MINUTES OF THE
UTAH TAX REVIEW COMMISSION
Thursday, June 30, 2016 – 2:00 p.m. – Room 445 State Capitol

Members Present:
Mr. Curtis Trader, Chair
Sen. Lyle W. Hillyard
Rep. Joel K. Briscoe
Rep. Steve Eliason
Rep. Daniel McCay
Mr. Kelly J. Applegate
Ms. Emily D. Bagley
Mr. Phil Dean
Ms. Kathleen Howell
Mr. K. Tim Larsen
Mr. Troy K. Lewis
Mr. Gregory G. Prawitt
Comm. John L. Valentine
Mr. Lawrence C. Walters

Members Excused:
Sen. Jim Dabakis
Sen. Deidre M. Henderson

Staff Present:
Mr. Bryant R. Howe, Deputy Director
Ms. Andrea Valenti Arthur, Associate General Counsel
Ms. Bree Frehner, Legislative Assistant

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. Commission Business

Chair Trader called the meeting to order at 2:04 p.m. Sen. Henderson was excused from the meeting.

MOTION: Mr. Lewis moved to approve the minutes of the May 26, 2016, meeting. The motion passed unanimously. Sen. Hillyard, Rep. Briscoe, Rep. McCay, Mr. Dean, and Mr. Prawitt were absent for the vote.

2. Perspectives on Utah's State and Local Tax System

Mr. Joseph D. Henchman, Vice President of Legal & State Projects, Tax Foundation, presented "Utah Tax Policy in a National Context" and distributed "Facts & Figures 2016: How Does Your State Compare," "2016 State Business Tax Climate Index," and "Location Matters 2015." Referencing these handouts, Mr. Henchman discussed how Utah compares to other states in state-local tax burden, state tax costs of doing business, and state business tax climate. He concluded that Utah should preserve the many good parts of its tax system and praised the effective administration of Utah's tax system. He noted trends in other states including evaluating the effectiveness of incentives, the future of state corporate income and sales taxes, and federal aid reliance.

Chair Trader and Mr. Henchman discussed the appropriate timing for adopting a single sales factor apportionment formula for business income. Mr. Henchman predicted that nearly all states with a state corporate income tax will eventually adopt a single sales factor, but the question is when.

Rep. Eliason asked whether there is a policy benefit of lowering Utah's tax rate and eliminating some exemptions. Mr. Henchman responded that Utah's current tax structure is good and added that the best tax policy is generally to broaden the base and lower the rate.

Relating to shifting Utah's tax burden to other states, Mr. Dean asked about the effects of transitioning to single sales factor apportionment for business income and the effects of removing the sales tax on business inputs. Mr. Henchman discussed the effectiveness of exporting a state tax burden of both options. He said that removing the sales tax on business inputs would likely result in long-term economic benefit to the state while changing to single sales factor would likely provide a short-term boost.

Mr. Walters asked how effective business tax changes are as incentives for businesses to locate in a state. Mr. Henchman responded that a business tax change in Utah would affect decisions on the margin. Sen. Hillyard outlined three options for changing to single sales factor apportionment for all business income: (1) make the change immediately and make compensating adjustments in revenue and spending during a single fiscal year, (2) transition over a few years, or (3) make the change and then raise other tax rates to recoup the lost revenue. Sen. Hillyard asked how other states have transitioned and what effects they have seen. Mr. Henchman discussed the effect of transitioning to single sales factor in other states, noting that for most states, unlike for Utah, the revenue impact was positive. He explained using a revenue trigger, which proposes making a tax cut when revenue reaches a certain threshold, or trigger that proposed changing to single sales factor apportionment after a certain number of states make the change.

Sen. Hillyard discussed Utah's constitutional provisions concerning income tax and education in relation to tax incentives for businesses. He also mentioned Utah's struggling sales tax system. Mr. Henchmen commented on double taxation, noting that the ideal structure for sales tax is to have a broad base that includes all final purchases and a low rate.

Mr. Henchman also responded to questions about federal fund reliance and sales tax food exemptions.

