

**MINUTES OF THE
UTAH TAX REVIEW COMMISSION**

Thursday, January 15, 2009 – 9:00 a.m. – Room 445 State Capitol

Members Present:

Mr. M. Keith Prescott, Chair
Mr. David Crapo, Vice Chair
Mr. Larry Barusch
Mr. Mark K. Buchi
Ms. Janis A. Dubno
Sen. Brent Goodfellow
Rep. Wayne Harper
Sen. Lyle W. Hillyard
Ms. Kathleen Howell
Comm. Bruce Johnson
Mr. Bruce Jones
Rep. Todd E. Kiser
Mr. Dixie Leavitt
Sen. Wayne L. Niederhauser

Members Absent:

Dr. Gary Cornia

Staff Present:

Mr. Phillip V. Dean, Policy Analyst
Mr. Leif G. Elder, 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 9:07 a.m. He excused Dr. Cornia from the meeting and welcomed Rep. Todd E. Kiser as a new member of the TRC.

MOTION: Mr. Jones moved to approve the minutes of the December 18, 2008 meeting. The motion passed unanimously with Mr. Crapo, Rep. Harper, and Sen. Niederhauser absent for the vote.

2. Tax Commission Administration, Collection, and Enforcement Amendments

Ms. Rockwell presented to the TRC an update on the working group that was asked to study this issue. She discussed 2009 General Session draft legislation, "Tax Commission Administration, Collection, and Enforcement Amendments," which was included in the mailing packet. She explained that the purpose of the draft legislation is to establish uniform enforcement and collection procedures for all taxes, fees, and charges administered by the Utah State Tax Commission (Tax Commission).

Ms. Rockwell said that the draft legislation addresses general powers of the Tax Commission, uniform requirements for the Tax Commission and taxpayers, notice to taxpayers, requirements for taxpayers to keep books and records, notices of delinquency to taxpayers, estimating a tax, fee, or charge, mathematical errors, assessments, recomputation of amounts due, actions for collection, claims for refunds, notice to third parties, delinquency payments, and liens.

Mr. Buchi asked if the draft legislation coordinates with the authority for a taxpayer to have an action adjudicated by the tax court. Comm. Johnson said that the draft legislation did not change current laws in relation to filing in district court. Mr. Leavitt asked if taxpayers who live outside of Salt Lake County would be inconvenienced if court actions were filed in Salt Lake County.

Comm. Johnson said that the draft legislation ensures consistent treatment of taxpayers by the Tax Commission across all tax types. He said that there is no provision in the draft legislation that makes it more difficult for a taxpayer to resolve a tax dispute.

Mr. Dee Talbot, Taxpayer Services, Tax Commission, discussed details of the draft legislation and explained that the goal of the draft legislation is to ensure consistency and simplicity for taxpayers and the Tax Commission.

Mr. Curtis Trader, member of the working group and practicing CPA, said the draft legislation was created to simplify tax payment and collection by practitioners and the Tax Commission. He spoke in support of the draft legislation from a practitioner's point of view.

Mr. Richard Van Komen, practicing CPA, voiced concerns that there are no provisions in the draft legislation that require the Tax Commission to issue refunds in a timely manner. Comm. Johnson responded that because required documentation for a tax refund is not always complete, there are often disputes with taxpayers. He said that some of the disputes require considerable time to resolve.

MOTION: Sen. Niederhauser moved to adopt 2009 General Session draft legislation, "Tax Commission Administration, Collection, and Enforcement Amendments," as a committee bill.

SUBSTITUTE MOTION: Mr. Buchi moved to adopt 2009 General Session draft legislation, "Tax Commission Administration, Collection, and Enforcement Amendments," as a committee bill and to direct staff to amend the bill to ensure that the bill does not impede a taxpayer's ability to have an action adjudicated by the tax court. The motion passed with Rep. Kiser voting in opposition and Mr. Crapo, Mr. Barusch, and Sen. Hillyard absent for the vote.

Rep. Harper asked that the draft legislation be distributed to the practitioner community for further review and comment.

3. Sales and Use Tax Working Group

Mr. Buchi distributed and discussed "Report of the Sales and Use Tax Working Group." He said that the working group report is only a beginning and that additional work is needed to develop a sales and use tax system that reflects the working group's principles of taxing all final consumption and not taxing business inputs.

Chair Prescott distributed and discussed "Why might consumption expenditures fade?"

Mr. Crapo asked if a future study would also consider alternatives to the sales and use tax.

Ms. Becky Schreyer, representing the Utah Association of Certified Public Accountants (UACPA), said that if the TRC moves forward with a sales and use tax study, UACPA will conduct its own study. She noted that UACPA does not support a sales and use tax on services.

