

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Friday, May 1, 2009 – 1:00 p.m. – Room 445 State Capitol

Members Present:

Mr. M. Keith Prescott, Chair
Mr. David Crapo, Vice Chair
Mr. Larry Barusch
Mr. Mark K. Buchi
Sen. Brent Goodfellow
Sen. Lyle W. Hillyard
Ms. Kathleen Howell
Comm. Bruce Johnson
Rep. Christine A. Johnson
Mr. Bruce Jones
Rep. Todd E. Kiser

Members Absent:

Dr. Gary Cornia
Rep. John Dougall
Ms. Janis A. Dubno
Mr. Dixie Leavitt
Sen. Wayne L. Niederhauser

Staff Present:

Mr. Phillip V. Dean, Policy Analyst
Mr. Bryant R. 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, a 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 1:07 p.m. He excused Dr. Cornia, Rep. Dougall, Ms. Dubno, Mr. Leavitt, and Sen. Niederhauser from the meeting.

MOTION: Mr. Buchi moved to approve the minutes of the January 15 and February 18, 2009 meetings. The motion passed unanimously with Rep. Johnson and Mr. Jones absent for the vote.

2. Review of Tax Related Legislation Enacted During the 2009 General Session

Mr. Howe distributed and discussed *Utah Code Ann.* § 51-9-305. He reviewed oil and gas severance tax and mining severance tax revenues for the first nine months of fiscal year 2009 and what revenues will be deposited into the permanent state trust fund.

Ms. Rockwell and Ms. Oakes discussed "Tax Bills Passed During the 2009 General Session," which was included in the mailing packet. They gave a brief summary of legislation enacted during the 2009 General Session regarding income taxes, sales and use taxes, property taxes, and other taxes.

3. Review of Study Items for the 2009 Interim

Mr. Howe distributed and discussed *Utah Code Ann.* § 59-12-104.5, which requires the TRC to study Utah's sales and use tax system during the 2009 interim and every 10 years after 2009. He also distributed and discussed letters from the governor's office and the chairs of the Revenue and Taxation Interim Committee.

Mr. Buchi distributed and discussed "Proposal for Public Hearings: Comprehensive Study of Utah's Sales and Use Tax System." He said that the sales and use tax working group has been reviewing the impact of exempting business inputs from the sales and use tax and expanding the sales and use tax base to include a greater range of services. Mr. Buchi said that the working group proposes conducting statewide public hearings on administrative and implementation issues. He also noted that the working group wants to confer with the governor and legislative leadership on the value of conducting the public hearings. Mr. Buchi answered questions from members of the TRC.

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Mr. Crapo said that it is important that the public hearings not be perceived as a step toward increasing taxes.

Rep. Kiser said that gathering information and listening to public testimony is an important part of the legislative process. Rep. Johnson agreed and expressed support for holding the public hearings.

Sen. Hillyard noted that the Legislature has reduced the number of meetings during the 2009 interim due to limited funding and that the working group should be aware of funding issues in conducting the proposed public hearings.

Mr. Howe further discussed the letter from the chairs of the Revenue and Taxation Interim Committee. He said the chairs have asked the TRC to study sales and use taxes on food and food ingredients, excise taxes on cigarettes and tobacco products, and the apportionment of business income for multistate businesses.

MOTION: Mr. Barusch moved to approve the public hearing proposal of the sales and use tax working group, to support conferring with the governor and legislative leadership about the proposal, and modify the proposal as needed after discussions with the governor and legislative leadership. The motion passed unanimously with Sen. Hillyard absent for the vote.

Mr. Howe said there are two additional items the TRC may wish to study this year: the definition of business income and the deduction for foreign operating companies.

Mr. Roger Tew, representing himself, suggested that the TRC study the definition of residency under the state individual income tax. He said that the current definition of a resident is ambiguous and can be a trap for the unwary. He noted that there are other states that have tried to clarify this issue in statute, and that a working group be established to study this issue and make recommendations to the TRC.

