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The Week in Review

Joining the Club

by Russell A. Cox III

South Dakota Gov. William Janklow (R) has signed SB 166, which recommends establishing a task force to study the final report of the Streamlined Sales Tax Project. Apparently lawmakers were only ready to get their toes wet, not to plunge into the model agreement. (See p. 863.)

The Alabama Department of Revenue has proposed legislation to have the state join the Streamlined Sales Tax Project’s compact. (See p. 836.) The Nebraska Revenue Committee has approved LB 172, which would move the state closer to creating the Streamlined Sales Tax System. (See p. 854.) Finally, Wyoming Gov. Jim Geringer (R) signed HB 259, which allows the state to enter into a multistate agreement regarding sales and use tax administration; this makes Wyoming the first state to adopt the Streamlined Project’s model legislation. (See p. 871.)

In the first public meeting since the National Conference of State Legislatures (NCSL) amended the model act, the Streamlined Project presented a series of work plans that will be carried out by work subgroups designated to handle various aspects of the envisioned “streamlined” system. The project hopes to reach agreement with the NCSL. (See p. 874.) Meanwhile, NCSL leaders have outlined their group’s “streamlining” strategy. (See p. 876.)

One Long Holiday

The Oklahoma House of Representatives has unanimously passed a bill that includes a provision that would provide a monthlong sales tax holiday. (See p. 861.)

Florida Gov. Jeb Bush (R) is having problems in The Sunshine State, where he’s pared back his tax cut requests to two major tax breaks. His favored tax cut, the continued phaseout of the state’s intangibles tax, was already in trouble when the Legislature convened on March 6. (The other proposed cut is the currently popular sales tax holiday. See p. 842.)

Utah lawmakers voted to provide a sales tax exemption for semiconductor processors, and Gov. Mike Leavitt (R) says he’ll sign the bill. (See p. 865.) The Legislature also voted to impose taxes and fees on radioactive wastes, but these charges are much lower than those originally proposed. (See p. 865.)

Arkansas lawmakers were of two minds about funding for nursing homes. They are passing both a “bed tax” and a tobacco tax as alternate means of funding. Gov. Mike Huckabee (R), who gets to choose between them, has already indicated he’ll choose the “bed tax.” (See p. 837.)

Georgia lawmakers are trying to close a loophole; the House has approved a bill that says federal entity classification will be followed only for state income tax purposes, not for other taxes. (See p. 843.)

In California, the Office of the Secretary of State and the State and Consumer Services Agency have rejected protest regulations proposed by the Franchise Tax Board on the ground that they are just a little too “taxpayer-friendly” and would cost the state considerable revenue. (See p. 839.)

If you’re concerned about the possible impact of federal estate tax repeal on the states, see a study by the Federation of Tax Administrators on p. 903.

How would states replace their estate taxes if the federal tax were repealed?
Alabama

DOR Proposes to Join ‘Streamlined’ Sales Tax Compact

by Bruce P. Ely, Tanner & Guin, L.L.C., Tuscaloosa

The Alabama Department of Revenue has proposed legislation by which the state would join the Streamlined Sales Tax Project’s compact. But the bill has already encountered resistance from municipalities and counties that have long collected their own sales and use taxes.

Companion bills urging Streamlined Project participation were introduced in the House and Senate (SB 321 and HB 472). (For the full text of Democratic Gov. Don Siegelman’s Executive Order No. 36, which authorized DOR participation in discussions regarding the Streamlined Sales Tax Project, see Doc 2000-24975 (2 original pages) or 2000 STT 191-1.)

Apparently, there is little if any opposition in the Legislature or the various state trade associations to what many refer to as “Phase I” of the bill, which would entitle the state and localities to begin receiving sellers’ use tax from remote sellers, once the various thresholds are met. What concerns the self-administered localities, however, is Phase II of the proposed legislation, which would require the DOR to become the sole collecting — and, apparently, auditing — authority for all state and local sales and use taxes at a designated point in the future. The Alabama version of the Streamlined Project bill does not give the DOR the right to contract out the audit function. The self-administered governments argue that their sales and use tax revenues would decrease if the DOR resumes control of all audits and that remittances to the locals of their share of the revenue collected by the DOR would be slowed. Unless this issue is resolved soon, prospects for passage of the bill during the 2001 regular session of the Alabama Legislature look dim.

On the other hand, during an address at the annual meeting of the Public Affairs Research Council of Alabama on February 15 in Birmingham, the chair of the House Ways and Means (Education Fund) Committee, Rep. John F. Knight (D), painted a bleak picture for Alabama public schools this year in light of massive revenue shortfalls in the Special Education Trust Fund, into which all corporate and individual income taxes and sales and use taxes flow. Knight pointed to last year’s study by the General Accounting Office on the effect of remote sales on state and local sales tax revenues and confirmed that its projections of $58 million to $168 million of lost Alabama state and local sales tax revenue this year due to remote sales appeared to be coming true. He concluded that “we simply cannot afford that,” and that the problem “must be dealt with soon” to stem the flow of lost revenues. (For the full text of the GAO study, see Doc 2000-23846 (66 original pages; tables available by microfiche and Access Service only) or 2000 STT 181-33.)

It is likely that the potential lost revenue, and the direct effect on state and local coffers, will bring all the parties to the bargaining table very soon.

**Full Text Citation:** SB 321. Doc 2001-6558 (12 original pages)

Arizona

Appeals Court: Microwave Television Company Subject to Privilege Tax

The Arizona Court of Appeals has ruled that a provider of microwave pay television services is not exempt from a local telecommunications services privilege tax (People’s Choice TV Corp. v. City of Tucson, Mar 1, 2001).

People’s Choice TV Corp. Inc. (PCTV) is a provider of pay television services via microwave frequency. Pursuant to Tucson City Code section 19-470, the city of Tucson assessed telecommunications services privilege taxes and interest against PCTV. The Tax Court dismissed the assessment, ruling that A.R.S. section 42-6004(A)(2) “creates a blanket exemption” from the telecommunications services privilege tax for businesses such as PCTV.

