

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

- DATE:** Thursday, March 20, 2014
- TIME:** 8:00 A.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** called the meeting of the Local Government and Taxation Committee (Committee) to order at 8:04 a.m.
- PRESENTATION:** **Chairman Siddoway** welcomed the Committee Page, Rebecca Swanson of Rigby, to the podium for a presentation. **Chairman Siddoway** asked Ms. Swanson to share her Senate experience with the Committee. **Ms. Swanson** said she has loved it here, and she is sad it is ending. She said it has been neat to see first hand the entire process, and she has gained a better appreciation for how government works. She said while she's been here, she's learned how to be patient and how to work very hard. She said she appreciates that the Senators are "regular people" with whom she can converse.
- Chairman Siddoway** asked about her plans when she leaves the Senate. **Ms. Swanson** said she will graduate high school in May and then will go to Europe for a couple of weeks as a senior trip, then she will return home, work for the summer and go to college in the fall. She has several offers and hasn't yet decided which school she'll attend, but she plans to study education with a focus in elementary or special education, along with French. **Senator Werk** asked where in Europe she would visit, and she said Wales, England, and Scotland. **Senator Werk** asked, why not France. **Ms. Swanson** said she really wants to go, and her dad is a French teacher and has been to France several times and hasn't taken her there yet. **Chairman Siddoway** asked how many members of her family have been Senate Pages. **Ms. Swanson** said two older sisters, an older brother and a brother-in-law who have all been pages. She said she has another little brother who will be here in about four years.
- Chairman Siddoway** said the Committee has certainly appreciated Ms. Swanson's assistance during the session, especially helping Secretary Christy Stansell. He presented her with a letter of recommendation, a letter from the Committee and a Senate watch.
- MINUTES:** Chairman Siddoway called for the review of Minutes from previous Committee Meetings, noting that the Minutes of March 11, 2014 were not on the agenda but were also ready for consideration.
- MOTION:** **Senator Bayer** moved, seconded by **Senator Werk**, to approve the Minutes of February 19, 2014. The motion carried by **voice vote**.
- PASS THE GAVEL:** Chairman Siddoway passed the gavel to Vice Chairman Rice.

MOTION: **Chairman Siddoway** moved, seconded by **Senator McKenzie**, to approve the Minutes of March 11, 2014. The motion carried by **voice vote**.

PASS THE GAVEL: Vice Chairman Rice returned the gavel to Chairman Siddoway.

HCR 61 **Chairman Siddoway** stated that **HCR 61** is the resolution for the rule the Committee took action to reject yesterday. It relates to Rule 205 in the pending rules of **Docket No. 35-0103-1302**.

MOTION: **Senator Werk** moved, seconded by **Senator Bayer**, to send **HCR 61** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 600 **Chairman Siddoway** welcomed Michael Chakarun, Tax Policy Manager with the Idaho State Tax Commission (Commission), to present **H 600** relating to income taxes and bonus depreciation.

Mr. Chakarun said the American Taxpayer Relief Act of 2012, signed into law in January 2013 (Public Law 112-240), extended bonus depreciation for 2013. That is from Section 168(k) of the Internal Revenue Code. **Mr. Chakarun** said the conformity bill decoupled Idaho from bonus depreciation only through 2012.

Mr. Chakarun offered some background. He said since the addition of bonus depreciation to the Internal Revenue Code in 2002, Idaho has conformed and allowed this deduction on Idaho income tax returns for only two years, 2008 and 2009. He said to continue Idaho's standing practice of not conforming to bonus depreciation, **HB 600** amends Idaho Code § 63-3022(O) by adding language to state that for tax years beginning after December 31, 2009, Idaho will not conform to bonus depreciation.

Mr. Chakarun said making this change will avoid an annual update to the statute each time Congress extends bonus depreciation, which it has done at least five times since 2002. He said the bill also removes the references to two federal tax statutes enacted by Congress in 2010 as these references will no longer be needed. He said that means Idaho permanently decouples from bonus depreciation, unless the Legislature affirmatively wants to instate it for a future year.

