund balances.

Rep. Hixon responded to question stating they did not consider inclusion of a trigger, in the event the corporate tax rate decreases. There are incentives for employers to make employee contributions. He stated it is believed to be more attractive for an employer to get a tax credit, which can be carried forward for 15 taxable years, instead of a tax deduction. Rep. Hixon does not see a need for a corporate tax rate trigger at this time and stated if needed, one can be added in the future.

VOTE ON MOTION: **Vice Chairman Wood(35)** called for a vote on the motion. **Motion carried by voice vote.**

RS 22908C1: **Tyler Mallard**, Government Affairs Liaison Risch Pisca and representing the Building Contractors Association, presented **RS 22908C1** related to the adoption of the International Residential Building Code and International Energy Conservation Code by Idaho. This proposed legislation is being brought back to the committee with a technical correction from the original RS, which deleted the wrong Code section.

MOTION: **Rep. Kauffman** made a motion to introduce **RS 22908C1**. **Motion carried by voice vote.**

H 486: **Rep. Morse** presented **H 486** which will repeal **Idaho Code Section 55-2109**, related to taxation of conservation easements. Mandated by the 1988 statute, when conservation easement legislation was passed in Idaho, Rep. Morse stated this code section is unconstitutional. Regardless of the constitutionality, this statute interferes with other mandates requiring the actual and functional use of a piece of property to be considered in assessing its value. Assessment, for tax purposes, is based on the actual market value. A conservation easement can be placed on part or all of a piece of property and can be small or more comprehensive. Article VII, Section 2 of the Idaho Constitution requires levying tax, based on the valuation of property. Article VII, Section 5 requires that all taxes must be uniformly applied on the same class of property.

Rep. Morse declared he is, by profession and trade, an appraiser, and has a real estate and broker's license. Ad valorem and assessment, in general, recognizes the uniqueness of each property. Since the title and physical attributes can vary from property to property, the valuation of property is fact specific and not a matter of law. Rep. Morse provided information on a trial court decision, based on a northern Idaho county case. The deed of consideration and scenic easement in the decision, outlined limited and retained property rights limited. Rep. Morse stated there are between 80-150 parcels similarly situated in this county and the trial court decision requires the properties to be treated equally. In an earlier case, the Supreme Court held that a statute cannot declare a public policy contrary to the Constitution. An easement typically grants a right of use to someone else's property.

Rep. Morse stated his second argument for repeal of this statute is the major economic restriction placed on a property, whether it is through an easement or covenant. An easement restricts future use and conveys use, but not ownership. **Idaho Code 63-208** provides rules prescribing market value for assessment purposes, stating the actual and functional use shall be considered. The result is a conflict exists in assessing property with conservation easements between the Idaho Constitution and other statutes, which dictate the assessment be made without consideration of the easement.

Rep. Morse cited another case, Greenfield Village Apartments v. Ada county. In this 1997 case, Ada County did not consider a rent restricted covenant that limited actual and functional use of the property, its assessment. The Idaho Supreme Court vacated the District Court decision and ruled the Assessor should have taken into consideration the rent restriction covenant, which limited the use of the property.

In response to a question from the committee whether the easement owner pays property taxes on the value of the easement, since they cannot use or develop the property, **Rep. Morse** stated, in order to get a deduction, the easement must be donated to a qualifying entity and be granted in perpetuity. The intent of an easement is to restrict development and preserve certain rights, which protect the land.

The committee posed a question regarding who pays the taxes on the difference between the market value and the assessed value? **Rep. Morse** reiterated there is inequity in the tax system, since property with an easement cannot be taxed at market value. If there is no restriction on the actual conservation easement, repeal of the statute will allow assessment to be made as it would on any other property.

Rep. Morse stated when there is a restriction on a property with a conservation easement, a value component is lost and no longer rests with the property owner. There is a perpetual, limited and restricted use and it is inequitable to tax that individual for property rights they no longer have.

Regarding a question on selling of an easement, **Rep. Morse** stated in some cases, acquisition of easements are made through eminent domain and consequently, not voluntary. The owner is compensated for the loss of the right to use the property. In other cases, an individual may donate an easement to a qualifying entity. The only way they are compensated is through gift tax deduction. If the property owner does not have the rights to the property, they should not pay taxes on value that does not exist.

As a clarifying response to the question on sale of an easement, **Rep. Morse** stated if there is a gain on the property that exceeds the basis, it would be a taxable sale.

Responding to a question, **Rep. Morse** said the actual and functional use for tax assessment purposes, as mandated by statute, limits the use of the property and consequently, impacts the market value. Valuation for conservation easement purposes, is the highest and best use.

In response to a question, **Rep. Morse** acknowledged the case study cited in the North Idaho case was not one of eminent domain, but was a scenic easement situation.

Rep. Morse stated markets change and a purchase price is one indicia of the value. Valuation is always a question of fact. If the market value has declined, it is likely due to a change in market considerations.

Rep. Morse responded to a question saying the issue being addressed is the ad valorem assessment. The Idaho Constitution mandates, for tax purposes, that the actual value of the property is considered and uniformity is required, regardless of what occurred in the past. This requirement for uniformity of valuation and treatment of property, collectively, may impact the tax burden of other property owners in the county, but there is a statutory mandate to tax in a uniform and equitable manner.

In response to a question, **Rep. Morse** stated even if a change was made on the actual and functional use clause, there is still the clear uniformity mandate and would require amendments to two sections of the Idaho Constitution.

Rep. Morse acknowledged the North Idaho county case stopped at trial court level. Working with the Attorney General's Office, they looked for any other Idaho cases involving conservation easements and found none. The 1997 Idaho Supreme Court case, Greenfield Village v. Ada County was the closest one found on record, but was related to a covenant, not an easement.

Rep. Morse stated it is not feasible to eliminate conservation easements, as there are hundreds, maybe thousands already in place. He said he believes **H 486** is the best way to correct the ad valorem issue.

Rep. Morse recapped stating the two primary outcomes is the disparity of treatment as evidenced by the 80-150 cases in North Idaho being treated one way due to the case presented, while other counties assess conservation easement property differently. This lack of uniform treatment by other counties in using actual and functional use instead of market preference and sales, creates the problem. The Idaho State Tax Commission (ISTC) has a statutory duty to defend the current statute, but acknowledges there is a problem. Valuation is fact specific. Without a conservation easement, property has an ascertainable value, based on economic use. The conveyance of conservation easement preserves a corridor and protects rights, and the value is materially diminished due to the easement. In order to get a charitable tax deduction, a conservation easement must be donated to a qualifying entity. Subsequently, there is a change in the economics of a property for the unrestricted remainder of the property. The charitable entity can't sell the easement, but the remainder of the property may or may not be significantly impaired.

MOTION: **Rep. Raybould** made a motion to **HOLD H 486** in committee. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 10:23 am.

Representative Wood(35)
Vice Chair

Kathleen A. Simko
Secretary