Before the Court of Appeals, Tucson contended that the Legislature never intended the phrase “interstate telecommunications services” in A.R.C. section 42-6004(A)(2) to include the activities of cable or microwave television systems. It argued, therefore, that the statute did not prohibit Tucson from taxing PCTV’s business income. Tucson pointed out that the definition of “intrastate telecommunications services” in A.R.S. section 42-5064 applied to both cable and microwave television systems. Tucson also pointed out, however, that in 1988 and in 1992, the Legislature amended section 42-5064 to remove sales of intrastate telecommunications services by cable television systems and microwave television systems from the tax base. Then, implicitly treating the section 42-5064 definition of “telecommunications services” as applicable within section 42-6004(A)(2), Tucson contended that the prohibition against municipal taxation of “interstate telecommunications services” in section 42-6004(A)(2) is categorically inapplicable to its taxation of cable or microwave television systems. In further support of its argument, Tucson pointed out that the Legislature recently added a new subsection to section 42-6004(A) that exempts “sales of Internet access services” from municipal taxation. From this, Tucson...
argued that if the Tax Court’s broad interpretation of section 42-6004(A)(2) were as clear as the Tax Court held, no such specific exemption would have been necessary.

Although it ultimately ruled in favor of the city, the court rejected Tucson’s analysis, concluding that if the Legislature did not want cable and microwave television services included within the exemption, it would have amended the definition of “telecommunications services” within section 42-6004(A)(2) to make that clear. The court, however, also disagreed with the tax court and PCTV that section 42-6004(A)(2) immunizes from municipal taxation all varieties of business income earned by any telecommunications company engaged in interstate business activities. The only taxation that section 42-6004(A)(2) precludes is that imposed on interstate “transmissions” of information, the court determined. The court concluded that PCTV is mistaken in characterizing its services as the equivalent of transmissions. The court pointed out that PCTV’s customers pay “subscription” fees for “access to” or “membership in” the telecommunications system by which PCTV makes its services and programming packages available. The customers do not pay separately for the transmission of each program viewed. Accordingly, the court ruled that section 42-6004(A)(2) did not preclude imposition of the telecommunications services privilege tax on PCTV’s business income.

As a cross-issue, PCTV argued that Tucson City Code section 19-470 exempts “cable television systems” from the telecommunications services privilege tax in violation of the state constitution and the equal protection clause of the 14th Amendment of the U.S. Constitution. PCTV, which did not operate as a cable television system within the statute’s definition, argued that there was no rational basis for treating pay television services differently based on the means by which the entertainment was distributed. The court explained that an equal protection challenge to a legislative tax can only succeed if the taxpayer is able to show that the classification is not rationally related to any conceivable legitimate governmental purpose. The court held that, because in enacting the statute the Tucson City Council may have believed that it was in the public interest to encourage cable television providers other than those that use microwave transmission, PCTV failed to convince the court that the statute lacked a rational relationship to any legitimate legislative purpose. Accordingly, the court ruled that PCTV must pay the telecommunications services privilege tax.

**Full Text Citation:** No. 1 CA-TX 00-0010. *Doc 2001-6497 (10 original pages)*

### Abstracts and Citations

- **DOR Amends Income Tax Filing Rules.** The Arizona Department of Revenue has proposed to amend and repeal rules regarding the filing of income tax returns to eliminate inconsistencies and to clarify late-filing penalties and relief procedures (Rules R15-2A-102 through R15-2A-104, R15-2A-201). **Full Text Citations:** *Doc 2001-6102 (4 original pages) or 2001 STT 44-3*

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**Arkansas**

### Governor to Choose Between Nursing Home Funding Bills

Two competing tax bills to raise money for nursing homes have passed the Arkansas House and Senate and are expected to go to Gov. Mike Huckabee (R), who will decide which will become law. (For prior coverage of nursing home funding proposals, see *State Tax Notes*, Mar 5, 2001, p. 757; 2001 STT 40-2; or *Doc 2001-5776 (3 original pages).* )

HB 1274, sponsored by Rep. Bill Bevis (D), would impose a gross receipts tax on nursing homes amounting to about $5.25 per resident per day. (For the full text of HB 1274, as passed by the House, see *Doc 2001-5197 (5 original pages) or 2001 STT 45-9.* )

SB 287, sponsored by Sen. Jim Argue (D), under a recent amendment, would impose a 6 percent tax on cigarettes and other tobacco products at the wholesale level. The bill would previously have imposed a 3.5 percent tax on such products. (For the full text of SB 287, as passed by the Senate, see *Doc 2001-5931 (2 original pages).* )

The taxes are expected to raise about $40 million each, to be used to get a match of nearly 3-to-1 in federal Medicaid money. The money would be distributed to nursing homes through a new payment methodology that lawmakers hope will improve quality of care and help stabilize an industry that has claimed it is near bankruptcy in Arkansas because of low Medicaid reimbursement rates.
The bills will go to Huckabee after concurrence from the House and Senate on amendments placed on the bills in committees. Both chambers are expected to concur in the amendments.

SB 287 was amended February 28 in a House committee to change it from the originally proposed gross receipts tax. If the wholesale tax becomes law, it would increase the price of a pack of cigarettes by 17 cents.

Huckabee last month publicly endorsed the proposed provider or bed tax over the proposed tobacco tax. He said he respected Argue’s attempt to solve the problem, but added at the time, “I don’t want there to be any misunderstanding or illusion as to which one I will sign.”

“I think the governor’s making a very poor choice here,” Argue said. “I can’t [understand] why anyone who’s for fairness and justice could support the other plan.”

Argue opposes the bed tax because it would cost private-pay patients $150 to $200 more a month on top of the average $3,000 per month they pay now, should the nursing home pass the tax on to the patient. The Arkansas Health Care Association put forth the bed tax. The association represents most of the 236 nursing homes in the state.

Most of the homes have only Medicaid patients or are a mix of Medicaid and private-pay residents. Only about six homes are totally private-pay. The industry says private-pay patients already are paying more to offset losses from Medicaid patients.

The industry says those higher rates would continue to increase if the Medicaid reimbursement rate is not increased.

Full Text Citations

The full texts of the following documents are available as indicated:

- **HB 1274, as sent to the governor.** Doc 2001-6904 (5 original pages)
- **SB 287, as sent to the governor.** Doc 2001-6905 (4 original pages)

California

**Senate Panel OKs Conformity to Feds on REITs**

Legislation to conform California tax law to several recent changes in federal law has been narrowed to provide conformity only regarding the tax treatment of real estate investment trusts. Provisions, affecting a wide range of tax policy from the treatment of alimony payments to the treatment of meals furnished to employees, have all been cut out of this bill in an effort to ensure that the REIT provisions will be in place soon enough to be effective for the beginning of tax year 2001.