Senator Hill said it seems this has to do with the gain or loss of the sale of property after 2009. He said he doesn't see the bill talking about the deduction for the bonus depreciation, and he asked if that is already covered or implied in this legislation, or if this bill isn't passed there is no deduction for bonus depreciation which would mean the seller doesn't get the higher basis when the property is sold. **Mr. Chakarun** said the Commission has mirrored the language that it used for decoupling prior to 2008. He said when bonus depreciation is taken into account, the depreciation will be based on regular modified accelerated cost recovery. He said the idea is to make sure the taxpayer reduces the basis by the regular depreciation, not by any bonus depreciation, for those years that Idaho does not conform with federal code. **Senator Hill** asked if this works. **Mr. Chakarun** said yes.

Senator Vick asked for a brief history lesson as this is an issue that seems to have been decided before he came to the Legislature. He asked why Idaho decoupled from this portion of the Federal Tax Code. **Mr. Chakarun** answered that Idaho decoupled because the fiscal effect has been so large on the State of Idaho. He said before Idaho decided to decouple from bonus depreciation for tax years beginning and after 2009, there was a \$10 million negative fiscal note for that year, and the next year was about a \$6 million or \$9 million fiscal note. He said the numbers are substantial. He said if Idaho did not make this change and instead conformed with bonus depreciation this year, the fiscal effect to Idaho would be an \$18.5 million reduction in General Fund revenue for FY 2015.

Vice Chairman Rice asked if the federal government tends to renew this every year, why this bill hasn't been brought forward in this session sooner. **Mr. Chakrun** said the 2013 extension was done last year in the fiscal cliff bill that was passed in January. He said the Commission probably should have done this at that time, but it was preoccupied with issues and "quite frankly, we missed it." He said for more background on bonus depreciation, it was enacted following the terrorist attacks of 2001 because Congress was worried there would be a negative economic impact. He said the government wanted to make sure people would still buy machines and equipment. He said it would sunset and then reinstate, sunset and reinstate.

Senator Hill moved, seconded by **Senator Lacey**, to send **H 600** to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 593

Chairman Siddoway welcomed Representative Lance Clow to the podium to present **H 593**, relating to funds and the sales tax. **Representative Clow** said this bill establishes a Tax Relief Fund. He said it is modeled after a concept being used in other states, including Utah. He said this will be the place for funds that may come from the Marketplace Fairness Act if and when it is passed by Congress. He said that money would accumulate in this fund to be distributed at the discretion of the Legislature, as it sees fit "for tax relief rather than the growth of government." He noted there is no particular tax relief item in mind at this point.

Representative Clow said he met with many stakeholders and interested parties and they discussed that this fund is a form of "fiscal flexibility" which means it could be used for property tax relief, sales tax relief, grocery tax relief, income tax relief, or whatever option may be necessary at that time. He said right now, he knows of no money that is qualified to come in for this account. He said there are no use taxes being remitted on tax returns, nor are there random tax checks coming in to the Commission from retailers around the country. He said the fund is designed to implement the Marketplace Fairness Act concept.

Representative Clow stated that retailers with nexus and physical presence in the State are required to collect sales tax and remit it to the Commission; however, retailers who do not have a nexus in the State are not required to collect those taxes. He said it is the responsibility of those that make those purchase to remit that tax on their income tax returns, but most people do not pay attention to that line, and there is not a lot of money being collected at this time. He said that line item is not intended for that money to go into this account.

Representative Clow said many people may ask when and what money will come in. He said the U.S. Senate passed the Marketplace Fairness Act bill, and it is now in the U.S. House, where hearings have been started. He said one agreement that has been made in Congress is that from a federal standpoint, sales taxes from remote sellers are not a new tax. He said remote sellers are not just internet sales but could also be direct marketing, direct mail or telephone solicitation. He said they are looking at simplification issues. **Representative Clow** said the U.S. House could pass the Act before the end of the year, but after elections.

