

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 15, 2015

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Johnson, Senators Vick, Guthrie, and Burgoyne

ABSENT/ EXCUSED: Senators McKenzie, Rice, Bayer, and Werk

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 3:02 p.m. He noted that other committee meetings prevented the excused Senators from attending.

SECRETARY AND PAGE INTRODUCTION: **Chairman Siddoway** introduced the Committee secretary, Mandy McLennan, and read her biography. He then invited the Committee page, Haley Fronk, to the podium and asked her to tell the Committee about herself.

PASSED THE GAVEL: Chairman Siddoway passed the gavel to Vice Chairman Johnson

RULES REVIEW ASSIGNMENTS: **Vice Chairman Johnson** went over the 2015 rules assignments.

PASSED THE GAVEL: **Vice Chairman Johnson** returned the gavel to **Chairman Siddoway**.

PRESENTATION: **Chairman Siddoway** introduced Steven Wallace, Director of the Idaho Board of Tax Appeals (Board).

Mr. Wallace introduced himself along with David Kinghorn, Chairman of the Board. He also introduced the other members of the Board that were unable to attend.

Mr. Wallace explained that the Board is an independent tax tribunal of three citizen Board members. The Board was statutorily created and hears tax appeals at an appellate level. The Board hears contested cases in accordance with Idaho's Administrative Procedures Act, thereby ensuring due process safeguards. He continued to explain that in its public service the Board strives to provide taxpayers a fair and convenient avenue to question and challenge tax assessments. In this service they are fully independent of the State Tax Commission (Commission) and Idaho's 44 counties. They are involved in the day to day business of administering Idaho's tax laws. The Board handles no money and operates solely to resolve disputed tax matters.

Mr. Wallace spoke on the backgrounds of the Board members and how this creates a balanced board. Each member has a different background. There are no strong duplicates such as two attorneys, or two assessors, or three new members. The members also have a good geographical dispersion. A balanced Board helps ensure that cases are fully considered.

By law, members of the Board must have "knowledge of and expertise in taxation". By legislative design the Board is intended to be a specialized tax tribunal. This works well in trying routine tax cases as well as the large or complex cases.

Mr. Wallace stated that including his position, the Board is supported by five full time staff. All the staff works from the Board's Boise office which is located off Americana Boulevard near the Boise River. Most of the staff positions focus heavily on assisting the Board with hearings and deciding hundreds of appeals annually. The Board members and staff hearing officers receive judicial training in-house and through outside organizations like the National Judicial College in Reno, Nevada.

Mr. Wallace reported that the best balance between the staff and the Board members is about a 50/50 split. The members sit for about 50 percent of the hearings, and staff hearing officers sit for the other 50 percent. Both the traveling hearing officers and all the Board members are well-seasoned and able to go anywhere and hear any type of case. This allows them to regularly assign fresh judges.

Mr. Wallace proceeded to outline what the Board's jurisdiction processes are by first explaining the subject matter jurisdiction. The Board's present jurisdiction takes in locally assessed property assessments (80-90 percent of total appeals), income tax, sales and use tax, and circuit breaker benefits. The Board does not presently have jurisdiction to hear appeals of centrally assessed property like a utility or transportation property, nor does the Board hear tax disputes on corporate income taxes or sales and use tax where the amount exceeds \$25,000.

Next, **Mr. Wallace** addressed hearings. He cited that in about 80 percent of the time a single Board representative participates at the hearing stage. In other instances there may be two or three representatives from the Board. Regardless of who presides at the hearing, the hearing officer's recommended decision must gain the signatures of at least two Board members to become a final decision.

A typical hearing lasts from one to two hours and is held at a county courthouse. The Board almost always travels to a location near the taxpayer for the hearing. There might be a total of three to six people participating. This is what most tax appeals need for the parties to tell their story and present their evidence. A larger hearing can be very trial like and take all day or multiple days, with attorneys on both sides and expert witnesses of a national caliber. A small case might involve a couple hundred dollars; while a larger case might involve tens of thousands of dollars.

Mr. Wallace reported that the Board's current flexibility has helped them handle a wide case load over the years. In years where the appeal numbers are high they might take on extra resources to match the workload, seeking a supplemental budget appropriation. In lower volume years, such as the last couple years, they have been able to revert extra personnel funds back to the General Fund.

Mr. Wallace commented on the Board's judicial function and its place within Idaho's tax appeal system. He referred the Committee to the first page of the handout material where there is a flow chart titled Idaho Appeals System. He said this summary illustrates the appeal steps for a local ad valorem assessment, which is the most common appeal type. The steps and processes, though not the same, are nonetheless comparable for an appeal of a Commission decision. Before a locally assessed property taxpayer can appeal to the Board, they must first bring their dispute before the County Board of Equalization (BOE). This is the first official step in the appeal process. The BOE process ends up resolving about 90-95 percent of the initial protests. The BOE is a relatively informal proceeding with some significant time constraints. After receiving a notice of decision from the BOE, an appeal may be brought either to the Board, or to the district court, within 30 days. Over 99 percent of taxpayers elect to bring their appeal to the Board. Following

the issuance of a decision by the Board, an appeal may be brought to the district court within 28 days. It is estimated less than 2 percent of Board decisions are further appealed to the district court. It often takes a district court one to two years to process a tax appeal. In contrast, the Board is able to complete appeals within approximately six months.

