

MINUTES  
**HOUSE REVENUE & TAXATION COMMITTEE**

**DATE:** Tuesday, February 13, 2018

**TIME:** 9:00 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Collins, Acting Vice Chairman Kauffman, Representatives Moyle, Raybould, Anderst, Dayley, Hartgen, Chaney, Nate, Thompson, Gestrin, Stevenson, Troy, Gibbs, Erpelding, Gannon

**ABSENT/  
EXCUSED:** Representative(s) Thompson, Nate

**GUESTS:** Ken McClure, ISCPA; Laura Lantz, ISCPA; Michael Lindstrom, Eide Bailly, LLP; Alex Heiner, Poston, Denney & Killpack, LLC; Christine Stoll, Idaho 529; Russell Westerberg, RMP

**Chairman Collins** called the meeting to order at 9:00 a.m.

**H 514:** **Kenneth McClure**, Idaho Society of CPAs, introduced **H 515** stating its purpose is to align Idaho treatment of capital gains on the sale of real estate partnership interests with the treatment given in the federal Internal Revenue Code. Mr. McClure informed the committee there is an oddity in Idaho law that makes it dissimilar and causes the unwary to pay tax the way doesn't, and to the degree Idaho Code can align with the Internal Revenue Code, it is a good thing. Under federal law, if a partnership interest in a real estate partnership is sold, the seller is qualified to claim capital gains interest for the sale, but it is not the case in Idaho law. The rationale for Idaho's law is the sale of a real estate interest qualifies for capital gains but a partnership interest does not, so if a partnership asset is real estate currently taxed in Idaho, it does not qualify for capital gains because it is the sale of a partnership interest and not the sale of real property. The federal government looks through that saying if it is real estate then it qualifies and gets capital gains treatment. It is a tax that sophisticated taxpayers with the help of accountants and attorneys avoid and unsophisticated independent taxpayers do not avoid which is not good tax policy.

**Michael Lindstrom**, CPA, Boise, ID and **Alex Heiner**, CPA, Idaho Falls, spoke in support of **H 514** opining that it would provide equity to all Idaho taxpayers, make the Idaho Tax Code simpler, and allow family businesses to be passed onto another generation and grow without dissolution of the partnership and multiple costs.

In response to committee questions, **Mr. McClure** said although rare, CPAs deal with this issue a couple of times a year. Mr. McClure clarified the fiscal statement of purpose by saying the Tax Commission has no data to base fiscal analyses upon, and that the \$500,000 was the lowest estimate to be given and one which it is anticipated will not be reached.

**MOTION:** **Rep. Chaney** made a motion to send **H 514** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Chaney** will sponsor the bill on the floor.

**H 515**

**Christine Stoll**, Executive Director, Idaho College Savings Program (ICSP), stated that **H 515** amends Idaho Code § 63-3022(o) to tax only the earnings portions of non-qualified withdrawals from the Ideal-Idaho 529 College Savings Program (529). Each year ICSP routinely reviews public facing documents, and this year, with the Idaho State Tax Commission, they discovered an error on Form 170 that this amendment fixes. Currently, Idaho taxes the entire non-qualified withdrawal from the 529, and the amendment prevents a double tax for Idaho families by taxing only the earner portion of the withdrawal. **H 515** also amends § 63-3022(p) to close a potential loophole for a tax deduction. A new federal tax law allows 529 funds to be rolled into a 529A account which is an ABLE (Achieving a Better Life Experience) account. ABLE allows disabled families to save for anything they might need up to \$100,000 without infringing on their disability. Idaho is asking for a 2-year recapture provision so that people do not use their 529 just to get a tax deduction before rolling it to an ABLE account. Idaho does not have an ABLE account so it would be rolled to an out-of-state program. The fiscal impact could be about \$108,742, which is the amount deemed over taxed. There is no fiscal impact on ABLE accounts

**MOTION:**

**Rep. Troy** made a motion to send **H 515** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Troy** will sponsor the bill on the floor.

**RS 26123:**

**Rep. Clow** said that affiliated retailers engaged in business in Idaho have an obligation to collect and remit taxes upon taxable Idaho purchases. **Rep. Clow** presented a history of court cases pertaining to the relationship of a retailer's nexus, both economic and physical, to Idaho impacting their obligations to collect and remit sales taxes from Idaho purchasers. **RS 26123** expands the definition of a retailer engaged in business in Idaho and establishes that a retailer selling tangible personal property to Idaho customers is engaged in business in Idaho if the out-of-state retailer generates sales of \$10,000 or more through affiliated Idaho persons. **RS 26123** also provides the retailer a rebuttable presumption that allows the retailer to apply for relief through appeal to the Tax Commission. **Rep. Clow** stated this legislation brings some fairness to the marketplace and addresses the unfair impact of Idaho access without equal treatment under the sales tax laws. An Idaho retailer who sells to an Idaho purchaser must collect tax but if that same retailer sells through the internet to the same purchaser, they must also collect and remit sales tax.

**Rep. Clow** addressed committee questions on why the Legislature should not wait for the June U.S. Supreme Court decision to gain additional parameters on these issues by saying the ruling on the South Dakota case before the U.S. Supreme Court won't be until June, and the South Dakota law is about economic nexus, and he is trying to follow the *Quill v North Dakota* U.S. Supreme Court decision about a physical nexus.

**MOTION:**

**Rep. Erpelding** made a motion to introduce **RS 26123.** **Motion carried by voice vote.**

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 9:25 a.m.

---

Representative Collins  
Chair

---

Lorrie Byerly  
Secretary