

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, January 21, 2016

TIME: 3:00 P.M.

PLACE: Room WW53

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

ABSENT/ EXCUSED: Senator McKenzie

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 3:07 p.m. and asked the secretary to take a silent roll.

RS 24153 **Chairman Siddoway** welcomed Senator Dan Schmidt to the podium to introduce **RS 24153**, relating to the catastrophic health care cost program. **RS 24153** amends Idaho Code § 31-3517 to authorize reimbursement for travel expenses for county commissioners who are members of the Catastrophic Health Care Cost Program Board. **Senator Schmidt** pointed out that commissioners from small counties are often unable to participate in board meetings due their inability to pay for travel.

MOTION: **Senator Burgoyne** moved to print **RS 24153**. **Senator Stennett** seconded the motion. The motion was carried by **voice vote**.

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

Vice Chairman Guthrie noted for the record that a procedural error was made during the Committee meeting of January 19, 2016, referencing his declaration of a voice vote as "unanimous"; he assured the Committee the error was corrected.

DOCKET NO. 35-0102-1501 **Vice Chairman Guthrie** welcomed Randy Tilley, Audit Division Administrator for the Idaho State Tax Commission (Commission).

Mr. Tilley presented **Docket No. 35-0102-1501**, sales and use tax administrative rules. Rule 027, amended consistent with 2015 HB 209, modifies the definition of tangible personal property to include digital videos, digital music, digital books and digital games. Mr. Tilley explained these digital media items are taxable only when the purchaser has a permanent right to use the product. Rule 056, amended consistent with 2014 HB 598, removes digital photographs from the definition of tangible personal property. Mr. Tilley pointed out that the Commission was unable to get industry groups to participate in negotiated rulemaking in 2014 or 2015. He then explained that digital photographs are now non-taxable unless delivered on a separate physical medium, such as a disc or in printed form. Mr. Tilley also explained that photographers qualify for the production exemption if the majority of their activities result in tangible personal property; for example, if photographers produce most of their work in digital form and not a physical medium, they no longer qualify for the exemption.

Senator Rice sought clarification on the language regarding production exemptions in the rule and in statute. **Mr. Tilley** explained that that statute requires photographers to primarily engage in the production of tangible personal property in order to qualify for the exemption, and that "primarily" is defined in separate statute as greater than 50 percent of activity.

Mr. Tilley presented Rule 107, amended consistent with 2015 HB 12, which adds utility-type vehicles and specialty off-road highway vehicles to the tax exemption available to nonresidents purchasing vehicles in Idaho.

Senator Burgoyne asked if Rule 027 was negotiated rulemaking and if there were any negative comments to the rule. **Mr. Tilley** asked Doug Harry, Managing Tax Auditor with the Idaho State Tax Commission, to respond. **Mr. Harry** affirmed that Rule 027 was negotiated rulemaking and reported that the main concern during that process was how to define "permanent use." He indicated that participants were satisfied with the definition at the conclusion of rulemaking.

MOTION:

Senator Bayer moved to approve **Docket No. 35-0102-1501**. **Senator Vick** seconded the motion. The motion was carried by **voice vote**.

**DOCKET NO.
35-0102-1502**

Mr. Tilley presented **Docket No. 35-0102-1502**, sales and use tax administrative rules. Rule 041 pertains to the application and payment of use tax and was amended consistent with 2015 HB 237, which exempted prepared foods and beverages freely given to employers if the retailer is in the business of selling prepared foods, such as restaurants or grocery stores with a deli. **Mr. Tilley** highlighted the substantive changes to the rule, which include the definitions of "prepared food" and "prepared beverage." Rule 072 also pertains to the application and payment of use tax. **Mr. Tilley** indicated the only substantive change is a cross reference to Rule 041. Rules 050, 079 and 083 were amended consistent with 2015 HB 39, which removed the hand-tools-under-\$100 exclusion from the production exemption. **Mr. Tilley** specified that hand tools with a value of \$100 or less used in production activity now qualify for the exemption. He pointed out the substantive changes in Rules 050, 079 and 083, which include the removal of conflicting language. Rule 128 adds other non-governmental agencies, as listed in Idaho Code § 63-3622(o), that now qualify for hotel room tax exemption. Rule 128 also clarifies that sales of transport trailers and office trailers do qualify for the occasional sales tax exemption.

