

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Monday, March 10, 2014

**TIME:** 8:30 A.M.

**PLACE:** Room EW42

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

**ABSENT/  
EXCUSED:** None

**GUESTS:** Russell Westerberg, Rocky Mountain Power; Elli Brown, Veritas Advisors; Mike Chakarun, Alan Dornfest, McLean Russell, Idaho State Tax Commission; Melissa Nelson, ISCPA; Rick Smith, Jay Larsen, Idaho Technology Council; Mike Brassey, Union Pacific Railroad; Amber Pence, City of Boise; Jonathan Parker, Internet Truck Stop; Caroline Merritt, Ray Stark, Boise Metro Chamber; John Jameson, Ridgeline Energy; Bill Roden, Coeur d'Alene Tribe; Ryan Woodings, MetaGeek, LLC.

**Chairman Collins** called the meeting to order at 8:32 am.

**MOTION:** **Rep. Burgoyne** made a motion to approve the minutes of March 6, 2014. **Motion carried by voice vote.**

**UNANIMOUS  
CONSENT  
REQUEST:** **Chairman Collins** requested unanimous consent to **HOLDH 506** in Committee. There being no objection, the request was granted.

**RS 23084:** **Chairman Collins** stated **RS 23084** was being returned to the Sponsor.

**RS 23101:** **Bill Roden**, representing the Coeur d'Alene Tribe, presented **RS 23101** which is a trailer bill to legislation passed earlier this year, as **H 384**. This proposed legislation will clarify the retroactive date of January 1, 2013, and adds an emergency clause.

**MOTION:** **Rep. Trujillo** made a motion to introduce **RS 23101**, and recommend it be sent to the Second Reading Calendar. **Motion carried by voice vote.** **Rep. Agidius** will sponsor the bill on the floor.

**RS 23111:** **Rep. Moyle** presented **RS 23111** dealing with personal property tax exemption. The prior legislation passed in 2013 provided a tax exemption for personal property, on the first \$100,000. The larger issue to ultimately eliminate personal property tax entirely still needs to be addressed. This is the next step, which will increase the exemption amount to \$250,000, effective FY 2016. **RS 23111** outlines personal property of operating property entities and the percentage of the property that will be tax exempt. Also defined is the difference between real and personal property. **Rep. Moyle** said the "third and a half factor", which is related to property that is attached and bolted down, could still cause some confusion on whether this is personal or real property. This proposed legislation clarifies that distinction, as well as codifying Rule 205.

**Rep. Burgoyne** declared Rule 38, stating he has done legal work for a firm selling cell towers. **Rep. Moyle** responded to a question stating the ultimate goal is to end the personal property tax entirely. Due to the Four R Act, it's unlikely Idaho can opt out railroads from taxation. The debate is whether to include operating property. **RS 23111** removes the former definition of taxpayer and makes the definition more clear.

Responding to another question, **Rep. Moyle** said rail cars are the boxes on the train and are considered personal property and eligible for the exemption. However, the rail way itself is considered to be real property and not included. The bigger debate is related to the percentage calculations. The fiscal impact has been based on the dollar amount and the percentage within each industry category.

**MOTION:** **Rep. Raybould** made a motion to introduce **RS 23111**.

In response to a question, **Rep. Moyle** said the fiscal numbers were derived from conversations with various entities; the Senate, Idaho State Tax Commission, businesses and House Leadership. While this proposed legislation does not represent a consensus, it is a good starting point. **Rep. Moyle** stated there is full replacement of tax shortfall resulting from personal property tax exemption, fixed at the 2012 tax year revenue amount. If local units of government consolidate, they continue to get replacement revenue, however, if they dissolve, the revenue would be retained by the state.

**VOTE ON MOTION:** **Chairman Collins** called for a vote on the motion. **Motion carried by voice vote.** **Reps. Burgoyne, Erpelding, Meline** requested to be recorded as voting **NAY**.

