

**MINUTES OF THE  
UTAH TAX REVIEW COMMISSION**  
Friday, June 15, 2007 – 1:00 p.m. – Room 125 House Building

**Members Present:**

Mr. M. Keith Prescott, Chair  
Mr. David Crapo, Vice Chair  
Mr. Larry Barusch  
Mr. Mark K. Buchi  
Ms. Janis A. Dubno  
Rep. John Dougall  
Sen. Lyle W. Hillyard  
Ms. Kathleen Howell  
Mr. Bruce Jones  
Mr. Dixie Leavitt  
Rep. Rosalind J. McGee

**Members Absent:**

Dr. Gary Cornia  
Sen. Brent Goodfellow  
Rep. Wayne Harper  
Comm. Bruce Johnson  
Sen. Wayne L. Niederhauser

**Staff Present:**

Mr. Phillip V. Dean, Policy Analyst  
Mr. Leif G. Elder, Research Analyst  
Mr. Bryant R. Howe, Assistant Director  
Ms. Angela D. Oakes, Associate General Counsel  
Ms. Rebecca L. Rockwell, Associate General Counsel  
Mr. Levi Pace, Research Assistant  
Ms. Phalin L. Flowers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. TRC Business**

Chair Prescott called the meeting to order at 1:06 p.m. Comm. Marc Johnson was in attendance for Comm. Bruce Johnson.

Mr. Howe introduced Mr. Levi Pace, who is a new research assistant with the Office of Legislative Research and General Counsel.

Ms. Dubno explained that she has been asked by the Center for Public Policy and Administration at the University of Utah to write a report on tax policy in Utah and to review Utah's state and local tax burden on households and businesses.

Mr. Howe noted that there is a change to the third page of the minutes of the May 11, 2007 meeting. He explained that the change more accurately reflects Rep. Dougall's comments.

**MOTION:** Mr. Leavitt moved to approve the minutes of the April 27, 2007 meeting and the revised minutes of the May 11, 2007 meeting. The motion passed unanimously with Sen. Hillyard absent for the vote.

**2. Sales and Use Tax Exemptions to Review in 2007**

Mr. Buchi distributed and discussed "Business Input Sales and Use Tax Exemptions by Category." He reviewed the activities of the Sales and Use Tax Working Group and explained that it has identified each existing sales and use tax exemption that is either a full or partial business input. Mr. Buchi also said that the Working Group drafted several guiding principles that are important to review before continuing with the study of exempting business inputs. In addition, he said that the Working Group identified several issues with each principle and has not yet debated and studied these issues in detail but that it could do so at the request of the TRC.

Ms. Rockwell directed the TRC to a memo concerning the constitutionality of adopting federal law and amendments by reference in state law.

Chair Prescott recommended that the Sales and Use Tax Working Group continue to meet.

Mr. Buchi distributed and discussed "Guiding Principles for an Ideal Sales and Use Tax System" and "Issues in Developing an Ideal Sales and Use Tax System."

Ms. Dubno asked if the Working Group has discussed whether to impose the sales and use tax on sales of services. Mr. Buchi replied that the Working Group adopted as a principle that the sales and use tax should be imposed on all final consumption, which would include services. However, it has not developed a detailed proposal on which services would be subject to the sales and use tax.

Mr. Leavitt asked Mr. Buchi to explain why the Working Group is studying exempting sales of business inputs from the sales and use tax. Mr. Buchi replied that the sales and use tax is now imposed on the purchase of nearly all business inputs. He said that this practice obscures the true incidence of the sales and use tax because the cost of the tax is included in the price of goods and services purchased by consumers who then also pay a sales and use tax on final consumption.

Mr. Barusch asked if the Working Group has studied the value added tax. Mr. Buchi replied that it has not. Ms. Rockwell commented that she reviewed language developed by the Working Group addressing business inputs with Dr. John L. Mikesell, Indiana University, who is a noted sales and use tax expert. She relayed Dr. Mikesell's comments that the proposed language is similar to a value added tax.

Mr. Crapo asked Mr. Buchi what direction the TRC should take concerning the Working Group's recommendations. Mr. Buchi replied that it is his personal opinion that the TRC should recommend that the Working Group continue to meet and to further review the principles before final action by the TRC. He explained that the Working Group is willing to meet but that it needs guidance from the TRC on which issues to study in more detail.

Rep. McGee said that as a member of the Working Group it would be useful to receive direction on which issues to continue to study.

Chair Prescott thanked the Working Group for its recommendations. He said it doesn't make sense for the TRC to study these issues in more depth when the Working Group has already started studying them. He said three things need to be decided as quickly as possible: what type of sales and use tax system is best; the guiding principles for that system; and the definition of business inputs.

Mr. Crapo said it appears that the Working Group needs action on the guiding principles before continuing its work. He suggested that the TRC review the guiding principles and make any necessary changes.

