

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Friday, November 4, 2005 – 1:00 p.m. – Room W125 House Building

Members Present:

Mr. M. Keith Prescott, Chair
Sen. Lyle W. Hillyard
Rep. Wayne Harper
Rep. Rosalind J. McGee
Mr. Larry Barusch
Mr. Mark K. Buchi
Dr. Gary Cornia
Ms. Janis A. Dubno
Ms. Kathleen Howell
Comm. Bruce Johnson
Mr. Bruce Jones
Mr. Dixie Leavitt

Members Absent:

Mr. David Crapo, Vice Chair
Sen. Brent Goodfellow

Staff Present:

Mr. Phillip V. Dean, Policy Analyst
Mr. Bryant Howe, Assistant Director
Ms. Angela D. Oakes, Associate General Counsel
Ms. Rebecca L. Rockwell, Associate General Counsel
Ms. Phalin L. Flowers, Legislative Secretary

Note: A list of others present, copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. TRC Business

Chair Prescott called the meeting to order at 1:08 p.m.

MOTION: Sen. Hillyard moved to approve the minutes of the October 14, 2005 meeting. The motion passed unanimously with Rep. Harper absent for the vote.

Mr. Howe distributed and discussed "Draft Legislation and Proposals Under Consideration." He also distributed and discussed a letter to be sent to county assessors and the Utah State Tax Commission concerning their assistance with the TRC's continuing study of a land value property tax system.

MOTION: Dr. Cornia moved to approve the letter for mailing to county assessors and the Utah State Tax Commission. The motion passed unanimously with Rep. Harper absent for the vote.

2. Report of the Trust and Estate Working Group

Mr. Barusch gave an update on the original purpose of the Trust and Estate Working Group (Working Group). He explained that the Working Group has attempted to harmonize the laws, practice, forms, and instructions regarding the application of the individual income tax to trusts and estates. He said that the Working Group has reviewed several drafts of proposed legislation in this study process.

Ms. Rockwell distributed and discussed "Major Highlights of Draft Legislation 'Income Tax -- Taxation of Individuals, Estates, and Trusts'" and 2006 General Session draft legislation "Income Tax - Taxation of Individuals, Estates, and Trusts." She explained what items are currently listed on Form TC-40 or Form TC-41 but are not specifically authorized or required by statute and items that are authorized or required by statute that are not listed on Form TC-40 or Form TC-41. She also explained the Trust and Estate Working Group's recommendations.

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Mr. Narrvel Hall, Ray Quinney & Nebeker and member of the Working Group, spoke on the draft legislation. He said that the Working Group relied heavily on the expertise of individual members to ensure that the draft legislation is clear and understandable for both taxpayers and tax administrators. He said that the typical tax preparer does not consult the state tax code when completing a tax return. The preparer will refer to the instructions for the form. This is why it is critical that the code, form, instructions, and practices all be in harmony.

Commissioner Johnson said that the Utah State Tax Commission (Tax Commission) has been closely involved with this study and that he is confident that no substantive changes are included in the draft bill. He said that any inadvertent substantive changes could be corrected by an equitable adjustment by the Tax Commission.

Sen. Hillyard said he would like the TRC to take action on the draft legislation now so that the Revenue and Taxation Interim Committee review it at their next meeting.

Sen. Curtis Bramble spoke to the TRC. He explained that he is the Senate Chair of the Revenue and Taxation Interim Committee. He said that the Committee would be taking action on all items brought forward by the Tax Reform Task Force at its next meeting. He suggested that the TRC make a short presentation at the next Committee meeting, but allow the Committee to take action on the draft legislation during the November 30, 2005 meeting, pending approval by the Legislative Management Committee.

MOTION: Sen. Hillyard moved to distribute 2006 General Session draft legislation "Income Tax - Taxation of Individuals, Estates, and Trusts" to members of the Revenue and Taxation Interim Committee. The motion passed unanimously with Rep. Harper absent for the vote.

Mr. Hall said that at the last TRC meeting that motion was adopted to include the proposed amendments to Subsection 59-10-114 (1)(i) in a separate bill.

MOTION: Mr. Barusch moved that the TRC endorse the concept that Utah resident beneficiaries not be subject to tax on distributions of income accumulated prior to January 1, 2004, and to request that the Trust and Estate Working Group meet to draft language to implement this concept.

Chair Prescott clarified that this includes trust income that has not been taxed in another state. Mr. Hall said that this is income accumulated by a nonresident trust. Mr. Barusch said that the concept is that a taxpayer who received a distribution of income accumulated prior to January 1, 2004 would not be subject to tax. Commissioner Johnson said that under the statute that is being amended that there is only a Utah tax imposed if the undistributed income had not been previously subject to a state tax.

