

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, January 31, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

ABSENT/ EXCUSED: None

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 Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 355 **Relating to the Internal Revenue Code, 2017 Conformity.** **Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented **H 355**. This legislation will conform Idaho income tax code to the Internal Revenue Code (I.R.C.). **Mr. Shaner** stated that Idaho is currently aligned with the I.R.C. as of January 1, 2017. **H 355** will change that date to December 21, 2017, prior to the enactment of the Tax Cuts and Jobs Act, with the exception of two provisions.

The first provision will lower the threshold for itemized medical expenses from 10 percent to 7.5 percent of federal adjusted gross income. The second provision will require foreign subsidiaries to report and pay tax on previously unreported foreign earnings. **Mr. Shaner** stated that, historically, corporations have been able to report foreign earnings incrementally over time. Under the new provision, those corporations will not be required to report those earnings a second time. **Mr. Shaner** then explained how federal and state tax would be applied to corporations that have not previously reported foreign earnings.

Senator Hill sought clarification regarding I.R.C. §§ 213 and 965. **Mr. Shaner** stated that Section 213 pertains to itemized medical expense deductions. Section 965 is a new code section that pertains to the transition tax on unreported foreign earnings of foreign subsidiaries. **Senator Hill** asked what section of Idaho Code references the treatment of foreign earnings by the State. **Mr. Shaner** said he would provide that information to the Committee.

Senator Burgoyne asked Mr. Shaner to provide an estimate of the fiscal impact of I.R.C. § 965. **Mr. Shaner** outlined the difficulties of estimating fiscal impact without examining each of the approximately 8,000 multi-state income tax returns filed in Idaho.

DISCUSSION: A discussion ensued regarding the application of I.R.C. § 965 to Idaho taxpayers.

Senator Burgoyne asked if language could be incorporated to prevent a retroactive tax increase. **Mr. Shaner** affirmed, but stated policy decisions require legislative action.

Senator Rice asked Mr. Shaner to clarify how taxes on foreign income are administered by the State. **Mr. Shaner** stated that treatment of foreign dividends is defined in statute and dependent on how a corporation files its Idaho income tax return. Many corporations pay taxes incrementally on foreign earnings over time. **Senator Rice** commented that only corporations that have unreported foreign income will pay tax under this provision; there will be no subsequent tax increase or double taxation issue.

Senator Burgoyne asked if Idaho's treatment of foreign earnings is more or less beneficial than that of the federal government under the Tax Cut and Jobs Act. **Mr. Shaner** commented that Idaho's treatment of foreign dividends is consistent with uniform models of multi-state tax application. The intention of repatriation is to encourage multinational corporations to bring profits back to the United States. **Senator Burgoyne** asked if this provision has prospective application. **Mr. Shaner** replied this is a one-time, transition tax.

Senator Hill clarified that the Tax Cuts and Jobs Act will provide a tax deduction for multinational corporations on previously unreported foreign earnings for tax year 2017. Those foreign earnings will be deemed repatriated and tax will not be applied again in subsequent tax years.

Senator Burgoyne asked how non-conformity to I.R.C. § 965 would affect Idaho. **Mr. Shaner** reported additional processing costs and challenges resulting from non-conformity, including the identification of unreported earnings of foreign subsidiaries for subsequent tax years.

Senator Vick asked for clarification regarding the proposed conformity date of December 21, 2017. **Mr. Shaner** stated the date was chosen to address I.R.C. §§ 965 and 213 separately because these provisions are retroactive and will affect Idaho tax preparation for tax year 2017.

Senator Hill provided clarity on the issue of conformity. He stated that, regardless of changes in tax law at the federal level, Idaho must decide on conformity for tax year 2017. When federal tax reform was passed, there were only two retroactive provisions that affected tax year 2017 - I.R.C. §§ 965 and 213. The remaining provisions apply to tax year 2018, and conformity to those provisions will be considered by the Legislature at a later date.

MOTION: **Senator Hill** moved to send **H 355** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 381 **Relating to Income Tax, Charitable Contribution.** **Mr. Shaner** presented **H 381**. This legislation will amend Idaho Code § 63-3022U, which pertains to deductions of charitable contributions by nonresidents. **Mr. Shaner** reported that this statute currently references Idaho Code § 63-3026A(4) for nonresidents to calculate these deductions. The correct code reference should be Idaho Code § 63-3026A(6). **H 381** will make this technical correction. The correction will have no impact on state revenue.

MOTION: **Vice Chairman Bayer** moved to send **H 381** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 382 **Relating to Income Tax, Notification Time.** **Mr. Shaner** presented **H 382**. Idaho Code § 63-3069 requires taxpayers to report changes in federal taxable income, or in tax paid to another state, to the Commission within 60 days. **H 382** will extend the reporting deadline from 60 to 120 days and will provide for a penalty in the case of a violation. **Mr. Shaner** stated the deadline extension will provide taxpayers and tax professionals with additional time to file amended returns.

