

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Tuesday, March 03, 2015

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

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

**ABSENT/ EXCUSED:** All present, with a vacancy in District 17.

**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 3:00 p.m.

**GUBERNATORIAL APPOINTMENT:** **Chairman Siddoway** invited the Committee to consider a vote on the gubernatorial appointment of Elliot Werk to the Idaho State Tax Commission.

**MOTION:** **Senator McKenzie** moved to send the gubernatorial appointment of Elliot Werk to the Idaho State Tax Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

**H 133** **Senator Brent Hill** presented **H 133**. He reported that Idaho allows a 60 percent tax deduction for capital gains derived from the sale or disposition of tangible personal property used in a revenue producing business and held for at least 12 months. Cattle or horses held for breeding, draft, dairy or sporting purposes for at least 24 months and other livestock used for breeding held for at least 12 months also qualify for the deduction if more than one-half of the taxpayer's gross income is from farming or ranching in Idaho. Idaho Code § 63-3022H(3) clearly states that capital gains generated by pass-through entities that meet the farming or ranching requirement also qualify for this capital gains deduction. These gains retain their character when passed through to the individual owners of the pass-through entity. This legislation clarifies that if the farming or ranching requirement is met at the pass-through entity level, the qualifying capital gains will qualify for the deduction by the individual owners, regardless of whether or not more than one-half of the personal income is derived from farming or ranching. This results in consistent treatment of all qualifying capital gains, rather than holding livestock to a different standard.

**TESTIMONY:** **Stan Boyd**, Idaho Cattle Association, testified on behalf of **H 133**. He said it would help future generations of livestock industries and would level the playing field for everybody.

**MOTION:** **Senator Rice** moved that **H 133** be sent to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

## H 109

**Robert Aldridge**, Chartered Attorney at Law, presented **H 109**. He reported that this bill is about income tax and is specifically limited to capital gains treatment of sales of real property under Idaho tax law. Idaho Code § 63-3022H deals with whether a sale qualifies for capital gain treatment in determining Idaho taxable income. If the income is capital gain income, then 60 percent of the gain is deducted to determine Idaho taxable income. The main property that qualifies for capital gains treatment is real property held at least 12 months. Part of the reason for the deductibility of capital gains is to encourage long-term investments in real property, therefore the 12 month holding period.

**Mr. Aldridge** said that currently the problem is the confusion that has arisen as to whether certain types of interests in real property, clearly covered in federal tax law, are to be treated as real property for Idaho tax law. He explained that **H 109** removes the confusion by adopting two specific interests clearly defined in federal tax law and one more general citation of the federal statute that defines real property.

### **H 109:**

1. Adopts the definition of a "qualified conservation easement". If that easement is conveyed to a qualified organization that is clearly treated federally as capital gain property and should be so treated by Idaho tax law.
2. Grazing permits and leases issued by either the US Forest Service, the Bureau of Land Management or by the Idaho Department of Lands. Permits to be attached to a "base property" which adjoins the permit area and that the applicant has the requisite number of cattle to use the permit. Leases do not have those requirements.
3. Third, Internal Revenue Code 1250 defines real property. This section of the bill also requires that the property be conveyed in perpetuity and that the transfer is required to be in writing. That section clarifies the Idaho definition of real estate, mainly that leases for one year or less are not considered real property nor are trusts or other powers over real property treated as real property.

The effect of this bill is to give a clear answer to the question of what qualifies for capital gains treatment under Idaho tax law. It also complies with federal tax law and with the original intent of the statute when it was passed. This bill restores the original intent of the statute. The bill is retroactive to all tax years beginning on or after January 1, 2010.

**Mr. Aldridge** reported that there would be no fiscal impact and asked that it be sent to the Amending Order.

A lengthy discussion ensued concerning possible amendment of **H 109**. **Senators Burgoyne, Rice, Johnson, Siddoway** and **Guthrie** submitted questions to Mr. Aldridge in efforts to clarify.

### **TESTIMONY:**

**Terry Dodds**, Dodds and Associates, testified in response to the legislation. He said what he would like to see happen is for property with intangible rights to be treated as real property just as it is treated in the federal tax code. He reported the current issue at the CPA level and being what is the correct interpretation regarding the intangible rights of a property being real property or not. He stated that in Idaho real property should include anything appurtenant to the real property, and it would be extremely helpful if the Idaho tax return is reflective of the federal tax return.

**Chairman Siddoway** expressed his concern over the fiscal note. He thought there will be money involved and said he would feel uncomfortable taking it on the floor.

**Mr. Aldridge** made closing statements and said he was open to whatever language changes needed to be done in order to clarify **H 109**.

**Chairman Siddoway** asked Mr. Aldridge if he had some proposed amendments that he would like to see attached to this bill. **Mr. Aldridge** said he could come up with some proposed language and that he would like to have it looked over by other Committee members prior to moving forward.

**Senator Rice** expressed concern about sending **H 109** to the 14th Order without having a chance to discuss the amendments.

**MOTION:** **Senator Rice** moved to hold **H 109** in Committee subject to the call of the Chair. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**S 1107** **Chairman Siddoway** presented **S 1107** and said this bill is proposed to remove the requirements for Idaho State Tax Commission to list donations to trust accounts on a conspicuous portion of the primary individual tax form. In other words, this bill will allow flexibility for the Tax Commission to consolidate forms and move sections of forms within an individual tax return. It also deletes the Idaho agriculture in the classroom account and the drug and driving while under the influence enforcement donation fund because they no longer meet the requirements of Idaho Code § 63-3067C. This bill also removes the code references to Idaho Code § 63-3067B since that section is being repealed. He reported that there would be no negative fiscal impact to the General Fund.

**MOTION:** **Senator Rice** moved to send **S 1107** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman Siddoway** adjourned the meeting at 4:27 p.m.

---

Senator Siddoway  
Chair

---

Amanda McLennan  
Secretary