**RS 23067:** **Rep. Dayley** presented **RS 23067** which would enhance Idaho's ability to move and store data and provide a competitive advantage. Currently Idaho exempts regular manufacturing equipment, but not telecommunication equipment. This proposed legislation would exempt new purchases of telecommunications network and data center equipment, from sales and use tax. **Rep. Dayley** stated he is requesting introduction only of **RS 23067** and does not intend to bring it to the floor this session.

**MOTION:** **Rep. Burgoyne** made a motion to introduce **RS 23067**.

**Rep. Dayley** responded to a question stating there are still unknown impacts of this proposed legislation, such as the amount of water that might be required. This is why he is requesting a print only, to allow the interim to explore some of these issues. **Rep. Kauffman** declared Rule 38, stating he is on the board of a telephone company.

**VOTE ON MOTION:** **Chairman Collins** called for a vote on the motion. **Motion carried by voice vote.**

**H 598:** **Jay Larsen**, Idaho Technology Council, presented **H 598** which defines Cloud services and improves the language in **H 243**, passed in 2013. Mr. Larsen said current supporters of this legislation include the Boise Metro Chamber of Commerce, Simplot Company, Idaho Association of Commerce and Industry, the Idaho Association of Realtors, and the Idaho Restaurant and Lodging Association, among others. Entertainment would not be included in the definition and a retroactive clause was removed. **H 598** will clarify cloud services are not subject to sales tax.

**Rick Smith**, Hawley-Troxell, testified in support of **H 598**. Mr. Smith was very involved in the drafting of **H 243** and **H 598** and wanted to provide clarification, if needed, on the language. Mr. Smith stated this legislation would not treat use tax differently from sales tax. This legislation deals with the definition of software and how it fits within the definition of tangible personal property. Ultimately, it is really a tax policy as to what is included as software. Tangible goods like discs and computers with pre-loaded software are and will continue to be taxed as tangible property. Remotely accessed and electronically delivered software is not considered tangible. To be consistent with the prior statute, tax policy should exclude those services from taxation.

In response to a question, **Mr. Smith** said audits are possible for Cloud services. If the primary use is remotely accessed, it would be excluded. Mr. Smith stated it is difficult to determine the fiscal sales tax impact, especially for software. He acknowledged the original fiscal impact last year, was estimated between \$250,000 - \$750,000 and was based on the best estimate of existing Cloud services. As we move into the future, an increase in the projected fiscal impact will occur due to the increase in use of Cloud technology. Ultimately, it is still a guess and difficult to determine. Mr. Smith responded to a question stating the basis for the fiscal impact resulted from estimates the Idaho State Tax Commission (ISTC) provided, which was \$8 million. Mr. Smith explained as more and more software is migrated to the Cloud, they felt a more accurate estimate is in the \$2 - \$5 million range.

**Mr. Smith** acknowledged this legislation would close off potential taxing of Cloud software in the future, but under current law, it isn't taxable at this point. Software is typically sitting somewhere outside Idaho and providing service on a remote basis. Since services are not taxable, last year's bill was labeled as a clarification bill. **H 598** is consistent with the principle of not taxing services. Mr. Smith stated, in response to a question, this legislation first outlines the types of exclusions, such as remotely accessed software, then adds back the non-excluded entertainment exemptions, like digital books and music, that are taxed as tangible goods.

**Jonathan Parker**, Holland and Hart, representing the Internet Truck Stop, testified **in support of H 598**. Internet Truck stop provides a service to match freight loads with truck drivers and connects those drivers to shippers. This allows drivers to avoid 'deadheading' where they drive their truck without a revenue producing load, typically on a return trip. Internet Truck Stop is located in New Plymouth, only eight miles from Oregon, who is attempting to lure Internet Truck Stop there by providing financial incentives. Owner and founder **Scott Moscrip** is an Idaho native and would like to keep his business here. Mr. Parker said this legislation would help attract as well as retain business and provide clarification of legislation previously passed.

**Carolyn Merritt**, Boise Metro Chamber, representing over 1800 members, including many that provide or access Cloud services, spoke **in support of H 598**. **H 598** is needed to ensure prior legislation and subsequent rules are applied as intended and will help attract, as well as retain, Idaho businesses.

**Ryan Woodings**, founder of MetaGeek, a software company that helps businesses manage computer software, testified **in opposition to H 598**. Mr. Woodings stated he is married to **Rep. Holli Woodings**. **H 243** was meant to clarify Cloud services and **H 598** doesn't match the traditional definition of a service.

**Michael Chakarun**, Tax Policy Manager, Idaho State Tax Commission (ISTC) stated the ISTC **does not oppose or support H 598**. Mr. Chakarun stated the ultimate decision is up to the Legislature but believes the decision should be based on as much information as possible. The ISTC calculates the fiscal impact of **H 598**, at a minimum, will be \$8 million and continue to grow. Software was originally defined as tangible personal property and taxed. In 1993, information stored on some type of medium was taxed. Barring a statutory exemption, this is still defined as tangible personal property. During the 2013 rule making, it came to the attention of the ISTC the intent was not to collect sales tax. In calculating the fiscal impact, Mr. Chakarun used actual sales tax returns from audits, and public information, looking at about 100 tax payers, who had a long history of sales tax collection. Of this sample size, 20 businesses were identified that paid tax on remotely accessed software and Cloud storage. Mr. Chakarun said these were some of Idaho's larger employers. The amount of sales tax that would not have been paid if **H 598** had already been enacted was \$5 million. There are currently 55,000 sales and use tax permits in Idaho and the ISTC believes a realistic fiscal impact is \$8 million.

**Mr. Chakarun** stated while this is not typically how fiscal notes are done, ISTC felt it was the best way to get a realistic estimate. As a point of information, **H 598** would exempt smart phones, tablets and applications, downloaded software, online software, and enterprise software. Enterprise software is not offered on a disc, but installed directly on a computer and known as "load and leave". Some of the enterprise software packages are very costly and can run hundreds of thousands to even millions of dollars. Software maintenance contracts would also be impacted. While some are currently not taxed, like help desks, others are partially taxed, since they are not wholly comprised of services. Other software maintenance contracts are taxed at 100%, when the contracts are written in a way so use of the software, without the maintenance component, is not permitted.

In response to questions, **Mr. Chakarun** stated the scope of the definition of tangible personal property is not narrowed by this legislation. The original bill excluded services in the Cloud, but was confusing on the load and leave concept. This bill makes it clear software, loaded onto a computer, is no longer taxable. **Mr. Chakarun** said in determining the fiscal note, the ISTC looked at potential sales tax impact only and did not take into consideration other possible economic activity.

**Mr. Chakarun** deferred to **McLean Russell**, ISTC, who responded to a question stating sales involving a license, lease or subscription are rentals and require a use tax. Leases, rentals and sales of tangible personal property are taxable in Idaho.

**Mr. Larsen** closed his presentation saying this legislation is intended to exempt entertainment from the sales tax exclusion. It's uncertain where things might be in five to ten years, but we do know where we are right now. Most applications, or apps as they are referred to, are primarily used for entertainment and will still be taxed. This bill aligns services, as being tax exempt, with existing statutes. It also aligns Idaho with the 17 other states that exempt remotely accessed software, from sales tax.

**MOTION:** **Rep. Burgoyne** made a motion to send **H 598** to the floor with a **DO PASS** recommendation. A roll call vote was requested. The **motion carried** by a vote of **14 AYE, 2 NAY, 0 Absent/Excused. Voting in favor** of the motion: **Reps. Collins, Barrett, Moyle, Raybould, Denney, Anderson(31) Anderst, Dayley, Hartgen, Kauffman, Trujillo, Agidius, Burgoyne, Erpelding. Voting in opposition** to the motion: **Reps. Wood(35), Meline. Rep. Moyle** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 9:45 am.

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Representative Collins  
Chair

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Kathleen A. Simko  
Secretary