

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 21, 2015

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Johnson, Senators McKenzie, Rice, Vick, Bayer, and Guthrie

ABSENT/ EXCUSED: Senators Werk, and Burgoyne

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 3:01 p.m.

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

MINUTES: Vice Chairman Johnson introduced Cynthia Adrian, tax policy specialist with the Idaho Tax Commission (Commission).

DOCKET NO 35-0101-1401: **Ms. Adrian** presented Rule 560 which is being amended to be consistent with the language from the multi state Tax Commission.

Ms. Adrian presented Rule 750 and reported that the change to this rule had to do with giving guidance to taxpayers regarding the carryover of the broadband tax credit. She said they had a tax payer inquire how the 14 year carryover period works. The Tax Commission thought it would be good to put it in a rule so that everybody could understand how the carryover works. **Chairman Siddoway** inquired as to whether or not this rule changed anything. **Ms. Adrian** replied that it did not; it served as additional information and an example.

MOTION: **Senator Vick** moved to approve **Docket No. 35-0101-1401**. **Chairman Siddoway** second the motion. The motion carried by **voice vote**.

DOCKET NO 35-0101-1402: **Ms. Adrian** presented Rule 268. It is meant to give guidance to part-year and non-resident tax payers regarding suspended losses from pass-through entities. There has not been any previous guidance. **Senator Vick** stated his concern for a need for a date on the Internal Revenue Code. He stated it would be helpful if the code had a date and requested for it to be included in the future if possible.

Ms. Adrian presented Rule 275. The change provides an example to part-year and non-resident tax payers who have income from a qualified investment partnership. If you have income from a qualified investment partnership, there are certain parts you can exclude. If a tax payer has income that would be taxable if they received it directly, then it's non-excludable. Previously there was not an example given that showed how that was handled.

MOTION: **Senator McKenzie** moved to approve **Docket No. 35-0101-1402**. **Senator Guthrie** second the motion. The motion carried by **voice vote**.

**DOCKET
NUMBER
35-0101-1403**

Ms. Adrian presented Rule 075 having to do with non negotiated rules which are required by statute. This rules is for tax brackets and is being amended to add the tax brackets for calendar year 2014 and remove the information for calendar year 2009 so only five years of historical data is retained in the rule.

Ms. Adrian presented Rule 190 that deals with the Idaho Medical Savings Account. It is being amended consistent with 2014 House Bill 595a to increase the maximum amount deductible from 2,000 to 10,000 for a single individual. **Senator Siddoway** inquired about the fiscal note attached to this deduction.

Ms. Adrian presented Rule 263 is a statutory change per Idaho code Section 63-3026A which tells about the guaranteed payments treated as compensation and says that it will be adjusted annually. **Senator Johnson** asked for clarification as to whether or not the adjustment stayed the same from 2013 to 2014. **Ms. Adrian** confirmed that his assumption was correct and that the 2013 amount is the same as 2014.

Ms. Adrian presented Rule 771 which is a grocery credit rule that adds an amount for 2014. It is \$100 taxable income of \$1,000 or less and \$90 for taxable income more than \$1,000.

Ms. Adrian presented Rule 872 and stated that this is being amended to change language from split monthly to semimonthly.

MOTION: **Senator Vick** moved to approve **Docket No. 35-0101-1403**. **Senator Bayer** second the motion. The motion carried by **voice vote**.

**DOCKET NO
35-0201-1401:** **Ms. Adrian** presented Rule 310 which is part of the non-negotiated rules and is an interest rate. This statute explains how it should be determined each year. For 2015 it is 4 percent.

Ms. Adrian presented Rule 501 which changes terminology.

MOTION: **Chairman Siddoway** moved to approve **Docket No. 35-0201-1401**. **Senator McKenzie** second the motion. The motion carried by **voice vote**.

Vice Chairman Johnson thanked Ms. Adrian and introduced McLean Russell, a tax policy specialist with the Tax Commission.

Vice Chairman Johnson invited McLean Russell to the podium and asked him to introduce himself.