He said if that bill does pass and Idaho has not done anything to simplify its tax laws to comply with the U.S. Senate version, there is potential that some retailers around the country might start remitting tax to Idaho, and this fund would be a place to put it. He said if Idaho were to conform to federal simplified provisions, Idaho could see larger amounts of money coming in, but at this time, there is no money coming to this account. **Representative Clow** said he wants to have it available in case the federal government were to take action before the next legislative session.

Representative Clow pointed out language in **H 593** that would need to be amended. He said he inquired with the Commission on how the monies would flow through the General Fund and he said his question was not as well-worded or he misinterpreted the answer, so there is a suggested amendment to fix that misunderstanding. He said on page 5 line 37 following the word "tax" there will be an insertion of "less amounts otherwise distributed in Subsections 1 through 10 of this Subsection." He said it was never the intention of this bill to take funds that might otherwise go to cities, counties, and other funds. He said this amendment would fix the bill.

Senator Johnson commented that there are parts of the bill he likes and parts he doesn't like. He said he will support sending it to the Amending Order. He said he is concerned about putting funds there for future tax relief.

Chairman Siddoway asked if the money that is voluntarily remitted on returns from sales, which he understands is about \$1 million to \$3 million, does not go to this fund. **Representative Clow** answered it is correct that monies that are filed on tax returns absolutely are not directed to this fund. He said those are use taxes that go to the General Fund as they always have. He said there is a reference to voluntary remittances, which this bill would provide for, but there are none at this time. He said there is an estimate that if Idaho were to simplify code and align and join with a national coalition group called Streamlined Sales Tax Governing Board (Board), there may be as much \$1 million to \$3 million that national retailers without nexus in Idaho might start remitting. He said only about half of that might be new money though, because some retailers might be doing it out of convenience rather than directly as new money. He said he doesn't see a big change until Idaho simplifies and the federal law passes.

Chairman Siddoway asked for an explanation of what all is entailed in joining that Board. **Representative Clow** said the Board has been discussed for several years. He said it is a coalition of 24 states who have joined together to simplify their tax code. He said the Board is mostly working on definitions, like with "sourcing" - where does the sale actually occur, at the point of sale or the point of purchase. He said some items need to be aligned and simplified. He said part of the federal legislation being discussed about simplification says that if a state is part of the Board, it automatically has met all of the simplification requirements.

Representative Clow said it doesn't mean Idaho couldn't potentially do that on its own, but it does make it a lot easier, especially in a state of this size, rather than reinvent the wheel. He said Idaho has attended the Board in an advisory role and not as a voting member. **Representative Clow** said he personally attended the Board's meeting last year and found it quite interesting. He gave examples of some definitions. He said Idaho taxes food, and some people like that, while some people don't. He said other states don't tax food, but they tax candy, so the determination at the grocery check out line is what is candy and what isn't. He said the Board defines what candy is so all 24 states treat it the same. He said the Board doesn't dictate whether a state has to tax candy or what to tax or not to tax. He said he doesn't see anything that would indicate joining the Board would generate additional tax or reduce tax, nor would it affect Idaho's ability to exempt things. He said states retain sovereignty over what is taxed and how it is taxed.

Chairman Siddoway welcomed John Watts of the Idaho Chamber Alliance to the podium. **Mr. Watts** spoke in favor of the bill, saying he believes it is the first step in the right direction toward fairness.

MOTION:

Senator Werk moved, seconded by **Vice Chairman Rice**, to send **H 593** to the 14th Order for possible amendment. The motion carried by **voice vote**.

Chairman Siddoway thanked the Committee for their work this session, as well as all those who participated and provided testimony to move legislation along.

CONVENED: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:31 p.m.

Senator Siddoway
Chair

Christy Stansell
Secretary