

Report to Governor C.L. "Butch" Otter

FINDINGS OF THE IDAHO TAX COMMISSION STUDY TASK FORCE

EXECUTIVE ORDER NO. 2014-06

Executive summary:

1. The Tax Commission Study Task Force finds that present state law is adequate to provide direction to the Tax Commission and other state agencies on the conduct of "Negotiated Rule Making".
2. The Task Force concludes that to accomplish "Best Management Practices" the Tax Commission should appoint a "Director of Revenue" to administer the day to day operation of the Department of Revenue and Taxation.
3. The Task Force believes that with a person relieving the tax commissioners of their administrative duties they will have the time to function as the Board of Tax Appeals which the Task Force finds aligns with the commission's constitutional mandate.
4. The Task Force recommends that the Department of Revenue and their audit and collection staff have their own legal representation. The Tax Commission should have separate legal council.

Discussion:

1. Negotiated Rule Making. The Task Force expressed consensus that creating clarification on processes and addressing expectations and interpretations would improve the rule making process. It appears that the name implies that any party can "negotiate" to alter the final product of the rule making process. The reality is that anyone that signs up to participate in the rule making process may offer input to the rule but the executive branch has the sole responsible for the content of a proposed rule.

The Tax Commission has put tremendous effort into becoming user friendly regarding the negotiated rule making process. The Task Force recommends that the commission refine its communications with affected industry prior to rule making and advocates that the commission maintain a record of negotiation comments for public and legislative information.

The Task Force reviewed a flow chart of the negotiated rule making process and concluded that if followed, everyone involved may not be happy at the end of the process but they will know that they have been given the opportunity to participate.

2. Administrative realignment. The present Tax Commission has been diligent in restructuring the operations of the Department. The Task Force heard testimony from the revenue departments of South Carolina, Arizona and Utah. In addition we surveyed Wyoming, Washington, Oregon,

New Mexico, Nevada, Montana, Colorado and California. All states surveyed use a "Director" to administer the personnel and daily operations of their respective departments of revenue. In fact the Task Force is not aware of any state using a commission or board to manage their revenue department.

There are a variety of ways that the "Director" is appointed. The Task Force agrees that for Idaho, the "Director" should be a professional appointed by the Tax Commission with the consent of the Governor. This is the Utah model. The "Director" is the central authority for the operation of the department. The Task Force discussed the nature of the appointment for the director without coming to a firm recommendation. The director could only be removed from the position for just cause.

Experience from other states has demonstrated that when the director is a direct appointment from the Governor, the Governor may attempt to influence the action of the department. This may be acceptable in some state agencies but in the realm of taxation, it is not.

The Tax Commission continues as the constitutional politically appointed body charged with overseeing the work of the director, hearing appeals, and interfacing with the legislature and Governor on tax policy including rules proposed by the commission.

3. Board of Tax Appeals. The Board of Tax Appeals was created in 1969 to provide an independent body to hear tax appeals, primarily about property taxes. At the time it was argued that a taxpayer had to go before the same body that had originally denied their claim when they filed an appeal.

By creating an administrative position to direct the operation of the Department of Revenue, it takes away that argument and frees the Tax Commissioners to exercise their constitutional responsibility to act as a quasi-judicial body to resolve contested issues between the taxpayer and the Department. This eliminates the need for the Board of Tax Appeals.

The Task Force understands that this change may be a political hard sell and in reality can only take place after the administrative function of day to day operation of the Department has been removed from the tax commissioners.

4. Council to the Tax Commission and Director of the Department of Revenue and Taxation. The task Force finds an inherent conflict when the same council that advises the Department's audit and collection staff also advises the Tax Commission when they sit as a hearing board on tax appeals. We strongly recommend that separate council be provided to the administrative function of the Department of Revenue and Taxation and the Tax Commission.

Due to time constraints, the Task Force did not examine the financial implications of the proposed changes. However, the savings gained by eliminating the Board of Tax Appeals should go along ways in offsetting the additional costs of a Director for the Department.

Dennis M. Lake, Chairman
Idaho Tax Commission Study Task Force