Mr. Buchi reviewed each principle included in "Guiding Principles for an Ideal Sales and Use Tax System."

Rep. Dougall and Sen. Hillyard commented on the sales and use tax treatment of certain "mixed use" property that can be easily used for both personal and business purposes. Mr. Barusch asked if both

tangible and intangible property is being considered. Mr. Crapo commented that intangible property such as patents, copyrights, and licenses are common examples of intangible business inputs.

Sen. Hillyard commented that while he supports the guiding principles, the Legislature faces a political problem in that any tax reform results in winners and losers.

**MOTION:** Mr. Crapo moved that the TRC tentatively support and continue to receive comment on "Guiding Principles for an Ideal Sales and Use Tax System." The motion passed unanimously.

Rep. Dougall said that he thinks a higher tax rate with a transparent tax system is better than an artificially low rate with a nontransparent pyramiding tax system.

**MOTION:** Mr. Crapo moved that the Sales and Use Tax Working Group continue to meet. The motion passed unanimously with Sen. Hillyard absent for the vote.

Rep. Dougall further discussed "Sales & Use Tax." He explained that he and Comm. Johnson consulted together to draft a definition of "business inputs." He said that under Example #1, all sales of tangible personal property and services are included in the sales and use tax base with an exemption for the sale of business inputs. Example #2 defines the sales and use tax base as sales of tangible personal property and services for final consumption. Under this example, business inputs are excluded from the sales and use tax base.

Mr. Buchi said that there is an essential and important difference between using an exclusion approach and an exemption approach in defining business inputs. He said that under an exclusion, the government has the burden to prove that the tangible personal property or service is within the sales and use tax base. Under an exemption, the taxpayer has the burden to prove that the sale of the tangible personal property or service is exempt from tax. This difference is critical in deciding cases at the margin.

Mr. Crapo said that he favors Example #2 as it should be the government's burden to prove that the sale of the tangible personal property or service is subject to tax. Sen. Hillyard said that it is important that these decisions are consistently applied.

Mr. Buchi further noted that the Working Group believes that the TRC should decide which of the two examples should be adopted.

Sen. Hillyard suggested that the Working Group invite a business manager from a large company to one of its meetings to provide assistance in defining business inputs.

**MOTION:** Mr. Crapo moved that the TRC: (a) tentatively support Example #2 from the document "Sales and Use Tax"; (b) continue to discuss the various effects of the two examples; and (c) may consider this issue again at a later time.

Ms. Dubno asked if the unequal treatment of taxpayers would be more likely to occur under Example #1 or Example #2. Mr. Crapo agreed that this is an important issue to consider and also suggested that the Working Group further study the administrative issues raised by Comm. Johnson.

The motion passed with Mr. Leavitt voting in opposition.

### **3. State Tax Revenue Volatility and State Rainy Day Funds**

Mr. Dean distributed and discussed "Policy Issues Associated with Budget Reserve Accounts." He gave the TRC an update of the progress of the Rainy Day Fund/Revenue Volatility Working Group.

Mr. Jonathan Ball, Deputy Director, Office of the Legislative Fiscal Analyst, introduced Dr. Berhanie Abebe and Dr. Thomas Young, who are new employees of the Office of the Legislative Fiscal Analyst. He explained that they will working on tax and revenue issues.

Mr. Dean distributed and discussed "Potential Statutory Clarifications Related to Budget Reserve Accounts." Sen. Hillyard asked that staff provide recommendations on needed statutory clarifications.

Mr. Ball distributed and discussed "Proposed Definition of Surplus for Purposes of Calculating Rainy Day Transfers" and "How to Get to the Combined 6% of Appropriations: Proportional by Fund."

Sen. Hillyard said that the TRC should be concerned with revenue volatility in both the General Fund and Education Fund. He noted that if revenue in the Education Fund is not sufficient to provide the desired appropriation, that revenue from the General Fund may be used for this purpose. However, revenue from the Education Fund may not be used for General Fund purposes.

Mr. Ball and Mr. Abebe also discussed "Growth Rates in Public Education (Nominal \$) and Enrollment, 1987-2008."

Rep. McGee noted that during the time period included in the analysis the public education system has acquired additional responsibilities to educate an increasing number of children in special education and non-English speaking children.

### **4. Individual Income Tax – Trust and Estates**

Mr. Crapo gave an update on the activities of the Trust and Estate Working Group. He reviewed the membership of the Working Group and explained that the Working Group is developing recommendations to harmonize the income taxation of trusts and estates with the new single rate individual income tax system. He said it will take several meetings for the Working Group to complete this task.

### **5. Other Items / Adjourn**

**MOTION:** Mr. Crapo moved to adjourn the meeting. The motion passed unanimously with Mr. Prescott absent for the vote.

Vice Chair Crapo adjourned the meeting at 3:05 p.m.