

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 17, 2023
TIME: 3:00 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Ricks, Vice Chairman Schroeder, Senators Grow, Cook, Adams, Bernt, Trakel, Rabe, and Just
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 Ricks** called the meeting of the Senate Local Government and Taxation Committee (Committee) to order at 3 p.m.
INTRODUCTION: **Chairman Ricks** invited each member of the Committee to introduce himself or herself.
DISCUSSION: **Chairman Ricks** stated that he would next like to have a discussion regarding the administrative rules review process and some possible changes coming and to address a few concerns regarding the pending rules of the Idaho Tax Commission (Commission).

Senator Grow informed the Committee that there was a discussion about whether to change the current rules review process to require both the Senate and House to approve an agency's rules. Currently, only one body must approve the rules. For that reason, he recommended postponing the rules review until later in the session.

Senator Rabe asked Senator Grow to further explain the reason for postponing the rules review. **Senator Grow** clarified that Representative Monks, House Revenue and Taxation Committee Chairman was slowing down the process of administrative rules review. He expressed a desire to work with Chairman Monks and be consistent in rules review.

Senator Just asked what was the effect of one house failing to approve the rules. **Chairman Ricks** responded that if one house approved the rules, they are approved, even if the other house rejected the rule. He noted that there was a discussion about requiring both houses to approve pending rules before they would take effect.

Vice Chairman Schroeder inquired whether tax preparers were waiting for the administrative rules to be approved before they could prepare 2022 income tax returns. **Cynthia Adrian**, Tax Research Specialist with the Idaho Tax Commission (Commission), responded that there was no reason for the administrative rules to be approved quickly. She explained that the current rules would remain in place.

Chairman Ricks noted that there were a number of examples in the current rules that would be moved to the Commission's website with links included in the rules. He asked Ms. Adrian whether by approving the pending rules, the Committee was approving the examples in the links. In addition, could those links be changed by the Tax Commission at will? **Ms. Adrian** responded that by approving the pending

rules, the links would also be approved. She further explained that those examples were for guidance and would go through a rules committee which would seek input from stakeholders before any change occurred. **Chairman Ricks** inquired whether examples changed on the Commission's website after the rules were approved would be deemed approved by the legislature. **Ms. Adrian** answered that the examples subsequently changed on their website would not be deemed as having been approved by the legislature.

Senator Grow shared that tax professionals were concerned about removing the examples from the rules without review by this Committee.

Chairman Ricks asked Josh Scholer, Bureau Chief for the Regulatory and Legislative Affairs Division of the Division of Financial Management, to respond to some of the concerns expressed during this discussion. **Mr. Scholer** stated that neither he nor the Division of Financial Management had an opinion regarding the postponement of the rules review, but noted that historically the review had been early in the legislative session. **Mr. Scholer** further stated that he felt that the examples did not belong in the rules since they did not provide a gap filler to statute which is the normal purpose of a rule. He also expressed a concern about requiring a change in examples in the rules every time the tax laws changed. He also stated that the examples were more accessible to people online. Finally, **Mr. Scholer** explained that it was the opinion of his office that the rules and examples do not have the full force and effect of law. A statute would trump a rule or example.

Senator Cook inquired about any legal effect of a CPA following an example. **Tom Shaner**, Tax Research Manager with the Commission, explained that statutes took precedence over rules. He further noted that the Commission could not come up with of an example being critical in a tax appeal.

Senator Rabe asked about the effect of legislation being passed prior to approval of a rule, thereby making the rule outdated. **Mr. Shaner** explained that the legislature had the authority to edit a rule by deletion, but would not have the authority to add new language. Typically, the rules would be amended and submitted for approval during the next legislative session.

Chairman Ricks concluded the discussion and stated that the Committee would pause the rules review.

PRESENTATION: **Chairman Ricks** asked the Committee's page, Josiah Knapp, to introduce himself to the Committee. **Mr. Knapp** shared that he was from Hagerman and he hoped to pursue a degree in Agricultural Communications from the University of Idaho and thereafter pursue a law degree and practice agricultural and natural resources law. **Chairman Ricks** thanked him for his service and his engagement in civic and state government.

ADJOURNED: There being no further business, **Chairman Ricks** adjourned the meeting of the Committee at 3:42 p.m.

Senator Ricks
Chair

Meg Lawless
Secretary