Mr. David Stringfellow, Governor's Office of Planning and Budget, explained that the governor supports the possibility of expanding the sales and use tax base by taxing services.

Mr. Bryan Larson, President, Utah Association for Justice, spoke in opposition to the taxation of services.

Mr. Royce Van Tassell, Vice President, Utah Taxpayers Association, voiced support for conducting a study of Utah's sales and use tax system.

Mr. Nathan Alder, President, Utah State Bar, said the Utah State Bar would like to participate in the TRC's study. He voiced concerns regarding the taxation of services. He said that many young legal practitioners are in solo practices that are only marginally profitable. He said that the imposition of a sales and use tax on legal services would impede the viability of many small firms. He also questioned the constitutionality of imposing a tax on a constitutionally protected right such as filing for bankruptcy and accessing the courts.

Mr. Roger Tew, Utah League of Cities and Towns, said that whether to "fix" or "throw out" the sales and use tax is a fair question. He said that the current sales and use tax system is seriously disconnected from the modern economy. He said that the TRC should not let political concerns, which will likely prevent the adoption of a perfect system, prevent consideration of marginal, yet important, improvements.

Ms. Allison Rowland, Voices for Utah Children, said the sales and use tax is a regressive tax. She noted that low-income individuals tend to spend more on sales and use taxes than high-income individuals because low-income individuals usually spend most of their income with very little savings.

Mr. Van Komen spoke in opposition to the taxation of services.

Chair Prescott said that the TRC welcomes comments from the various professions and organizations who have an interest in this issue. He encouraged all stakeholder groups, as they take positions, to consider the broader public policy objectives of what is in the best interest of the state.

MOTION: Mr. Buchi moved that:

- Because the Utah sales and use tax system needs to be modernized and aligned with the current economy, the TRC recommends that a comprehensive study be undertaken of the state's sales and use tax system.
- In conducting this study, the TRC recommends that:
 - (1) the following principles be followed:
 - a. tax final consumption;
 - b. don't tax business inputs;
 - c. don't tax investment and savings;
 - d. consider taxpayer and administrative simplicity; and
 - e. recognize evolving interstate, international, and electronic commerce; and
 - (2) the following issues, among others, be addressed:
 - a. Should a sales tax be imposed on health care services and if so should it be imposed at the point of sale or on health care insurance premiums?
 - b. What should the sales and use tax treatment be of sales of new and used motor vehicles required to be registered with the state?
 - c. How should initial purchases by households of improvements to land be treated?
- The TRC commends the report of its sales and use tax working group for further review and consideration.

SUBSTITUTE MOTION: Mr. Crapo moved that:

- Because the Utah sales and use tax system was designed for a different economy, and there has been significant erosion in the sales and use tax base, the TRC recommends that a comprehensive study be undertaken of the state's sales and use tax system to determine whether it should be modernized and more closely aligned with the current economy.
- In conducting this study, the TRC recommends that:

- (1) the following principles be followed:
 - a. tax final consumption;
 - b. don't tax business inputs;
 - c. don't tax investment and savings;
 - d. consider taxpayer and administrative simplicity; and
 - e. recognize evolving interstate, international, and electronic commerce; and
 - (2) the following issues, among others, be addressed:
 - a. Should a sales tax be imposed on health care services and if so should it be imposed at the point of sale or on health care insurance premiums?
 - b. What should the sales and use tax treatment be of sales of new and used motor vehicles required to be registered with the state?
 - c. How should initial purchases by households of improvements to land be treated?
 - d. What should the sales and use tax treatment be of sales of food?
 - e. What are the incidence and distributional effects?
 - f. What are the effects on consumption and investment?
- The TRC commends the report of its sales and use tax working group for further review and consideration.

The substitute motion passed unanimously with Mr. Barusch, Rep. Harper, Sen. Hillyard, and Mr. Jones absent for the vote.

4. Deduction for Foreign Operating Company

Mr. Howe distributed and discussed "Excerpt from minutes of October 9, 2008 TRC meeting," "Sec. 2. Minnesota Statutes 2006, section 290.01, subdivision 6b," and "A Report of the Corporate Tax Task Force to the Tax Review Commission."

Chair Prescott said that this agenda item would be considered at a future meeting.

Comm. Johnson said that the Tax Commission has no concerns with bona fide foreign operating companies and does not want to recommend that the TRC act precipitously without first receiving testimony from affected taxpayers. Mr. Prescott suggested that practitioners with clients who claim the foreign operating company deduction be contacted and asked to provide testimony on this issue at a future meeting.

5. Other Items / Adjourn

MOTION: Rep. Harper moved to adjourn the meeting. The motion passed unanimously with Mr. Barusch, Sen. Hillyard, and Mr. Jones absent for the vote.

Chair Prescott adjourned the meeting at 11:57 a.m.