Comm. Johnson agreed with Mr. Tew's comments, and said that some states have adopted a more objective approach to resolving this issue. He said he believes there could be great benefits to studying this issue and bringing clarification.

Mr. Barusch said that in addition to how residency is determined, he would like to see the working group discuss how dual residency would be treated and ways to avoid taxing the same income twice.

Comm. Johnson said there are two additional areas that are uncertain for taxpayers: the length of time that an employee has to work in the state before the employer is obligated to collect withholding tax, and the level of contact a company needs to have with the state before a corporate excise tax is imposed.

MOTION: Sen. Hillyard moved to form a working group to study the definition of residency under the state individual income tax, the amount of time before an employer is obligated to collect withholding tax from an employee, and the level of contact a company needs to have with the state before a corporate tax should be imposed. The motion passed unanimously with Mr. Jones absent for the vote.

Mr. Buchi said he would like the TRC to consider reintroducing the severance tax bill that did not pass in the 2009 General Session and consider studying government competition and privatization issues.

Mr. Crapo said he would like the TRC to study appeals by counties of the taxable value of centrally assessed property. He said that both a taxpayer and a county may appeal the valuation established by the Property Tax Division of the Utah State Tax Commission.

4. Overview of Cigarette and Tobacco Products Excise Taxes

Mr. Dean distributed and discussed "Cigarette and Tobacco Taxes in Utah." He discussed existing cigarette and tobacco taxes and the pros and cons of having an excise tax on cigarette and tobacco products. Mr. Dean also gave a historical base, rate, and revenue trend summary. Mr. Dean then answered questions from members of the TRC.

Sen. Goodfellow asked for information on the effect on demand for cigarettes after Arizona increased its cigarette excise tax to \$2.00 per pack. Rep. Johnson asked for information on how other states use revenue from cigarette excise taxes. Commissioner Johnson asked for historical rate information on the federal cigarette excise tax. Senator Hillyard asked for historical price information for cigarettes. He also asked for a comparison of cigarette excise tax rate increases in Wyoming, Idaho, and Utah.

Mr. Michael Siler, Director of Government Relations, Utah Chapter, American Cancer Society, said that his organization supports dramatically increasing taxes on cigarettes and tobacco products. He said that studies show that thousands will quit, will cut back, or will not begin use of tobacco when cigarettes and tobacco are subject to high taxes. Mr. Siler also spoke in support of using a portion of cigarette and tobacco tax revenues for cancer research, cessation programs, and outreach and education. Mr. Siler then answered questions from members of the TRC.

Rep. Kiser asked how new revenue from an increase in the cigarette excise tax should be spent. Mr. Siler replied some of the new revenue should be targeted for prevention, cessation, research, and treatment of smoking-related illnesses. Revenues could also be deposited into a trust fund or the general fund.

Mr. Crapo pointed to the high cigarette excise tax in New York and asked if that state has a high rate of smoking cessation due to the high tax. Mr. Siler replied that he was not sure but that he would attempt to provide a response to that question.

Mr. Jim Olsen, President, Utah Food Industry Association, distributed and discussed "Fiscal Note - S.B. 114 - Tobacco Tax Amendments" and "Cross-border Purchasing Impacts Retailers and Government Revenues." He spoke in opposition to increasing cigarette and tobacco taxes because it causes consumers to cross state lines to take advantage of states with lower cigarette and tobacco tax rates. He also discussed lifetime health and other social costs of tobacco users. Mr. Olsen then answered questions from members of the TRC.

Mr. Buchi asked about online sales of cigarettes. Mr. Olsen replied that there have been sizable increases in these sales, especially sales to youth.

5. Other Items / Adjourn

MOTION: Mr. Buchi moved to meet on the second Thursday of each month at 1:30 p.m. The motion passed unanimously with Mr. Jones absent for the vote.

MOTION: Rep. Johnson moved to adjourn the meeting. The motion passed unanimously with Mr. Jones absent for the vote.

Chair Prescott adjourned the meeting at 4:08 p.m.