The motion passed unanimously with Sen. Hillyard absent for the vote.

Mr. Barusch said that in the course of its deliberations the Working Group discussed how this concept would be enforced. Some trusts are not subject to reporting or withholding requirements. The TRC might want to refer these administrative and enforcement issues to the Working Group.

Chair Prescott asked whether or not it is feasible to develop such a recommendation.

Commissioner Johnson said that the practice of the Tax Commission would be that if it is aware that the income should have been reported, that the burden will be on the beneficiary to ensure that the income is properly reported. He said that the Tax Commission would welcome any guidance on this question from the Working Group. Mr. Hall said that designing these administrative functions is a more complex task than determining what should be reported. He said that he would not object to extending the Working Group to consider this issue.

Mr. Buchi said that the TRC has historically convened a panel of experts to advise it on matters such as this.

MOTION: Mr. Buchi moved to continue the Trust and Estate Working Group through 2006. The motion passed unanimously with Sen. Hillyard absent for the vote.

Ms. Rockwell asked the TRC for clarification on a motion that was passed in the last meeting concerning draft legislation that would exempt transportation from sales and use tax.

3. Tax Exempt Status of Hospitals Owned by Intermountain Health Care, Inc.

Dr. Cornia distributed and discussed a draft letter addressed to Sen. Waddoups concerning the tax exempt status of hospitals owned by IHC (Intermountain Health Care, Inc.)

MOTION: Mr. Buchi moved to approve the draft letter to Sen. Waddoups concerning the tax exempt status of hospitals owned by IHC with the modifications proposed by Dr. Cornia.

Mr. Buchi withdrew his motion.

MOTION: Mr. Leavitt moved that the TRC review the Tax Commission standards for determining whether or not non-profit hospitals qualify for an exemption from the property tax, including how a hospital's gift to the community is computed.

Comm. Johnson asked that the motion be divided. He said that it is not the role of the TRC to conduct an audit to determine whether or not a taxpayer qualifies for a tax exemption.

Ms. Howell said that most county assessors do not expend considerable time or resources to determine an accurate appraisal of these hospitals because in most instances the hospital's gift to the community far exceeds the hospitals estimated property tax liability.

Mr. Leavitt withdrew his motion.

MOTION: Mr. Leavitt moved that the letter to Sen. Waddoups concerning the tax exempt status of hospitals owned by IHC be resubmitted to the TRC at its next meeting for further review. The motion passed unanimously with Sen. Hillyard absent for the vote.

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MOTION: Mr. Barusch moved that the draft letter include the sources of the TRC's information and to state that the TRC did not review the Tax Commission standards governing the tax exempt status of nonprofit hospitals. The motion passed unanimously with Sen. Hillyard absent for the vote.

MOTION: Mr. Buchi moved that the TRC take no further action regarding the tax exempt status of hospitals owned by IHC. The motion passed with Mr. Barusch voting in opposition and Comm. Johnson abstaining from the vote.

Mr. Doug Hammer, General Counsel, Intermountain Health Care, clarified several issues for the TRC.

4. Oil and Gas Severance Tax Issues

Mr. Tom Sellers, ConocoPhillips, distributed and discussed "Executive Summary" and "A Review of Materials and Issues Relating to Oil and Gas Taxation." He explained five concerns his company has with the two reports written by Dr. Shelby Gerking for the TRC.

Mr. Barusch asked if differences in state severance taxes effect investment decisions. Mr. Sellers said that when an oil or gas exploration company is making an investment decision that it considers factors such as margins, operating costs, and allocation of resources. He said that it costs more to operate in Utah than it does in other states.

Mr. Morris Jackson, Questar, said that Questar would probably support the establishment of trust fund for the oil and gas severance tax.

MOTION: Dr. Cornia moved to create a trust fund for severance tax revenues. The motion passed unanimously with Sen. Hillyard and Rep. Harper absent for the vote.

5. Other Business / Adjourn

Mr. Dale Wooley, President, Utah Dental Laboratory Association, distributed and discussed "Removal of Sales Tax on Dental Prosthetics." He spoke in favor of removing the sales and use tax on dental prosthesis. He explained that dictionaries include dental prosthesis in the definition of prosthesis. He explained that, by law, dental laboratories require a prescription by a dentist or orthodontist before they can make any dental prosthesis. He explained that other prosthesis are required to have a prescription by a doctor, and that even hearing aides have been included in the sales and use tax exemption.

Chair Prescott said that the TRC should consider reviewing whether or not sales of dental prosthetics should be exempt from the sales and use tax.

Mr. Howe distributed "Utah Economic and Business Review" and "Simple, Fair, & Pro-Growth: Proposals to Fix America's Tax System."

Chair Prescott adjourned the meeting at 5:00 p.m.