Assembly member Ellen Corbett (D) presented her newly scaled back bill to the Senate Revenue and Taxation Committee, saying that California can not delay its conformity measures regarding the REITs or they will redirect their substantial investment elsewhere.

The committee chair, Sen. Jack Scott (D), said that he understands the urgency to adopt the REIT conformity measures but is reluctant to pass other tax bills given the state’s current financial uncertainty. In addition, the Appropriations Committee was reluctant to waive its suspense provisions for bills with costs. Although as a whole the former AB 10 was very close to revenue-neutral, certain provisions did come with price tags; however, the provisions concerning REITs would result in revenue gains. The committee approved AB 10, as it now stands. (For the full text of AB 10, as amended February 6, see Doc 2001-5392 (58 original pages) or 2001 STT 43-2.)

The committee also approved SB 12, authored by Wes Chesbro (D), which would provide relief for localities whose property tax revenues were reduced as a result of reassessment of properties damaged or destroyed by the Napa County earthquake last September. The affected localities would be reimbursed for their property tax losses. This bill follows previous tax treatments of disasters. This reimbursement would cost approximately $50,000.

In other action, the Senate approved SB 22 (sponsored by Sen. Joe Dunn (D)), which would eliminate the vehicle license fee rebate check for those registering their vehicles after July 1 of this year, and would instead provide that the 67.5 percent fee reduction would apply at the time of registration. The bill has encountered little opposition as it moves through the process. It was approved by the Senate Appropriations Committee and Senate floor without a single “no” vote.
Supporters of this bill say that it would reduce administrative costs by $20 million and provide taxpayers with more immediate tax relief. It still potentially faces opposition from Gov. Gray Davis (D), who had originally suggested the offsets as a means of making sure that fee payers knew that they were getting a significant reduction in their fees. A previous bill was bottled up in the Senate. However, after a year of offsets, and with unanimous legislation passing out of the Senate, he may not use his veto.

— Allison Pratt and Lenny Goldberg, California Tax Reform Association, Sacramento

**Full Text Citations**

The full texts of the following documents are available as indicated:

- SB 12, as passed by the Senate Revenue and Taxation Committee. Doc 2001-6981 (4 original pages)
- SB 22, as passed by the Senate. Doc 2001-6991 (6 original pages)

**FTB Protest Regulations Rejected**

The protest regulations put forth by the California Franchise Tax Board (FTB) have been rejected by the Office of the Secretary of State and by the State and Consumer Services Agency. According to the Office of the Secretary of State, the regulations “could adversely impact state revenues and increase state costs.” This rejection follows closely on the heels of Democratic Senate President Pro Tem John Burton’s sharp criticism of the regulations. (For coverage of Burton’s challenge to the revised protest regs, see State Tax Notes, Mar 5, 2001, p. 758; 2001 STT 42-1; or Doc 2001-6210 (2 original pages).)

The Office of the Secretary of State accused the FTB of “challenging the integrity of our process,” referring to the FTB’s “withdrawing and resubmitting the Form 399 and withdrawing the appeals of the Department of Finance decisions concerning the BCP’s [budget change proposals] related to the regulations.” The office finds that the FTB’s “latest conclusion that these regulations will have neither budgetary impact on the Franchise Tax Board nor fiscal impact on the state of California is not credible.”

The notice of rejection was concluded with an invitation to the FTB to instead “adopt regulations to codify the policy related to tax protest procedures contained in the forms and instructions invalidated [editor’s and author’s note: presumably, ‘validated’ is meant] by the Office of Administrative Law.”

— Allison Pratt, California Tax Reform Association, Sacramento

**Appeal Court: Auto Repair Supplies Subject to Sales Tax**

The California Court of Appeal has ruled that sales of supplies to auto repair shops are not considered sales for resale (Modern Paint and Body Supply Inc. v. Board of Equalization, Mar 6, 2001).

Modern Paint and Body Supply Inc. (Modern) sells products and supplies associated with auto body repair. The State Board of Equalization (the Board) determined that Modern owed sales tax on the supplies it sold to auto repair shops. The trial court found that Modern did not owe and was not subject to any sales tax because its purchases of supplies were for resale. Before the Tax Court, Modern argued that the Board improperly invalidated resale certificates received from Modern’s wholesale buyers and that all paints and supplies are subject to sales tax when they are sold by auto shops. The Board argued that Modern had paid insufficient sales tax on supplies that do not become a part of an automobile, such as sandpaper and masking tape. The Board appealed to the Court of Appeal after Modern was awarded summary judgment in the trial court.

Modern argued that because the supplies are sold by the auto shops, it is not subject to sales tax on the supplies. However, the court held that for a sale to occur, property must be furnished. The court stated that the supplies were not furnished to the customer, but consumed in the repair. Therefore, the court determined that the auto supply stores were not the retailers of the supplies. The court also looked to the primary intent of the purchaser to determine whether the supplies were purchased for resale. Because the primary intent of a repair shop is to repair automobiles and the supplies are incidental to the main object, the court found that the sales of supplies to repair shops were not sales for resale, and thus Modern’s purchases were subject to tax.

The Board argued that it was entitled to a negligence penalty and a judgment as a matter of law because Modern received literature from the Board stating (1) that general resale certificates are unacceptable and (2) that auto repair shops should not purchase supplies for resale. Modern argued that it received misinformation from the Board that led it to obtain the inadequate resale certificates. The court disagreed with the Board and held that a “bona fide and reasonable belief” that a transaction is not taxable is sufficient to avoid the penalty. The court determined that Modern showed it consistently took the position that its purchases were not subject to sales tax and that there were not enough facts to show that the negligence penalty was warranted.

**Full Text Citation:** No. B141232. Doc 2001-6767 (8 original pages)

**Note to Readers**

The full text of all state tax statutes and regulations referred to in STN is available from Tax Analysts on the State Tax OneDisc. To order your copy, call (800) 955-2444.
**Colorado**

**Rulings Affect Manufacturing Equipment Breaks**

**News Analysis**

The Colorado Supreme Court, on March 5, issued its decision in *Colorado Department of Revenue v. Cray Computer Corp.*, Docket No. 99SC367, reversing the Colorado Court of Appeals’ decision, which held that Cray’s sale of more than $6 million of used manufacturing machinery and equipment, or parts thereof, was exempt from Colorado sales and use tax under the enterprise zone exemption contained in C.R.S. section 39-30-106(1)(a). (For the full text of the high court’s decision in *DOR v. Cray Computer*, see Doc 2001-6622 (12 original pages).)