3. Apportionment of Business Income Under the Utah Corporate Income Tax

Mr. Billy Hesterman, Vice President, Utah Taxpayer’s Association, distributed "2016 Fast Tax: Tax Summary and Easy Reference Guide" and "Utah 2.0: Ensuring Utah's Economic Viability Through Tax Reform and Workforce Alignment," which was paired with a video, "Introducing Utah 2.0!" He noted the association's involvement in discussions on single sales factor apportionment for business income and on eliminating sales taxes on business inputs. He recommended making single sales factor apportionment mandatory for all businesses. Mr. Hesterman responded to questions from the commission.

Sen. Hillyard discussed how Utah revenues would be impacted by transitioning to single sales factor apportionment. He recommended that the Utah Taxpayer's Association provide empirical measurements to support the policy change. He commented on the perception held by some that Utah does not value education due to its low per-pupil spending.

Mr. Lewis also asked for additional empirical measurements. He asked if the association has forecasted the result of moving to single sales factor apportionment for manufacturing industries. Mr. Hesterman responded that the association has not yet done such forecasting.

Mr. Dean asked about differences between optional and mandatory single sales factor apportionment. Mr. Hesterman responded that the association favors mandatory as better tax policy.

Mr. Matthew Weinstein, State Priorities Partnership Director, Voices for Utah Children, presented "The Case Against Single Sales Factor." He explained that Voices for Utah Children is concerned about single sales factor apportionment because of the likely revenue losses, Utah's low current revenues, Utah's low per-pupil spending, and Utah's decline in the number of its citizens who hold college degrees. He discussed recent research on single sales factor apportionment, whether the apportionment should be mandatory or optional, likely major revenue losses resulting from the apportionment, and concerns about the dynamic fiscal note for 2016 General Session H.B. 61, "Corporate Franchise and Income Tax Changes." Mr. Weinstein responded to questions from the commission.

Chair Trader asked commission members for their opinions on whether Utah should transition to single sales factor apportionment for all business income.

Sen. Hillyard stated that although he is not opposed to changing to single sales factor apportionment for all business income, he has concerns about the resulting revenue loss. He said that other changes may be needed to recoup lost revenue.

Mr. Larsen expressed doubt that transitioning to single sales factor apportionment for all business income would expand the tax base enough to offset the lost revenue. He mentioned concern about being the last state to adopt the change if this is a trend that all states are adopting.

Mr. Applegate stated that there needs to be a significant incentive to transition to single sales factor apportionment. He noted that Utah attracts jobs already and suggested reevaluating this issue once Utah loses competitive advantage.

Mr. Lewis commented that while he understands that nearly every state will likely eventually adopt a single sales factor apportionment formula and that those states that delay may be at a competitive disadvantage, he recommends that the state proceed cautiously and carefully examine the evidence. He also said that use of the single sales factor apportionment formula should be mandatory for all taxpayers.

Rep. Briscoe stated that he is troubled by optional single sales factor apportionment. He stated that discussing tax theory is nice, but the real question is how to fund essential public services if we change to single sales factor apportionment and lose revenue.

Mr. Walters doubted that growth after changing to single sales factor apportionment would justify the tax reduction.

Ms. Bagley stated that she is not convinced that changing to single sales factor apportionment is the right choice currently. She also commented that if is optional, then a business will choose the formula that results in the lowest tax liability.

Mr. Prawitt agreed with Mr. Lewis. He mentioned a concern about fairness as different states tax businesses that operate in multiple states using different formulas, which in some cases will result in some businesses being taxed more heavily.

Rep. McCay acknowledged the fear from changing to single sales factor apportionment. He cautioned against waiting for the data to show that this is a good idea, stating that it would then be too late. He stated that Utah needs equitable and responsible tax policy, not policy governed by fear.

Mr. Dean noted that there would be more willingness to make the change if there was certainty about its effect. He also commented on tax fairness. He spoke in favor of making single sales factor apportionment mandatory. With an election option, a taxpayer that does not make the additional investment in plant and equipment is no worse off than one that does increase investment. He also missing verb the large revenue loss with an election option.

Commissioner Valentine mentioned Utah State Tax Commission concerns about optional single sales factor apportionment due to uncertainty as the commission performs audits. He noted that mandatory single sales factor apportionment creates winners and losers. He encouraged the commission members to consider clarity for taxpayers and administrators as they evaluate policy.

4. Other Items/Adjourn

Chair Trader adjourned the meeting at 4:19 p.m.