

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Wednesday, February 04, 2015

TIME: 9:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Collins, Vice Chairman Trujillo, Representatives Moyle, Raybould, Anderson, Anderst, Dayley, Hartgen, Kauffman, Chaney, Nate, Scott, Thompson, Erpelding, Nye, Rudolph

**ABSENT/
EXCUSED:** None

GUESTS: Michael Chakarun & McLean Russell, Idaho State Tax Commission; Bob Aldridge, Trust & Estate Professionals of Idaho, Inc.; Andrew Mitzel, Realtors; Dennis Stevenson, Rules Coordinator; Benjamin Davenport, Associated Taxpayers of Idaho; Ken McClure, Idaho Association of Certified Public Accountants; Jonathan Parker, Holland & Hart

Chairman Collins called the meeting to order at 9:00 A.M.

RS 23442: **Chairman Collins** presented **RS 23442** which is a Concurrent Resolution rejecting Section 102 and Section 128 of the Idaho Sales & Use Tax Administrative Rules contained in **Docket No. 35-0102-1403**. Rule 102 deals with sales tax for logging operations and Rule 128 pertains to lodging sales tax.

MOTION: **Rep. Raybould** made a motion to introduce **RS 23442** and recommend it be sent directly to the Second Reading Calendar. **Motion carried by voice vote.** **Chairman Collins** will sponsor the bill on the floor.

RS 23457: **Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc., described the composition of his organization and the involvement of a broad-based group of individuals along with the State Tax Commission who participated in the drafting of this legislative proposal.

He presented **RS 23457** dealing with the definitions of "real property" and "personal property" as it relates to the deduction of Capital Gains. "Real property" was defined as "land and other tangible property permanently affixed to the land" which was subject to varying interpretations and did not match federal law. This proposed legislation will clarify the definition of "real property" by including the following: (1) qualified conservation easements, (2) grazing permits or leases if it is transferred at the same time as transfer of the base property and (3) any other property conveyed in perpetuity as defined in "Section 1250 Property" of the Internal Revenue Code. That section of the code also requires that transfers of property must be conveyed in writing. **Mr. Aldridge** stated this will have little or no fiscal impact. It is requested that this proposal be made retroactive for all tax years beginning on or after January 1, 2010 in order to remove the need for, and costs of, such audits or appeals on existing open tax returns.

Rep. Raybould questioned the deletion on page 2 of "means the land and other tangible property permanently upon or affixed to the land" stating this deletion leaves a void and should be retained. He further noted he had no objections to any of the other additions to this proposal, just this one deletion. Responding to a question regarding the involvement of cattle industry landowners in these changes, **Mr. Aldridge** noted that one of the CPA's who participated in the drafting of this legislation represented the interest of many families with grazing rights and permits. Mr. Aldridge also explained the reasoning for making this retroactive to 2010 was at the request of the Tax Commission in order to settle relevant tax cases going through the appeals process.

MOTION: **Rep. Nye** made a motion to introduce **RS 23457**.

Rep. Raybould stated that although the intent of this proposal is good, he will be voting in opposition because of his earlier expressed concern that the deletion of the definition of real property on page 2 does not serve to make this an effective piece of legislation despite its good intentions.

ROLL CALL VOTE: **Chairman Collins** requested a roll call vote on **RS 23457**. **Motion carried by a vote of 10 AYE and 6 NAYE. Voting in favor of the motion: Reps. Collins, Trujillo, Anderson, Anderst, Kauffman, Chaney, Scott, Thompson, Nye and Rudolph. Voting in opposition to the motion: Reps. Moyle, Raybould, Dayley, Hartgen, Nate and Erpelding.**

RS 23458: **Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc., presented **RS 23458** related to the capital gains deduction when a partnership distributes property to another partner. Current Idaho Code creates a distinction between distributions to a partner who continues in the partnership versus a partner who is cutting ties and leaving the partnership. Under Idaho Code, an individual must hold real property for 12 months in order to qualify for the capital gain deduction. A continuing partner receiving a distribution, can "tack on" the amount of time the partnership held the property to determine if he has satisfied the 12-month holding requirement. On the other hand, a terminating partner who receives a distribution and leaves the partnership is not allowed to "tack on" the partnership holding period when calculating the same 12-month holding requirement. This proposal removes any distinction between distributions to an on-going partner versus a liquidating partner. In either case, the individual would be allowed to "tack on" the amount of time the partnership held the property for the purpose of satisfying the 12-month holding period.

MOTION: **Rep. Trujillo** made a motion to introduce **RS 23458**. **Motion carried by voice vote.**

RS 23459: **Robert Aldridge**, Trust & Estate Professionals of Idaho, Inc., presented **RS 23459** dealing with pass through entities and composite returns. One of the issues being addressed is if a non-resident is included in the composite return of an Idaho pass through entity, does that inclusion satisfy the requirement that the individual file an Idaho individual tax return. A number of stakeholders, including the Trust & Estate Professional of Idaho, the CPA society and others, have been effectively working with the State Commission on similar issues through negotiated rules. These stakeholders feel that the determination of this issue can be accomplished more easily through the rulemaking process rather than legislation and this proposal provides for the State Tax Commission to create such rules. **Rep. Moyle** commented he does not like to see the legislature cede its legislative authority.

MOTION: **Rep. Moyle** made a motion to return **RS 23459** to the sponsor.

Mr. Aldridge stated in response to a question, that using the rulemaking process allows temporary rules to be issued after input from all stakeholders. The rule is then ultimately put before the legislature who can reject or accept accordingly.

Rep. Nate also expressed concern about relinquishing legislative jurisdiction over these matters.

VOTE ON MOTION:

Chairman Collins called for a vote on the motion. **Motion carried by voice vote.**

H 77:

Michael Chakarun, Tax Policy Manager, Idaho State Tax Commission, presented **H 77** which is the annual bill to conform Idaho's income tax code to changes made to the federal Internal Revenue Code. This allows Idaho tax filers to use their federal return as a starting point for taxable income on their Idaho tax return. This legislation has a negative fiscal impact of \$17.7 million split between fiscal years 2015 and 2016 due to the extension of the Section 179 deduction and bonus depreciation.

Ken McClure, Idaho Society of Certified Public Accountants, spoke regarding the efforts of the ISCPA to find an alternative to this annual legislation. Unfortunately, a solution to the necessity of conforming the tax code each and every year did not come to fruition this session.

MOTION:

Rep. Thompson made a motion to send **H 77** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 9:44 A.M.

Representative Collins
Chair

Bev Bean
Secretary