The Department of Revenue had argued that only the first $150,000 of used machinery and equipment was exempt from Colorado sales and use tax because C.R.S. section 39-30-106(1)(b) indicates that except to the extent inconsistent with the enterprise zone exemption, the exemption is to be administered by the DOR in accordance with the rules applicable to the general manufacturing equipment exemption contained in C.R.S. section 39-26-114(11). Subpart (d) of that provision incorporates by reference the federal income tax definition of property (which was prior to the repeal of federal investment credit) eligible for the federal investment credit under section 38 of the Internal Revenue Code. Because the IRC limited the dollar amount of property that could qualify for federal investment credit to $150,000, the DOR argued only $150,000 worth of equipment could qualify for state sales and use tax exemption.

The Colorado Court of Appeals had held for Cray on the basis that the $150,000 limitation was inconsistent with the enterprise zone exemption. Justice Bender, writing for a unanimous Colorado Supreme Court, concluded that implicit in the Court of Appeals’ decision was the conclusion that any limitations on the manufacturing equipment exemption would be inconsistent with the enterprise zone effort to increase investment and employment within the enterprise zone. The supreme court disagreed with this conclusion, analogizing Congress’s attempt to promote investment and modernize manufacturing on a nationwide basis with Colorado’s local effort embodied in the enterprise zone exemption.

The state supreme court reasoned that there was a rational distinction between new and used equipment because new equipment could be anticipated to have a longer useful life and to be more productive. Based on the high court’s determination that the word “administration,” as used in the enterprise zone sales tax exemption, refers to both procedural and substantive requirements, the plain language mandates that to be exempt, the purchased property must also meet the federal investment credit $150,000 limitation because that limitation is not inconsistent with the enterprise zone statutory.

Despite the *Cray* case, taxpayers had something to cheer about in the manufacturing equipment area as the executive director, in final determination DD-567, issued February 5, ruled in favor of a cogeneration facility. That decision held that the purchase of machinery, including gas turbines, steam turbines, and heat recovery steam generators, was exempt from Colorado sales and use tax under the enterprise zone exception contained in C.R.S. section 39-30-106(1)(a) and the manufacturing equipment exemptions contained in C.R.S. sections 39-26-114(11) and 39-26-203(1)(y). The DOR had argued that electricity was not properly classified as tangible personal property under Colorado sales and use tax law and was not manufactured or compounded. Consequently, the taxpayer was not involved in manufacturing tangible personal property. The executive director, acknowledging that electricity can be detected by the senses, in that it can be seen and felt, determined that it qualifies as corporeal tangible personal property under Colorado law.

The director then went on to conclude that while electrons, neutrons, and protons are generally present in all atoms, their separation into positive and negative charges that can be transmitted as an electrical charge does in fact constitute manufacturing for purposes of the manufacturing equipment sales and use tax exemption. In reaching this conclusion, the executive director noted that there was a split, as to this issue, in other jurisdictions, citing Potomac Edison Co. v. Commonwealth of Pennsylvania, 411 A.2d 287, 1289 (Penn. 1980) and Curry v. Alabama Power Co., 243 Ala. 53, 8 So.2d 521 (Ala. 1942). The executive director found dispositive of this issue, in Colorado, the Colorado Supreme Court’s decision in *Heatherton v. Camp Bird Mining, Leasing & Power Co.*, et al., 70 Colo. 531, 202 P. 1087 (Colo. 1921), stating in dicta: “It is well settled that electricity made by artificial means is a product of manufacture, and is personal property.”

Also helpful to manufacturers is the Jefferson County Court’s January 10 decision in *Ball Corp. v. Fisher*, Docket No. 99-CV-0240. That decision held that for manufacturing equipment used in an enterprise zone and purchased after the enactment of HB 1349, effective June 7, 1989, there is no requirement that property have a three-year useful life to qualify for the enterprise zone exemption. HB 1349 amended the exemption under C.R.S. section 39-30-106(1)(a) to afford sales and use tax relief for machinery and equipment used exclusively in an enterprise zone, whether the purchased items were capitalized or expensed. In reaching its conclusion, the district court also recognized that beginning in 1981, there was no longer a three-year-useful-life requirement for the federal investment credit for most recovery property. The three-year useful life requirement to qualify for the federal investment credit was amended in 1981 in favor of the recovery property definition.

The district court also held that because the Regional Transportation District, Scientific and Cultural Facilities District, and Baseball District, could, during the years at issue 1990 through 1993, tax only those items the state taxed, except as otherwise provided in C.R.S. section 29-2-105(1)(d), the districts were not authorized to levy a use tax on manufacturing machinery, equipment, and parts thereof. The court found dispositive the clear language of the statute and the fact that C.R.S. section 29-2-105 is concerned only with sales tax. The
corresponding provision — contained in C.R.S. section 29-2-109, dealing with use tax, unlike C.R.S. section 29-2-105(d)(1), which deals with sales tax — does not authorize the districts to charge a use tax in situations that are otherwise exempt from state use tax under C.R.S. section 39-26-203(1)(y).

Under Colorado law, the state may not appeal from an unfavorable decision by its own executive director of revenue; therefore, DD-567 is a final decision. The Department of Revenue has already filed notice of appeal in the Ball Corp. case, which is now docketed at the Colorado Court of Appeals as Case No. 01CA246.

— Robert A. Wherry Jr., Denver

Full Text Citations

The full texts of the following documents are available as indicated:

- DD-567. Doc 2001-7001 (8 original pages)
- Ball Corp. v. Fisher. Doc 2001-6994 (16 original pages)

Appeals Court: City Liable for Sales Tax On Golf Cart Purchases

The Colorado Court of Appeals has ruled that a city that rents golf carts to the public was liable for sales and use tax on the acquisition of the carts because it was not acting in a governmental capacity when it purchased them (Colorado Department of Revenue v. City of Aurora, Mar 1, 2001).

The city of Aurora rents golf carts to the public for a fee. Aurora does not charge tax on the rentals and did not pay sales tax or use tax on the purchase of the carts, instead claiming the exemption for governmental entities. The Department of Revenue audited the city’s Springhill Golf Course and issued assessments and notices of deficiency for sales tax on golf cart rental charges. After the city protested, the department changed the assessment to use tax on the purchase price of the golf carts. The city then appealed to the trial court, which ruled in its favor, and the department appealed to the Court of Appeals.