Mr. Wallace explained that appeals and decisions are filed in two manners. An appeal of a BOE decision to the Board must be filed locally with the County Clerk/Auditor within 30 days. They have a one-page appeal form that is popular with appellants, or the appeal may be filed in the legal pleading style. Together with other materials, the Auditor transmits the appeal to the Board within 30 days. An appeal from a decision of the Tax Commission is direct-filed with the Board within 91 days, but must be preceded by a prepayment/deposit of 20 percent of the amount asserted by the Commission. The deposit is paid to the Commission and a receipt is then typically attached to the notice of appeal filed with the Board. Once an appeal reaches the Board, it is docketed, acknowledged and a case file is created. At this early stage a large number of paths can lead to the final disposition. But in the standard case an evidentiary hearing will be held where the record will be made. From the record, and based on the record only, the Board may then pursue decision-making. The Board renders a decision with factual findings and legal conclusions stated. Most of the Board's decisions are on their website. A party may seek reconsideration or rehearing from a final decision within ten days. A final decision may be appealed to the district court within 28 days.

Mr. Wallace then outlined deadlines. In ad valorem cases, the Board must issue a final decision by May 1 of each year. This is a few weeks prior to the time in which the New Year's assessment must be finalized. This helps county personnel and offices, as well as taxpayers, to avoid automatic follow-up appeals in the subsequent tax year. A more recent fixed-value law also reduces the number of repeat appeals and gives parties a chance to cool off and retool their cases. In Commission cases there is no statutory deadline. In these cases the Board seeks to rule in these appeals within 6 months after the appeal is filed, or within 90-120 days after hearing.

Mr. Wallace discussed ad valorem case dispositions. He said that these results swing from year to year, or for instance from one area to another, for a variety of reasons. One reason may be new tax legislation. Tweaks to the tax code may reduce appeals, while larger changes tend to increase appeals. Even with the shortcomings inherent in these statistics, they are nonetheless telling when taken on the whole. It would probably take a three-year compilation of results to indicate a truer central tendency.

In conclusion, **Mr. Wallace** stated that he believed the results showed that the Board is being fair, open-minded, and doing something quite worthwhile for taxpayers and government within Idaho's overall tax system. The Board can be thought of as one of the safety nets underlying taxation in Idaho. He said the taxpayers are clearly getting heard by an impartial tribunal. He reported that the Board is working well at this time, and a manageable case load and the support this Committee contributed to its success.

Senator Guthrie asked about the anomaly (see attachment) in 2006 Bonner County and in 2011 in Twin Falls County. He assumed there were common reasons for the spikes, and asked what is done when a spike is seen. **Mr. Wallace** explained what may have contributed and how they made adjustments. Twin Falls was different, and they were not able to do as much in that county.

Senator Guthrie asked another question regarding the variance in number of appeals in 2013 and the number of decisions made. **Mr. Wallace** explained how surprising it is that many parties withdrawal, settle, cases get dismissed, or parties didn't show up at hearing. Sometimes the difference is 50 percent.

Senator Vick asked about the breakdown pie chart difference between counties. Southwest Idaho and the other two areas of the State are very different. Why is Southwest Idaho so different from the other two? **Mr. Wallace** explained what may be happening between different counties.

Senator Burgoyne asked if the Board adheres to its own precedents. **Mr. Wallace** explained how the Board hears every case new and that they have chosen not to set precedents.

Senator Burgoyne asked about the Board's fact finding. **Mr. Wallace** explained, and gave an example of a case that comes before the Board on a regular basis. **Senator Burgoyne** expressed additional concerns about contested case procedures.

Senator Guthrie commented on the pie chart anomaly. **Mr. Wallace** explained how the large counties got very sophisticated in how they managed cases. The smaller the sample size, the more likely these numbers don't make sense. He suspects that in Ada County they might prevail 90 percent of the time because offices are well funded, staffed and experienced.

Chairman Siddoway asked about what happens when an appeal is reversed and if that caused an adversarial situation between the Board and the county commissioners. **Mr. Wallace** replied that a difficult part of their business is that there will always be winners and losers. There's not always an opportunity with the parties to explain, but the Board has redoubled its efforts to do more public relations. **Chairman Siddoway** asked if there is an opportunity for the Board to communicate with the county commissioners. **Mr. Wallace** indicated they are reaching out, and he has the time to do much of this. He mentioned that Mr. Kinghorn and he have several meetings set up that create an opportunity to visit with different groups in order to reach out.

Senator Burgoyne asked what the reversal rate is. **Mr. Wallace** did not have a firm percentage, but gave instances and estimates of 25 percent or less.

Senator Siddoway recognized Commissioner Tom Katsilometes from the Commission in the audience. **Chairman Siddoway** extended his appreciation to both Mr. Wallace and Mr. Kinghorn for coming and giving their presentation and announced the Committee schedule for the next week.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:08 p.m.

Senator Siddoway
Chair

Amanda McLennan
Secretary