

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, February 10, 2015

TIME: 3:00 P.M.

PLACE: Room WW53

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

ABSENT/ EXCUSED: Chairman Siddoway, Senators Rice 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: **Vice Chairman Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:05 p.m.

MINUTES: **Vice Chairman Johnson** called for the approval of the Minutes from January 28, 2015, and January 29, 2015.

MOTION: **Senator Burgoyne** moved to approve the Minutes of January 28, 2015. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

MOTION: **Vice Chairman Johnson** moved to approve the Minutes of January 29, 2015. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

RS 23327C1 **Senator Nuxoll** introduced **Ken Harvey**, from Orofino who presented **RS 23327C1**, relating to annexation. **Mr. Harvey** stated that the purpose of this draft was to amend Chapter 2, Title 50, of Idaho Code, and add a new section 50-221A. **Mr. Harvey** spoke about the existing legislation, how expensive it is for property owners to hire an attorney to fight the city on a disputed annexation, and reported that as of 2013, there were three states in the nation that allowed forced annexation. Those states are Indiana, Tennessee, and Idaho. He testified that in 2014, Tennessee did away with forced annexation, and now Indiana is currently looking at doing the same. **Mr. Harvey** told the Committee that there are 177 Idaho cities with less than 8,000 population. He reiterated that he speaks for every rural citizen who wants to exercise their constitutional right to vote on such an important issue as forced annexation.

Senator Burgoyne commented that although he doesn't suspect he will support this legislation, he believes that the supporters of it deserve to have it heard and therefore he will be voting to have it printed.

MOTION: **Senator Vick** moved to print **RS 23327C1**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

H 34 **Senator Burgoyne** presented **H 34**, relating to the Idaho Administrative Procedure Act. In 2013, Idaho law required that the Tax Commission (Commission) include in its notices of proposed rulemaking a description of negative fiscal impacts of more than \$10,000 to the General Fund and other funds. H 202 (2013) did not change that requirement but added the requirement that the Commission include in its proposed rule making notices a description of positive fiscal impacts as well. The purpose of this changes was to ensure that the public and the Legislature would know if a proposed rule had the effect of raising more than \$10,000 in additional revenue. At the request of the Commission, H 202 had a two year sunset clause taking effect on June 30, 2015. Now that the Commission has had experience with H 202, it does not object to the removal of the sunset clause, and this bill's sole provision is to repeal it.

Vice Chairman Johnson asked if the purpose of this act in its entirety is to repeal the provision. **Senator Burgoyne** clarified that **H 34** is the repealer, and H 202, from the 2013 Session, contains the sunset clause that will have no action taken.

MOTION: **Senator McKenzie** moved to approve **H 34** with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 10 **Cynthia Adrian**, Idaho State Tax Commission Tax Policy Specialist, presented **H 10**, relating to publications. **H 10** modifies Idaho Code § 63-3039 to reflect current practice. Idaho Code § 63-3039 requires the Commission to publish the Income Tax Act, amendments to the Act, and rules in effect in pamphlet form. Requirements also provide for the sale of the pamphlet at a price not to exceed the cost of printing plus the actual cost of postage and handling. The Commission has not published the pamphlet in paper form for many years. The Income Tax Act and related rules are available to the public via the internet at no cost. This makes the requirement to publish paper documents no longer necessary. This bill amends the statute to reflect current practice. If someone doesn't have Internet service and requests a copy, it will be provided.

Senator Burgoyne asked what the cost was avoided by not printing these materials. **Ms. Adrian** replied that since this had not been published for many years she didn't have a number to share. **Senator Bayer** asked if given the current provisions those practices within recent years matched up with current statutory provisions. **Ms. Adrian** stated that the current practice of the Commission was that they do not print anything, and if there is someone that does not have internet access the Commission will print it and send it to the taxpayer at a small price. She reported that she didn't believe the Commission's current practices were in sync with statutory requirements, and that was why this bill was being presented. **Senator Vick** asked how the Commission went about the process of deciding not to print and what the ramifications might be if the Commission was no longer following the law. **Ms. Adrian** replied she did not know the answer but reiterated what the Commission was asking for in order to comply with the law.

MOTION: **Senator Guthrie** moved to approve **H 10** with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 11 **Michael Chakarun**, Idaho State Tax Commission Tax Policy Manager, presented **H 11**, relating to a sales tax tech correction. **H 11** makes a technical correction to the Sales Tax Act. In § 63-3622J it provides an exemption from sales tax for the sale of nutritional meals provided by programs to senior citizens under the federal Older Americans Act. The current reference to this Act is incorrect and no longer valid. This bill updates § 63-3622J to provide the proper cross reference to Title III of the Older Americans Act, PL 109-365. This change does not affect the underlying program, and the bill has no fiscal effect.