The city argued that it was not liable for the tax because the relevant statute does not include cities as taxing entities. The department countered that there is a statutory basis for assessing sales or use tax against cities. Agreeing with the department, the court looked to the legislative intent of the General Assembly to show that it intended the city to be subject to sales or use tax when it acts in its proprietary capacity rather than its governmental capacity. The court went on to say that when interpreting tax statutes, there is a strong presumption that taxation is the rule and that exemption is the exception. The city further argued that it is exempt from the tax because it was operating as a governmental entity. The department argued and the court agreed that the city was acting in a proprietary capacity and therefore was subject to the sales and use tax. The court explained that the provision of golf carts by the city was not for the purpose of governing. Finally, based on a state statute that grants tax exemptions to certain lessors, the city argued that the short-term lease of golf carts was not a taxable event because the rental customers were not granted the right to continuous use or possession of personal property. The court disagreed and ruled that tax is imposed on either the purchase or rental of the carts. According to the court, because the city did not pay any tax on the carts upon their acquisition and was not acting in a governmental capacity in renting the carts, it was liable for the tax. The court stated that if a vendor does not charge the customer sales tax or use tax, the vendor remains liable for the tax. The city’s failure to collect tax obligated it to pay the tax.

The court found that the director was correct in concluding that the city’s failure to collect sales tax on the rentals obligated it to pay the tax based on the cost of the acquisition. The court reversed the trial court’s decision and held that the assessment of use tax was correct and therefore the city was liable for the payment.

Full Text Citations: No. 00CA0535. Doc 2001-6445 (6 original pages)

Abstracts and Citations

DOR to Adopt Fuel Excise Tax Administration Regs. The Colorado Department of Revenue has proposed to adopt regulations for the administration of the fuel excise tax and to relocate special fuel with gasoline (Regulations (39-)27-104, (39-)27-105, and (39-)27-102.5(1)(a)(1)). Full Text Citations: Doc 2001-5839 (5 original pages) or 2001 STT 42-5

Delaware

Abstracts and Citations

Revenue Division Announces Increase in Pension Exclusion. The Delaware Division of Revenue has issued a news release to announce that the pension income tax exclusion for taxpayers over the age of 60 increased from $5,000 to $12,500 for the 2000 tax year. Full Text Citations: Doc 2001-6103 (2 original pages) or 2001 STT 45-12
District of Columbia

Court Jurisdiction Over Taxes Upheld by U.S. Circuit

by Jacquelyn V. Helm,
Law Office of Jacquelyn V. Helm, Washington

The exclusive jurisdiction of local District of Columbia courts over all matters relating to the district’s taxes has been upheld by the U.S. Court of Appeals, District of Columbia Circuit in Jenkins v. Washington Convention Center, 236 F.3d 6 (2001).

The U.S. circuit upheld the dismissal for lack of subject matter jurisdiction of a lawsuit seeking refund of certain special taxes dedicated to the financing of the district’s new convention center.

In Jenkins, 19 individuals and one corporate plaintiff alleged that the statutory authority for the special taxes had expired and that then-Mayor Marion Barry (D) acted without authority in collecting the taxes during all or part of the period from September 28, 1996, to August 12, 1998. The plaintiffs further contended that giving retroactive application to the emergency, temporary, and permanent legislation enacted by the Council of the District of Columbia to extend the special taxes constituted an unconstitutional taking of property without just compensation.

The district argued, and the trial court agreed, that the district is a “state” for purposes of the Federal Tax Injunction Act, that the act barred plaintiffs’ claims, and that plaintiffs’ case may only be presented in the Superior Court of the District of Columbia. Without reaching the issues related to the act, the appellate court affirmed on the basis of exclusive jurisdiction of district tax matters being vested in the local District of Columbia courts.

Prior to 1970, the local courts were courts of limited jurisdiction, with federal courts granted exclusive or concurrent jurisdiction over a number of District of Columbia matters. District tax matters were subject to concurrent jurisdiction. In 1970, Congress approved the District of Columbia Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, 84 Stat. 473 (Jul 29, 1970) (hereinafter the Court Reform Act) establishing a state-type court system for the district and transferring jurisdiction of district matters from the federal to the local courts. As the court noted in the instant case, section 111 of the Court Reform Act granted the new Superior Court of the District jurisdiction of:

any civil action or other matter, at law or in equity, which involves an appeal from or petition for review of any assessment of tax (or civil penalty thereon) made by the District of Columbia.

Section 111 of the Court Reform Act further provided that: [t]he Tax Division of the Superior Court shall be assigned exclusive jurisdiction of all appeals from and petitions for review of assessments of tax (and civil penalties thereon) made by the District of Columbia and all proceedings brought by the District of Columbia for the imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia.

In addition, the Court Reform Act specifically repealed the statutory grant of concurrent jurisdiction over district tax matters in the U.S. District Court for the District of Columbia. Finally, three years after enacting the Court Reform Act, Congress approved the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 774 (Dec 24, 1973) (the Self-Government Act), granting the district limited home rule, including power over the enactment and collection of taxes.

Having examined this history and the specific statutory language, the U.S. Court of Appeals held that:

By enactment of the Court Reform Act and the Self-Government Act, therefore, Congress has expressed its clear intent to grant exclusive jurisdiction over claims for refund of District of Columbia taxes to the District of Columbia courts and authorized District of Columbia government officials to enact and collect, as well as refund, taxes. Congress divested the federal courts of any jurisdiction over such challenges that they might otherwise have, including jurisdiction over challenges presenting federal statutory or constitutional claims.


Florida

Phaseout of Intangibles Tax In Trouble

The continued phaseout of Florida’s intangibles tax, Republican Gov. Jeb Bush’s favored tax cut this year, was in trouble already as the 103rd session of the Florida Legislature convened on March 6.

“I think it’s going to be a tough battle,” said House Speaker Tom Feeney (R).

Bush has pared back his tax cut requests from his first two years, when Florida, like much of the rest of the nation, was awash in revenue generated by economic good times. The governor is asking lawmakers to approve just two major tax breaks, totaling about $300 million. One would cut in half the intangibles tax paid by businesses and by Floridians with investments. The other would give shoppers a nine-day tax holiday in August.

But as the Legislature convened to begin its two-month session, Republicans are finding the tax breaks tough to reconcile with cuts in human services and education spending.

