

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 24, 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 3:00 p.m.

MINUTES APPROVAL: **Senator Grow** moved to approve the minutes of January 17, 2023. Senator Bernt seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL: Chairman Ricks passed the gavel to Vice Chairman Schroeder.

DOCKET NO. 35-0101-2201 **Cynthia Adrian**, Tax Research Specialist with the Idaho Tax Commission (Commission), presented the docket. **Ms. Adrian** stated that these rules had been reviewed in accordance with Governor Little's Zero Based Regulation (ZBR) guidelines. She explained that some of the changes were global and applied to all executive agencies. Other changes removed rules that were also in statute. Finally, some examples that were viewed as guidance were moved from the rules and put on the Commission's website.

DISCUSSION: **Vice Chairman Schroeder** asked Ms. Adrian to provide a high level view of the proposed changes. **Ms. Adrian** cited an example where the proposed rules deleted a rule that was duplicative of statute. The definition of "employee" was deleted because **Idaho Code § 63-3018** contained that definition.

Senator Cook asked whether there was any legal defense for a tax preparer or taxpayer who relied on the examples. **Ms. Adrian** replied that the Commission's Deputy Attorney General stated that it would be a possible legal defense, however, he was not aware of any instances where the defense had been raised. In addition, the Deputy Attorney General did not think that issue would set up the Commission for a lawsuit.

Senator Bernt asked whether any concerns regarding removal of examples were expressed during the negotiated rule-making process. **Ms. Adrian** responded that there were, but she believed those individuals who had concerns worked with the Governor's office and developed a solution to put links in the rules to the examples on the Commission's website.

Senator Rabe asked whether removal of the examples from the rules constituted a substantive change. **Ms. Adrian** confirmed that there were no substantive changes.

TESTIMONY: **Tom Shaner**, Tax Research Manager for the Commission, clarified that the proposed addition to the rules of section 35.01.01.256 relating to non-resident and part-year resident individuals was the result of a ruling of the Commission.

- DISCUSSION:** **Chairman Ricks** expressed a concern regarding lack of oversight by the Committee if the examples were removed from the rules. **Mr. Shaner** explained that in past years the Commission did non-negotiated rulemaking to add tax tables and other information already included in statute. They received comments at public hearings, but there was no way for the Commission to address concerns without amending the statute. Removing tax tables and such from the rules was to avoid this process.
- TESTIMONY:** **John Eaton**, Vice President of the Idaho Association of Commerce and Industry (IACI), spoke opposing the proposed rules. He cited concerns by IACI after a review by an attorney at Lamb West which were cited in a letter to the Commission, Attachment 1. They felt that many of the proposed changes removing examples and cross-referencing were not user friendly to tax preparers and taxpayers. The Association asked the Committee to reject the proposed rules in this docket.
- TESTIMONY:** **John Legarreeta**, President of the Associated Taxpayers of Idaho also spoke in opposition to the proposed rules. They were representative of taxpayers, chief financial officers and others. He expressed concern regarding the removal of examples and cross-referencing to statute. Removing examples made it more difficult for tax preparers and taxpayers to track changes in guidance.
- DISCUSSION:** **Vice Chairman Schroeder** questioned whether the removal from the rules of section 35.01.01.190 relating to medical savings accounts was an example of removal of guidance and whether that guidance was in statute. **Mr. Legarreeta** replied that would potentially be an example. **Ms. Adrian** clarified that section of rules was in statute.
- Senator Rabe** asked Ms. Adrian whether removing examples was a standard practice under ZBR. **Ms. Adrian** affirmed that, in consultation with the Governor's office and the Division of Financial Management (DFM), it was standard practice among the executive agencies. She further stated that most tax preparers and taxpayers sought guidance on the Commission's website rather than in rules.
- TESTIMONY:** **Josh Scholer**, Bureau Chief for the Division of Regulatory and Legislative Affairs at DFM, testified that when rules were removed it was with the intent to make the information more accessible and getting rid of rules that were superfluous or unnecessary.
- DISCUSSION:** **Senator Grow** noted that concerns about removing examples from the rules had been expressed by a number of tax professionals. He expressed concern about the legislature losing oversight if examples were removed from the rules.
- MOTION:** **Senator Grow** moved that the Committee reject the changes in these rules, specifically sections 1-299 and 700-999. **Senator Cook** seconded the motion.
- DISCUSSION:** **Chairman Ricks, Senators Bernt, Cook, and Just** each stated that they would support the motion.
- SUBSTITUTE MOTION:** **Senator Grow**, in order to clarify the motion, offered a substitute motion to reject **Docket No. 35-0101-2201**. **Senator Cook** seconded the motion.
- DISCUSSION:** **Vice Chairman Schroeder** expressed his legal opinion that a statement by a party opponent was just as useful whether the example resided in rules or on a website. He further expressed a concern about lack of accountability if the examples that provided guidance were removed.
- VOICE VOTE:** The motion to reject **Docket No. 35-0101-2201** passed by **voice vote**.
- PASSED THE GAVEL:** Vice Chairman Schroeder passed the gavel back to Chairman Ricks.
- ADJOURNED:** There being no further business at this time, **Chairman Ricks** adjourned the meeting of the Committee at 3:50 p.m.

Senator Ricks
Chair

Meg Lawless
Secretary