MOTION: **Senator Bayer** moved to approve **H 11** with a **do pass** recommendation. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

H 12 **McLean Russell**, Idaho State Tax Commission Tax Policy Specialist, presented **H 12**, pro-taxpayer legislation intended to correct an irregularity in the Sales Tax Act relating to sales of certain off-highway vehicles to non-residents. Under current law, if a dealer in Idaho sells an ATV to a nonresident and the nonresident takes the ATV to another state where they are required to provide licenses, register, and title to the ATV, the dealer was not required to collect sales tax on the transaction. Sales of most other off-road vehicles receive the same exemption. However, if that vehicle is a UTV or a specialty off-highway vehicle, then sales tax owed on that transaction because they were not exempt by statute. This odd line has been confusing for dealers to administer and purchasers to understand. For the dealer, there's the additional problem that they are held liable if they do not collect sales tax on a taxable sale of a UTV to a nonresident. No policy reason exists for the different tax treatment. **H 12** would treat UTVs and SOHVs the same as ATVs and other off-road vehicles. The fiscal note is a negative \$200,000 impact to the General Fund.

Senator Burgoyne wondered if the fiscal impact might be less. He asked when sales tax was due in the other state, if there was some sort of credit back arrangement against the Idaho sales tax between the states or not. **Mr. Russell** replied that there was no such arrangement.

Vice Chairman Johnson asked if the owner was required to keep the vehicle in the state that it was titled in for a minimum number of days before bringing it back to Idaho and titling it in Idaho. **Mr. McLean** replied that the new resident exemption would apply as long it has been 90 days, pending investigation by the Commission.

MOTION: **Senator Vick** moved to approve **H 12** with a **do pass** recommendation. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

H 13 **Cynthia Adrian** presented **H 13**, relating to claim of right. **HB 13** was beneficial to the taxpayer and modifies Idaho Code § 63-3022F and adds § 63-3029F to allow a refundable credit for claim of right income repayment. A claim of right is when a taxpayer reported income as being taxable in one year, but then has to repay it back in a future tax year. **Ms. Adrian** gave an example of a person that received disability insurance payments that are taxable while contesting a denial of a Social Security disability claim. The taxpayer included the disability insurance payments as income in the year received. If the taxpayer prevails with Social Security and receives a retroactive payment from Social Security in a subsequent year, he would then repay the insurance company for the disability payments received in a prior year. The Social Security income the taxpayer received was not included in Idaho taxable income, but the taxpayer has already paid tax on the disability insurance payments he received in the earlier year and had to repay. In this situation, the taxpayer can take a federal deduction for the amount repaid. Current Idaho statute allows for a deduction when a federal deduction was taken, but in some situations the taxpayer may not have Idaho taxable income in the year of repayment to use the deduction. The result is payment of tax on benefits that were repaid. This bill allows for a refundable credit for the difference between the Idaho state income tax liability for the year the income was included in taxable income and the Idaho state income tax that would have been paid had the income not been included in taxable income.

MOTION: **Senator Burgoyne** moved to approve **H 13** with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 36

Cynthia Adrian presented **H 36**, relating to retirement benefits. **H 36** modifies Idaho Code § 63-3022A to expand the retirement benefits deduction to include workers covered under the Foreign Service Retirement and Disability System (FSRDS) as well as employees receiving benefits under the offset programs for the Civil Service Retirement System (CSRS) and the Foreign Service Retirement and Disability System. CSRS was a specific retirement plan that exempted the participants from paying FICA taxes. When § 63-3022A was added to Idaho Code, Civil Service Retirement members were allowed the retirement benefits deduction. This put those retirees on the same footing as individuals who receive Social Security benefits. There was also a retirement plan for Foreign Service employees, the Foreign Service Retirement and Disability System (FSRDS), that operated similarly to the CSRS plan. The similarity was that these employees did not pay into social security. Employees have been excluded from claiming the Idaho retirement benefits deduction, making those benefits taxable. Idaho Code § 63-3022A specifically allows the retirement benefits deduction to retired civil service employees and not employees covered under FSRDS. This bill modifies Idaho Code § 63-3022A to allow the deduction to these employees as well if they were not covered under Social Security. It clarifies who does and does not qualify. The bill modifies the code to allow the deduction to employees receiving retirement benefits from the offset programs of both of these systems.

MOTION:

Senator Burgoyne moved to approve **H 36** with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

H 37

Tom Shaner, Idaho State Tax Commission Tax Policy Specialist, presented **H 37** relating to charitable contribution and net operating loss. **H 37** corrects an inequity in which some taxpayers find themselves. This applies to both individuals and corporations. On federal income tax returns, charitable contributions are limited to a percentage of federal taxable income. The excess is carried over for up to five years. The charitable contribution limitations and carryover rules are more restrictive than the net operating loss rules. If the taxpayer is in a net operating loss situation and therefore unable to use some of their contributions because of the limitations, the excess contributions are converted to net operating loss on the federal return. Under current Idaho law, the subsequent year the contributions carryover is reduced by the amount that was converted to net operating loss. Idaho does not use the federal net operating loss. Without this bill that amount of converted contribution is lost for Idaho income tax purposes. This bill allows the taxpayer to take a deduction in the amount of converted contributions. The fiscal impact was estimated to be a loss to the General Fund of \$25,000. There is an emergency clause that would allow an effective date of January 1, 2014, so taxpayers can use this in the current filing season.

MOTION:

Senator Guthrie moved to approve **H 37** with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Vice Chairman Johnson** adjourned the meeting at 3:40 p.m.

Senator Siddoway
Chair

Amanda McLennan
Secretary