“It’s going to be very difficult to rationalize significant tax breaks if we cannot restore some of the budget cuts that have been recommended,” said Sen. Tom Lee (R).
The House was poised to pass the intangibles tax cut, but Feeney promised not to bully legislators to do so. “I’m not going to beat on anybody to vote for a tax cut in a tough budget year,” he said.

“I think the House philosophically made a commitment [to cut taxes] and has done it for the right reason,” he added.

The going might be even tougher in the Senate, historically a more pensive and prudent chamber.

A study released by the National Conference of State Legislatures (NCSL) compared the fiscal health of the 50 states and analyzed their agendas. Florida was cited in the study as one of seven states with steady revenue and higher need for expenditures, largely because of a $1 billion shortfall in its Medicaid budget. (For the full text of the NCSL study, see Doc 2001-6222 (32 original pages; tables and graphs available on microfiche and by Access Service only.)

Among the seven states, only two — Florida and Delaware — are discussing the possibility of cutting taxes this year. Two others plan tax increases; the other three plan neither.

Lee said lobbyists have become used to sizable tax cuts — billions worth in the first two years of Jeb Bush’s administration — and may have a hard time accepting fewer or no breaks this year.

“People who feed at the budget trough in the Legislature only want to know, ‘What have you done for me lately?’” Lee said. “I don’t see a whole lot of appreciation for past performance.”

— Joe Follick, Tallahassee

**Appeal Court: City May Collect Utility Fees From State Agency**

The Florida Court of Appeal, First District, has ruled that a city is entitled to collect utility fees from the state and its agencies for storm water runoff management (City of Gainesville v. State of Florida, Mar 5, 2001).

The city of Gainesville (City) sought a declaratory judgment that the monthly storm water runoff utility charges billed to the Florida Department of Transportation (DOT) were valid and requiring the DOT to pay the fees. The trial court dismissed the City’s complaint against the DOT, ruling that the ordinance authorizing the storm water utility charges imposed a special assessment the City could not collect from a state agency, and did not authorize utility fees. The City appealed; the Court of Appeal held that the City was granted the power to collect the fee by act of legislation. The court explained that state statutes provide cities with the option of establishing storm water management systems and financing them by charging utility fees. The DOT argued that the fees collected by the City are not utility fees but an unauthorized tax or assessment.

The DOT argued that the fees were not user fees as defined by case law because the parties paying the fees did not have the option to refuse the service and because the fee was not paid in exchange for a service. The DOT also argued that the utility fees did not correlate with the benefits that each individual user received. The court held that because a landowner can refuse the City’s storm water management service and prevent landowner liability for fees by either refraining from developing the land or containing run-off, the fees were valid and were not a tax. The court went on to explain that it is difficult to meter run-off water and determined that the City is entitled to charge a regular service charge similar to other utility companies. The DOT further argued that it had sovereign immunity from paying the fees to the City. Citing a South Carolina case and interpreting a statute similar to one existing in Florida, the court stated that storm water utilities in other jurisdictions are permitted to assess fees on state property. Accordingly, the court reversed the trial court decision as to the declaratory judgment.

**Full Text Citation:** No. 1D99-4548. Doc 2001-6624 (15 original pages)

**Abstracts and Citations**

- DOR: County’s Purchase of Construction Materials Sales-Tax-Exempt. The Florida Department of Revenue has ruled that the terms of a contract between a county and a local contractor to build an airport are sufficient to allow the county to purchase construction materials exempt from sales tax (TAA 01A-003). Full Text Citations: Doc 2001-6207 (10 original pages) or 2001 STT 45-13
- DOR: Sale, Leases of Property by Nonprofit Sales-Tax-Exempt. The Florida Department of Revenue has confirmed that a nonprofit organization’s sales and leases of donated property are exempt from sales tax as long as proof of the exemption is presented at the time of the sales and leases (TAA 00A-085). Full Text Citations: Doc 2001-6283 (4 original pages) or 2001 STT 45-14
- DOR: Stadium Furnishings Purchases Exempt From Sales Tax. The Florida Department of Revenue has ruled that purchases of furniture, fixtures, and equipment for a football stadium by a limited partnership under a contract with a tax-exempt sports and stadium facility authority are exempt from sales tax (TAA 01A-004). Full Text Citations: Doc 2001-6074 (10 original pages) or 2001 STT 45-15

**Georgia**

**House Votes to Limit Use of Federal Entity Classification**

*by Peter G. Stathopoulos, PricewaterhouseCoopers LLP, Atlanta*

Georgia HB 582, which has passed the Georgia House and is before the Senate, contains provisions clarifying that federal entity classification will be followed only for Georgia income tax purposes, not for purposes of other Georgia taxes.

Georgia Code Ann. section 14-11-303 currently states that a limited liability company (LLC) shall be classified as a partnership “for Georgia tax purposes” unless otherwise classified for federal income tax purposes, in which case the federal classification will be followed “for Georgia tax purposes.” The language “for Georgia tax purposes” arguably applies to all
Georgia taxes (e.g., sales and use taxes, net worth taxes, property taxes, and real estate transfer taxes), not only to Georgia income tax under Ga. Code Ann. section 48-7-21.

This language created the opportunity for some tax planning for Georgia sales, use, and other non-income-tax purposes. For example, a corporation that owned a single-member LLC that was disregarded for federal income tax purposes would arguably not have to charge sales tax for otherwise taxable sales to that single-member LLC because such entity would have to be disregarded for Georgia sales tax purposes. If the entity were disregarded for sales tax purposes, then arguably no sale was made that could be subject to Georgia sales tax. Georgia HB 582 would close this loophole by clarifying that federal elective entity classification will only be followed for Georgia income tax purposes, and not for other Georgia taxes.

HB 582 would also amend Ga. Code Ann. section 14-11-303 to apply to limited partnerships as well as LLCs. It is unclear under current Georgia income tax law whether Georgia would adopt federal elective entity classification for limited partnerships doing business in Georgia. Currently, federal elective entity classification is only implicitly adopted for limited partnerships by Georgia’s adoption of federal taxable income as the starting point for calculating Georgia taxable income and by Georgia’s annual adoption of the Internal Revenue Code. See Ga. Code Ann. sections 48-7-21(a), 48-7-21(b)(7).

Full Text Citation: HB 582, as passed by the House. Doc 2001-6831 (21 original pages)

Hawaii

Senate Tax Panel Votes to Repeal Scheduled Income Tax Cuts

Citing the need to balance tax relief proposals against the state’s fiscal obligations, the Hawaii Senate Ways and Means Committee, headed by Sen. Brian Taniguchi (D), has recommended to the full Senate that income tax cuts scheduled for the current year and next year be repealed.