**DOCKET NO
35-0102-1401:** **Mr. Russell** presented Rule 27 dealing with computer equipment, software, and data services. In response to HB 598, passed during the 2014 Legislative Session, this rule is being amended to clarify that software accessed remotely (i.e. cloud-based software) is not tangible personal property. In addition, software delivered electronically or by the load and leave method will no longer be tangible personal property. Finally, the rule clarifies that digital books, games, music, and movies are tangible personal property regardless of how they are transferred to the user. The Commission held public meetings on how to revise Rule 27. He reported that after all their discussions there are two major unresolved concerns.

Mr. Russell proceeded to review the first concern which is an exception for live broadcasts, television broadcasts, and cable broadcasts. Rule 27 makes clear that offerings like Netflix video streaming services are taxable.

A lengthy discussion ensued concerning the changes to Rule 27 in response to the significant changes to the law enacted by the passage of HB 598 last year.

Senators Rice, Vick, Bayer, Siddoway, and Johnson, submitted questions to Mr. McLean in efforts to clarify. **Senator Bayer** expressed a desire for further discussion of Rule 27 in order to have resolution to move forward and asked for the Committee's consideration of further dialog before proceeding on the voting of this rule.

Vice Chairman Johnson asked if there was anyone in the audience that would like to testify.

Jay Larsen with the Idaho Technology Counsel testified in response to the legislation.

Senators Vick, Chairman Siddoway, Guthrie, Bayer, and Rice questioned Mr. Larsen regarding streaming, fiscal impact, business incentives, Netflix date beginning to collect tax, change in tax policy, and internet delivery systems.

Senators Bayer, and Vick asked Mr. Russell additional questions concerning payment of use tax.

MOTION: **Chairman Siddoway** moved to hold **Docket No. 35-0102-1401** until a later date in the Session. **Senator Guthrie** second the motion. The motion carried by **voice vote**.

DOCKET NO 35-0102-1402: **Mr. Russell** presented Rule 22 having to deal with drop shipments. Nothing has changed in how drop shipment transactions are taxed, but the proposed changes should make it clearer to manufacturers, retailers, and customers what their responsibilities are related to sales or use tax.

MOTION: **Senator Rice** moved to approve **Docket No. 35-0102-1402**. **Chairman Siddoway** second the motion. The motion carried by **voice vote**.

DOCKET NO 35-0102-1403: **Mr. Russell** presented Rule 012 having to do with contractors improving real property. The change is to clarify what is covered by the out of state contract exemption and what is not. It clarifies the exemption only applies to materials.

Mr. Russell presented Rule 024 which deals with rentals or leases of tangible personal property. The changes are to clarify the original intent of only one lease type applying to a particular lease contract.

Mr. Russell presented Rule 102, which deals with logging. The changes clarify that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption, if the criteria of that exemption is met, but not the logging exemption. He cautioned that the Commission thought it would be prudent to go back to the drawing board on this rule to address the bigger picture of tree farms in the rules and requested the Committee vote to reject Rule 102.

Mr. Russell presented Rule 128 dealing with hotel and motel establishments accepting one of two exemption certificates when a guest stays from an exempt organization such as a governmental agency. This rule is being amended to require exempt organizations to use form ST-104-HM to claim an exemption on purchases of lodging accommodations. The forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed. The Commission will have the information needed to verify the exemption claim.

A lengthy discussion ensued with questions from **Senators Bayer, Guthrie, Rice, and Chairman Siddoway** to Mr. Russell on this rule.

MOTION: **Chairman Siddoway** moved to approve **Docket No. 35-0102-1403** with the exception of Rule 102 (logging rule) and Rule 128 (certificates for resale and exemption of claims) to be rejected. **Senator Guthrie** second the motion. The motion carried by **voice vote**.

Docket No. 35-0102-1404 is moved to January 28, 2015 meeting.

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

ADJOURNMENT: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:41 p.m.

Senator Siddoway
Chair

Amanda McLennan
Secretary