A discussion ensued regarding what constitutes "prepared food" as defined in Rule 041 and in statute. **Chairman Siddoway** inquired whether ice cream meets the criteria of a prepared food as defined in the rule, which **Mr. Tilley** affirmed.

Senator Rice asked if an apple or banana given freely to an employee by a retailer qualify as prepared food. **Mr. Tilley** explained that since fruits do not meet the criteria of items given away as prepared meals, as defined in statute, they do not qualify for the exemption. He pointed out that grocery stores did participate in negotiated rulemaking and provided input regarding the definition of "prepared food." **Senator Rice** then asked if a cheeseburger and apple were given away as a meal, would each item be treated separately in terms of taxability. **Mr. Tilley** affirmed, explaining that an apple would be subject to use tax, while the cheeseburger would be exempted. **Mr. Tilley** pointed out that grocery stores often have items that go to waste, such as dairy items, that when given away would not be taxable because they would have no value. **Senator Rice** followed up by asking if a cheeseburger and apple were given away as a meal, would the meal as a whole be exempt or would each item be treated separately. **Mr. Tilley** responded that the statute defines prepared foods, not prepared meals.

Senator Burgoyne provided a scenario in which microwaveable popcorn was the food item given to an employee, illustrating that popcorn meets criteria of prepared food, even though popcorn is not typically regarded as a meal, and thus not taxable. He then inquired whether the inconsistency stems from the rule or statute. **Mr. Tilley** asked Mark Stone, Bureau Chief for Sales Tax with the Idaho State Tax Commission, to respond. **Mr. Stone** indicated that the intent of Rule 041 was to include food items prepared and served by a food retailer in its normal course of business. **Senator Burgoyne** remarked that the introductory language in the rule does not control the outcome and is inconsistent with the intent of the statute; he then asked if the problem is with the drafting of the rule or the statute itself. **Mr. Stone** replied that the Commission would continue to examine the issue in the future.

Senator Rice asked which section of Idaho Code pertains to the rule change, to which **Mr. Stone** replied §§ 63-3612(2)(b), 63-3621(p) and 63-3622(j).

Senator Burgoyne commented that Rule 041 needs further review, regardless of whether the docket is approved, to ensure that the language represents the intent of the statute. **Mr. Tilley** stated they will address these issues in future negotiated rulemaking.

Senator Rice commented that he felt the specific language in the rule is consistent with the statute.

Senator Vick commented that rules should be drawn more broadly rather than narrowly to avoid potential problems. He then inquired if an ice cream cone and ice cream served in a dish both met the criteria of prepared food, to which **Mr. Tilley** affirmed.

MOTION: **Senator Vick** moved to approve **Docket No. 35-0102-1502**. **Senator Siddoway** seconded the motion. The motion was carried by **voice vote**.

DOCKET NO. 35-0102-1504 **Mr. Tilley** presented **Docket No. 35-0102-1504**, sales and use tax administrative rules. Rule 081 removes the hand-tools-under-\$100 exclusion. Rule 099 pertains to occasional sales exemptions and updates the exemption form for office trailer and transport trailer sales to document non-taxable transactions. Rule 110 adds reimbursement for county assessors for each occasional sale exemption claim for office trailers and transport trailers.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 35-0102-1504**. **Senator Bayer** seconded the motion. The motion was carried by **voice vote**.

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

Chairman Siddoway recognized Commissioners Ken Roberts and Elliot Werk and thanked the Commission for appearing before the Committee.

ADJOURNMENT: There being no further business, **Chairman Siddoway** adjourned the meeting at 3:49 p.m.

Senator Siddoway
Chair

Jennifer Carr
Secretary