Adopted in the 1998 session of the Legislature as part of a package to stimulate the state’s sagging economy, the individual income tax rate reductions were to be phased in over four years in three stages. The first reduction, which dropped the top tax rate from 10 percent to 8.75 percent, took effect in 1999 and continued through 2000. The second phase was to take effect with the beginning of 2001, and the third and final phase is to take effect beginning January 1, 2002. However, SB 791, SD-1, would repeal the second and third phases, putting the top tax rate back at 8.75 percent for the current year. (For coverage of the 1998 tax cut, see State Tax Notes, Jul 20, 1998, p. 139: 98 STN 137-9; or Doc 98-22540 (2 pages). For the full text of HB 2749, HD-1, SD-1, CD-1 (Act 157 of 1998), see Doc 98-26532 (24 pages) or 98 STN 169-19.)

While the committee report does not specifically identify the major fiscal issues, lawmakers have been struggling with pay raise issues for public employees. While all bargaining units have wage demands on the table, it is the proposal to raise teachers’ pay by 22 percent that is getting in the public spotlight. The teachers’ union has already gone on record that it will go out on strike sometime this spring, before the Legislature adjourns.

SB 791, SD-1, would also reenact a food tax credit that would be available to all resident taxpayers. This part of the bill appears to be the majority’s response to calls by the Republicans for exemption of food purchases from the state’s 4 percent general excise tax. Hawaii law had previously provided a food credit, but that credit was repealed in 1998 when the income tax reductions were adopted. Because that credit was repealed, Republicans believe, exemption of food purchases is necessary to reduce the regressivity of the general excise tax.

The proposal will now go before the full Senate. The media and various leaders, including Gov. Ben Cayetano (D), are criticizing senators for going back on their promise to lower income tax rates.

— Lowell L. Kalapa, Honolulu

Full Text Citation: SB 791, SD-1. Doc 2001-6980 (10 original pages)

Senate Panel Approves Long-Term-Care Credit

What started out as a proposal to adopt general guiding principles as a part of Hawaii’s policy on long-term care (SB 1534) has emerged from the Senate Ways and Means Committee with an addition that would provide an income tax credit aimed at lower-income individuals who opt to purchase long-term-care insurance.

In recommending SB 1534, SD-1, to the full Senate, the Ways and Means Committee, headed by Sen. Brian Taniguchi (D), did not specify how much the credit would be, leaving the percentage of the cost of the long-term-care premium payment unspecifed. The Ways and Means Committee also did not indicate at what level of income the credit would no longer be available, but it implied that the credit would be available only to taxpayers below the unspecified income level.

The measure is primarily focused on setting up a single-entry system for long-term-care provision in the state. It proposes five guiding principles for the provision of long-term care: (1) reducing fragmentation of services; (2) creating a consumer-centered system; (3) expanding home- and community-based services; (4) promoting personal responsibility; and (5) limiting long-term-care expenditures.

The members of the Senate fiscal committee apparently also believe that low-income individuals need a subsidy if they are to be encouraged to purchase long-term-care.

SB 1534 is another in long line of attempts to address the issue of providing long-term care to Hawaii’s elderly and disabled. Proposals to establish a state-run and tax-funded long-term-care plan in the early 1990s, dubbed “Family Hope,” were soundly defeated. Thus, efforts in recent years have turned to reforming and improving the system of services for long-term care.

— Lowell L. Kalapa, Honolulu

Full Text Citation: SB 1534, SD-1. Doc 2001-6788 (27 original pages)
**Idaho**

**Governor OKs Land Producing Nursery Stock as Agricultural Land**

On February 26, Idaho Gov. Dirk Kempthorne (R) signed HB 55 into law as Chapter 12. The new law updates and clarifies the definition of “land actively devoted to agriculture” for property tax purposes to include land that produces nursery stock. (For the full text of HB 55, as signed, see Doc 2001-6304 (4 original pages) or 2001 STT 44-27.)

Modern technology and new agricultural practices created a need to update the existing law as it pertains to defining agricultural use and having land classified as “actively devoted to agriculture.” This legislation is effective from January 1.

— John McGown, Boise

**House to Ponder Income Tax Credits For Farming, Mining Taxes**

For tax year 2001 only, Idaho HB 333 would provide a 100 percent income tax credit for personal property taxes due for agricultural machinery and equipment and a 100 percent credit for property taxes due for real property used in mining.

The fiscal impact is estimated as follows:

<table>
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<th>Description</th>
<th>Dollar Amount</th>
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<tr>
<td>Personal Property Credit for Agricultural</td>
<td>$12.4 million</td>
</tr>
<tr>
<td>Machinery and Equipment Real Property Credit for Mining</td>
<td>$1.7 million</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14.1 million</strong></td>
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While this is special-interest legislation, the apparent hope is to provide targeted relief to two of Idaho’s traditional industries. If passed, HB 333 would be effective from January 1. It has been referred to the House Revenue and Taxation Committee.

— John McGown, Boise

**Full Text Citation:** HB 333. Doc 2001-6757 (4 original pages)

**Proposal Would Relieve State Responsibility for School Buildings**

Idaho House Joint Resolution 1, which is in the House State Affairs Committee, would amend Article IX, section 1 of the Idaho Constitution to clarify that the provisions of this section that require the Legislature to establish and maintain a general, uniform, and thorough system of public, free common schools shall not apply to buildings or facilities of school districts. The question would be submitted to the electorate. The Legislative Council would be directed to prepare the statements required by law, and the secretary of state would be directed to publish the amendment and arguments as required by law.

In the view of Rep. Todd M. Hammond (R), sponsor of HJR 1, for over 100 years in Idaho the question of when and how to build new school buildings was reserved solely to the local school district and its patrons. Recently, the Idaho Supreme Court altered this long-held policy by ruling that the state had a constitutional duty to involve itself in the school facilities question. To reassert the time-honored policy, and settle the question that the capital improvements are the sole prerogative of the local school district, this Legislature would propose that the Idaho Constitution be amended to specifically enumerate that the constitutional duty of the state regarding free, common public schools shall not apply to buildings or facilities of local school districts.