MOTION: **Senator Vick** moved to send **H 382** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

H 384 **Relating to Income Tax Adjustments.** **Mr. Shaner** presented **H 384**. Idaho's income tax code conforms annually to the I.R.C. with the exception of Bonus Depreciation rules and Net Operating Loss (NOL) provisions. Idaho Code § 63-3022O requires Idaho taxpayers to add back the federal bonus depreciation deduction to their Idaho income tax return. **Mr. Shaner** explained that current statute prohibits taxpayers from using net operating losses, Idaho credits, and capital loss carryovers that are more than three years old. **H 384** will extend the use of such credits or carryovers beyond the three-year statute of limitations to mitigate a tax increase related to a bonus depreciation adjustment.

MOTION: **Senator Siddoway** moved to send **H 384** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 383 **Relating to Cigarette and Tobacco Product Taxes.** **Cynthia Adrian**, Tax Policy Specialist with the Commission, presented **H 383**. **Ms. Adrian** stated that Idaho Code §§ 63-2516 and 63-2563 pertain to the collection and enforcement statutes for cigarette and tobacco products. **H 383** will add a provision detailing a taxpayer's right to appeal an audit to both statutes. The appeal provision is in Idaho Code § 63-3045B and **H 383** will add mention of that statute to the provisions. In addition, this legislation will condense lengthy lists of statutes into a statutory range. **Ms. Adrian** felt this would improve readability.

Senator Hill asked why certain code sections were omitted. **Ms. Adrian** was unsure, but stated she would review the specific code sections for relevancy. **Senator Burgoyne** commented on the precision of listing relevant statutes individually. He felt that such practice leaves no uncertainty about what is incorporated. **Senator Hill** recommended that the Committee postpone further consideration of **H 383** to ensure that appropriate code sections are referenced.

S 1230 **Relating to Property Tax Delinquencies.** **Donna Peterson**, Treasurer, Payette County, presented **S 1230**. Idaho Code § 63-1002(2) states delinquent tax payments may only be paid and accepted upon the oldest delinquency. This legislation will replace "may" with "shall" to require delinquent tax payments be paid upon the oldest delinquency. **Ms. Peterson** stated this will prevent taxpayers from choosing in which year of delinquency to apply payment.

Senator Siddoway asked Ms. Peterson to explain the tax implications of applying payment to a year other than the oldest delinquency. **Ms. Peterson** stated that paying only the most recent delinquency will not relieve the taxpayer of remaining tax obligations.

Senator Patrick asked how delinquent property taxes affect the sale of property. **Ms. Peterson** explained that current law grants counties the authority to place a lien on a property if tax payments are delinquent for three or more years.

MOTION: **Senator Patrick** moved to send **S 1230** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

S 1231 **Relating to Property Taxes, Late Charges.** **Ms. Peterson** presented **S 1231**. This legislation proposes to amend Idaho Code § 63-903 to specify that interest for subsequent and missed property taxes will be applied from January 1 of the subsequent year. **Ms. Peterson** stated that the current statute is unclear as to when to apply interest. Some county treasurers begin applying interest the day after a property tax payment is considered delinquent. This legislation will provide consistency for county treasurers and Idaho taxpayers.

Senator Siddoway asked for clarification regarding the application of interest to annual property tax payments. **Ms. Peterson** explained that interest is applied to delinquent property tax payments beginning January 1st of the subsequent year for the prior year's taxes. The intention of **S 1231** is to align the assessment of interest on subsequent and missed property bills in the same manner.

Senator Vick asked Ms. Peterson to explain the fiscal note. **Ms. Peterson** replied that approximately 90 percent of Idaho counties already begin collecting interest on January 1st. The fiscal impact will be relatively small when the remaining counties conform to this provision. **Senator Vick** felt that this should be noted in the fiscal note.

Senator Burgoyne asked if this amendment will create a circumstance where a taxpayer will pay interest for a period of time in which they were not delinquent. **Ms. Peterson** stated that, for subsequent and missed property rolls, the majority of county treasurers assess interest as of January 1st. The small percentage of taxpayers that are not currently assessed in this manner will pay more interest under this provision. **Ms. Peterson** stated this will create consistent application of tax for county treasurers statewide. Taxpayers will not pay interest for a period of time in which they were not delinquent.

Vice Chairman Bayer asked Ms. Peterson to adjust the fiscal note to reflect the potential impact at the county level.

MOTION: **Vice Chairman Bayer** moved to send **S 1231** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Hill** moved to approve the Minutes of January 17, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 383 **Chairman Johnson** asked Ms. Adrian to return to the podium to address concerns regarding statutes referenced in **H 383**. **Ms. Adrian** reviewed four statutes in question - Idaho Code §§ 63-3041, 63-3045B, 63-3046A, and 63-3046B. She reviewed the subject matter of these statutes and felt they are relevant to the proposed legislation.

MOTION: **Senator Hill** moved to send **H 383** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion.

The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:08 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary