

MINUTES
HOUSE REVENUE & TAXATION COMMITTEE

DATE: Monday, March 11, 2019

TIME: 9:00 A.M.

PLACE: Room EW42

MEMBERS: Chairman Collins, Vice Chairman Stevenson, Representatives Moyle, Anderst, Dayley, Chaney, Gestrin, Addis, Dixon, Furniss, Giddings, Nichols, Ricks, Erpelding, Ellis, Mason

**ABSENT/
EXCUSED:** None

GUESTS: Tom Shaner, Idaho State Tax Commission (ISTC); Seth Grigg; IAC; Pam Eaton, IRA; Jonthan Parker, PPA; Melinda Merrill, NW Grocery Association.

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

MOTION: **Rep. Stevenson** made a motion to approve the minutes of March 5, 2019. **Motion carried by voice vote.**

H 250: **Rep. Moyle** asks for consent to address **RS 27076** first. **Chairman Collins** approves the agenda change.

Rep. Moyle informs the committee, the difference between **H 250** and **RS 27076** is when **H 250** was introduced, language was left out of the emergency clause declaring an emergency. Without the declaration being in place in the emergency clause, **H 250** does not work and is the reason for **RS 27076**. **RS 27076** is exactly the same as **H 250**, except for the emergency clause, and both deal with online sales tax, which is a tax that is due but not being paid by many of Idaho citizens. Last year the US Supreme Court ruled states can start collecting this tax, and the proposed legislation sets up a process to collect the tax from market facilitators. On June 1st, collection and remittance of the tax starts, and **RS 27076** ensures new revenue collected is distributed to the tax refund account set up by this committee for future tax relief.

In response to committee questions, **Rep. Moyle** said the online sales tax collected goes to the tax relief fund from which it is distributed per the distribution model set out in **RS 27076**. All sales tax goes through the General Fund, and then the money is appropriated when the legislature decides to act. Some states have tried this, but it is new since the Supreme Court decision guidelines are new. Idaho does not have many local option taxes to fit in like some states do.

Speaking **in support** of **RS 27076**, **Pam Eaton**, President, Idaho Retailers Association, said she has been discussing this issue for eighteen years, and she hopes this is the last year because of the Supreme Court case. **RS 27076** is based on model legislation that follows Supreme Court guidelines, and there are states using it already. The proposed legislation was negotiated with retailers, the ISTC, and attorneys, and it is fair to local retailers who support local programs.

Rep. Moyle closes saying if it is the will of the committee, he would like to see **RS 27076** go to the second reading calendar. The relief fund is not a new fund but was put in place with the intention to collect it some day. The legislature designates where and when to distribute the funds which can be ongoing or onetime.

MOTION: **Rep. Chaney** made a motion to **HOLD H 250** in committee. **Motion carried by voice vote.**

MOTION: **Rep. Addis** made a motion to introduce **RS 27076** and recommend it be sent directly to the Second Reading Calendar. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

H 202: **Rep. Blanksma** informed the committee a couple of concerns about code references being left out of **H 202** and in connection with the appeal process have arisen. She said she is working with the Governor's Office on these issues, and she would like to send **H 202** to General Orders to make sure all the code references are inserted.

MOTION: **Rep. Nichols** made a motion to send **H 202** to General Orders. **Motion carried by voice vote.** **Rep. Blanksma** will sponsor the bill on the floor.

Commissioner Ken Roberts, Chairman, ISTC presented information on the State Board of Equalization (SBOE) and principles of equalization. Property tax has been around a long time and is ever evolving. Sales tax is a transactional tax and property tax is an ad valorem tax. Equalization system assessment is the value of a parcel within a taxing district, and it is important that we equalize property in a district so the load is equally shared. An ad valorem tax means according to value, and, hopefully, it means providing uniformity among counties and among categories in counties. A local board of equalization deals with individual tax properties/payers. State boards of equalization look at the values of categories and one county compared to another county. Equalization ensures taxes levied by districts that span more than one assessment district are fairly apportioned, and that partial exemptions have similar tax benefits across the jurisdiction of the equalization agency. Chairman Roberts gave a history of equalization in Idaho, the legal underpinnings of the SBOE, a review of SBOE decisions regarding operating property appraisals and equalization effects. The SBOE has authority to adjust the value of any category of property in a county up or down when it finds values are not just and equal as compared to other categories in the county or other counties' values, no statutory right exist for appeals from SBOE equalization orders, and judicial review is available in extraordinary proceedings when an SBOE action is in bad faith or so arbitrary and capricious as to constitute fraud. Without equalization, taxes are shifted to categories of property close to market value, away from categories of property assessed below market value, and without correction, taxes would be shifted to all other categories of property. Chairman Roberts shared Property Tax Assessment/Equalization Calendar information with the committee.

In response to questions from the committee, **Commissioner Roberts** said the SBOE looks at a taxing category as a whole. They equalize because it is about all categories paying their fair share. This comes into play in joint districts where, as an example, a school district spans more than one county with the property value in one county being \$50 and \$150 in the adjoining county, so that one property will pay three times the amount of the other for the same school. Within counties, the valuation lies with the county commissioners, whereas the SBOE looks at a county as a whole and look to see if they are carrying their appropriate share of the tax load. A very large county can be broken up into different regions, and they do look at those subcategories as well.

Chairman Roberts introduced **George Brown**, Deputy Attorney General, who spoke to constitutional issues related to the SBOE. The Idaho Constitution establishes the ISTC sitting as the SBOE to supervise and coordinate county BOEs, prescribes rules and regulations, and performs other duties as prescribed by law. SBOE is a constitutional board clothed in statutory authority with quasi-judicial powers that involve appeals. One other constitutional concern is that of uniformity. Equalization is based on the idea that properties should be valued the same which includes the mode of assessment and rate of tax. That rate has to be applied to all property of all types. The mode of assessment is market value. So both have to be uniform. The same responsibility lies with county commissioners sitting as a board of equalization. There are two types of review before the SBOE, operating property appraisals, which are railroads and power companies, and county property equalization, distinguished from individually owned property equalization. Mr. Brown outlined for the committee the methods and practices of SBOE hearings and appeals.

In response to committee questions about who on the SBOE is the neutral party, **Mr. Brown** responded it is hard to determine neutrality. The SBOE Commissioners do not discuss a case before they receive it nor do they, except rarely, have anything to do with those values. There is a balance between neutrality and knowledge. A professional board that did tax every day was what was wanted, and many other states have the same model. The SBOE can look at the case *de nuevo*, meaning a new trial with new evidence, whereas a district court looks at it on appeal, which means a review of the record. In response to committee questions on whether the Administrative Procedures Act (APA) would impact the equalization time line, Mr. Brown replied APA guidelines would put matters past the appeal process and would probably be a record review rather than a case *de nuevo*, however, property tax doesn't fall under the APA because there is no statutory right existing for an appeal beyond the SBOE. When an SBOE decision is considered in bad faith it can be appealed.

In response to a committee member's request for a draft bill to provide a neutral decision maker on appeal, **Mr. Roberts** responded there are multiple categories in counties with shifting values, there are 24 categories of property in Idaho, Idaho has escalating home prices with local counties not keeping up which means they are not paying their fair share and forty-one of forty-four counties are affected by joint districts. Values must be finalized for levies to be set. Decisions need to be made at the state level. As long as there is operating property and taxing districts some level of oversight is going to be needed. In some states they have a state tax court. It requires some tax expertise responsibility. It could be there is a need for more checks and balances, but care needs to be given not to mess up an entire system without a lot of thought and protections for taxpayers.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 10.25 a.m.

Representative Collins
Chair

Lorrie Byerly
Secretary