

**MINUTES OF THE  
UTAH TAX REVIEW COMMISSION**

Thursday, September 22, 2016 – 2:00 p.m. – Room 450 State Capitol

**Members Present:**

Mr. Curtis Trader, Chair  
Sen. Lyle W. Hillyard  
Rep. Daniel McCay  
Mr. Kelly J. Applegate  
Ms. Emily D. Bagley  
Mr. Phil Dean  
Ms. Kathleen Howell  
Mr. K. Tim Larsen  
Comm. John L. Valentine  
Mr. Lawrence C. Walters

**Members Excused:**

Sen. Jim Dabakis  
Sen. Deidre M. Henderson  
Rep. Joel K. Briscoe  
Rep. Steve Eliason  
Mr. Troy K. Lewis  
Mr. Gregory G. Prawitt

**Staff Present:**

Mr. Bryant R. Howe, Deputy Director  
Mr. Leif G. Elder, Policy Analyst  
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](http://www.le.utah.gov).

**1. Commission Business**

Chair Trader called the meeting to order at 2:00 p.m. Mr. Lewis was excused from the meeting.

**MOTION:** Ms. Bagley moved to approve the minutes of the August 25, 2016, meeting. The motion passed unanimously with Rep. McCay absent for the vote.

**2. Pass-Through Entity Payment or Withholding of Tax and Pass-Through Entity Audits**

Comm. Valentine and Mr. Nathan Runyan, attorney, Holland & Hart, presented "Tax Review Commission Presentation." Comm. Valentine said that about 100,000 income tax returns are filed each year by pass-through entity taxpayers with about 10,000 of these taxpayers having Utah sourced income passed through to nonresidents as owners or eventual owners. He proposed that the commission consider a refund option for pass-through entities that would otherwise qualify for a withholding waiver except for the tax year differences between the pass-through entity and the pass-through entity taxpayer. The refund option would be available for pass-through entities with pass-through withholding that exceeds 5% of Utah sourced income by a certain threshold amount.

Comm. Valentine and Mr. Runyan responded to questions from the commission. Mr. Runyan emphasized that the proposal would not result in a loss of revenue to the state, but that the proposal only aims to expedite a refund that a taxpayer would eventually otherwise receive. Mr. Larsen asked how many noncalendar year pass-through entity taxpayers file a Utah return. Comm. Valentine said that it is a relatively small number of all pass-through entity taxpayers, about 1-2%.

Commission members discussed what the threshold amount might be, per Comm. Valentine's recommendation, and how it would be decided.

**MOTION:** Comm. Valentine moved that the TRC authorize the Utah State Tax Commission to confer with staff in drafting legislation to allow certain pass-through entity taxpayers to claim a refund of the withholding, per the proposal presented. The motion passed unanimously with Rep. McCay absent for the vote.

### **3. Sales and Use Tax Exemption for Purchases of Manufacturing Equipment**

Ms. Valenti Arthur presented "Manufacturing Inputs Sales and Use Tax Exemptions" and distributed "Selected Excerpts from Utah Code Ann. Section 59-12-104." She explained the current sales and use tax exemptions for manufacturing inputs and overviewed the history of these exemptions.

Ms. Anikka Hoidal, Law Clerk, Office of Legislative Research and General Counsel, distributed "Sales and Use Tax Exemptions for Manufacturing Inputs by State," a table summarizing a 50-state survey of sales and use tax exemptions for purchases of manufacturing equipment, replacement parts, and materials. Ms. Hoidal explained the table and reviewed the findings as they relate to Utah specifically.

Sen. Hillyard recommended that further study be done concerning any economic development that has resulted from Utah's sales and use tax exemptions.

Mr. Thomas Young, Senior Economist, Office of the Legislative Fiscal Analyst, presented "Comparing the Effects of Single Sales Factor Apportionment vs. Removing the 3-Year Economic Life Requirement for Manufacturers." He explained various scenarios exploring the impact of changing the corporate income tax apportionment formula or removing the three-year economic life requirement for the manufacturing equipment sales and use tax exemption. He showed a comparison of the possible fiscal impacts of either moving to an optional single sales corporate income tax formula or removing the three-year economic life requirement for manufacturers. He noted that the impacts vary depending upon market response and explained how different market responses are simulated in his models. Mr. Young responded to questions from the commission.

Commission members discussed the assumptions used in Mr. Young's models, including a discussion of the applicability of the models. They discussed the difficulty of predicting economic outcomes or attributing economic outcomes to a single factor. They also discussed the balance between confidence and caution in decisions based on modeling.

Commission members discussed possible recommendations for the Legislature regarding removing the three-year economic life requirement for the manufacturing equipment sales tax exemption. Commission members also discussed whether the state should allow all corporate taxpayers to elect to use a single sales factor apportionment formula to calculate the state corporate income tax.

Mr. Dean said that he is not comfortable at this time with recommending that all taxpayers be allowed to elect to use the single sales factor apportionment formula. He said that if the Legislature decides to allow single sales factor apportionment, then the formula should be mandatory. He also expressed support for reducing sales taxes on business inputs and more broadly and uniformly taxing consumption.

Mr. Applegate agreed with Mr. Dean. He said that in speaking with businesses that have relocated to or expanded in Utah, he has learned that these businesses need a qualified and educated workforce. He supported removing the three-year economic life requirement for the manufacturing equipment sales tax exemption.

Mr. Larsen agreed with Mr. Dean and Mr. Applegate. He added that it has been his experience, in listening to businesses considering moving to Utah, that they are concerned with the state's low per pupil public education spending.

Mr. Walters said that if the Legislature decides to allow all corporate taxpayers to use the single sales factor apportionment formula, then it should be mandatory for all taxpayers. He said that he supports removing sales and use taxes on business inputs but conceded that the fiscal impact of doing so is

currently unmanageable. He questioned the argument that manufacturing exemptions have resulted in significant economic growth in the state but noted that it may be disadvantageous to eliminate such exemptions.

Ms. Howell noted the difficulty of making recommendations due to the lack of conclusive studies. She agreed with previous comments.

Ms. Bagley agreed that if the Legislature adopts a single sales factor apportionment formula, then the formula should be mandatory for all taxpayers. She stated that the three-year exemption for manufacturing seems arbitrary, and thus poor tax policy, and recommended evaluating other possible ways to compensate for the revenue loss from changing the exemption.

Chair Trader asked that, in preparation for the next meeting, commission members consider options for increasing revenue to make up for revenue losses that would result from modifying the manufacturing exemption.

#### **4. Other Items/Adjourn**

Chair Trader adjourned the meeting at 4:07 p.m.