— John McGown, Boise

**Full Text Citation:** HJR 1. Doc 2001-6758 (3 original pages)

**House Considers Vehicle Registration Changes**

The Idaho House Transportation Committee has received HB 349, sponsored by Rep. JoAn E. Wood (R), which would amend section 49-434, Idaho Code, relating to the registration of motor vehicles over 60,000 pounds gross vehicle weight.

The bill would revise the annual registration fee schedule for motor vehicles weighing in excess of 60,000 pounds, add two additional mileage bands at 20,000 and 35,000 miles, and provide for quarterly payments of the annual registration fee.

This bill is revenue-neutral for the state. If enacted, it would have an effective date of October 1.

— John McGown, Boise

**Full Text Citation:** HB 349. Doc 2001-6756 (8 original pages)

Abstracts and Citations

**Final SB 1018 Extends Workforce Development Training Tax Until 2007.** Idaho SB 1018, signed into law as Chapter 19, extends the imposition of the workforce development training tax on 3 percent of the taxable wage rate of employers until January 1, 2007. **Full Text Citations:** Doc 2001-6353 (5 original pages) or 2001 STT 45-18

State Tax Notes, March 12, 2001
**Illinois**

**Circuit: Parent of Insurance Company Not Part of Unitary Group**

by Garland Allen, Louise Calvert, and Julie B. Dubin, PricewaterhouseCoopers LLP, Chicago

Overturining an administrative decision of the Illinois Department of Revenue, the Circuit Court of Cook County has held that an out-of-state parent of insurance companies and one investment company was not a “holding company” of insurance companies and therefore was not required by statute to be partially included in the insurance subsidiaries’ combined returns. *Cincinnati Casualty Co. and Affiliates v. Bower, et al.*, No. 00 L 50254 (Jan 17, 2001).

The taxpayer (Parent), a corporation based outside Illinois, had two wholly owned, first-tier subsidiaries, an insurance company, and an investment company. In addition to owning and managing the insurance and investment companies, Parent also owned and managed a portfolio of more than $1 million in stocks and bonds. Parent’s insurance company subsidiary in turn owned three other insurance companies. During the 1991-94 period in issue, the four insurance entities each conducted business in Illinois and filed Illinois tax returns on the separate-company basis, using the “direct premiums” single-factor apportionment method required for insurance companies. Parent and the investment company did no business in Illinois and filed no returns.

On audit, the DOR found that Parent and the four insurance subsidiaries were unitary and were required to file a combined return in Illinois. The DOR also found that Parent was a “holding company” of insurance companies that was required by a 1987 amendment to the statute to be included in the insurance company combined return. The administrative law judge upheld both determinations, and Parent appealed that administrative decision to the Circuit Court of Cook County. (For an analysis of the ALJ’s decision, see *State Tax Notes*, Dec 18, 2000, p. 1616; 2000 STT 237-22; or Doc 2000-31547 (5 original pages); for the full text of the ruling, see Doc 2000-31596 (31 original pages) or 2000 STT 238-21.)

Parent presented the following issues to the court: (1) whether Parent was a holding company of insurance companies, which was required to be included in an insurance company combined return; (2) whether Parent was entitled to discretionary relief from this rule, on the ground that the single-factor apportionment formula did not fairly reflect Parent’s business activities in Illinois; and (3) whether the DOR properly imposed penalties on Parent for failing to include itself in the unitary return of its insurance subsidiaries.

On the statutory issue, the court determined that Parent was not a “holding company” within the ordinary and popularly understood meaning of the term and therefore could not be included in the insurance companies’ unitary business group. Relying primarily on definitions contained in *Black’s Law Dictionary* and *Webster’s College Dictionary*, the court found that the term was limited to “a company created solely to buy, own and control the shares of stock of one or more other corporations, which company does not engage directly in its own productive business operation.”

The court reasoned that this definition “allows the State of Illinois to obtain tax revenues from abusive situations (corporations using shell holding companies solely for the purpose of avoiding Illinois tax), while at the same time removing from Illinois taxation those foreign parent corporations which have significant business operations of their own wholly outside the State of Illinois,” citing the 1998 Illinois Appellate Court decision in *Shaklee Corp. v. DOR*. The court also noted the absence of legislative history as to the legislature’s intent, and the rubric of construction that “taxing statutes are construed most strongly against the government and in favor of the taxpayer.” (For coverage of the Appellate Court’s 1998 ruling in *Shaklee*, see *State Tax Notes*, Sep 7, 1998, p. 594; 98 STN 168-4; or Doc 98-26882 (4 pages).)

On Parent’s distortion claim, the court agreed that the inclusion of Parent’s income on a unitary basis results in “a clear distortion of the subsidiaries’ income.” According to the court, including Parent in the combined return subjected investment income earned by Parent in Ohio to Illinois taxation based on the amount of insurance business done by its insurance subsidiaries in Illinois. As a result, the court found, under Illinois Income Tax Act section 304(f) Parent was entitled to use separate accounting for such income because that method would properly result in none of Parent’s income being taxable in Illinois.

Finally, the court determined that Parent was entitled to abatement of penalties for “reasonable cause.” Pointing to the statute’s Internal Revenue Code conformity clause, the court found applicable the definition in IRC section 6664(c), which includes “taking a good faith position on a tax return.” The court said that Parent “was never provided with a definition [of] what a holding company is” and that “if the Department’s auditor could not determine whether [Parent] was a holding company, then that established that it made a good faith effort by not including its income in its subsidiaries’ returns.”

Even though the court disposed of all the matters at issue, it remanded the case to the DOR “for further proceedings including findings and reasons” concerning the distortion and penalty issues.

Full Text Citation: *Cincinnati Casualty Co. and Affiliates v. Bower, et al.* Doc 2001-6901 (25 original pages)

**Lawmakers to Consider Change in Tax on Snuff Tobacco**

An interesting process is under way in the Illinois General Assembly in which a business is actually lobbying for a tax increase on its activities. U.S. Smokeless Tobacco Company is supporting a change in the taxation of snuff tobacco that would result in an overall increase in collections.

Currently, snuff is subject to an Illinois tax of 18 percent of the wholesale price of the product. Under SB 449, introduced by Sen. William E. Peterson (R), the tax on snuff would change from an ad valorem tax to a tax of 37 cents per ounce. This
would result in an overall increase in tax collections from the sale of snuff.

The increase is being supported by the tobacco firm for two reasons. First, with a change in the tax from an ad valorem tax to a specific (quantity-based) excise, the tax would not rise in the future with increases in prices. Second, U.S. Smokeless Tobacco sells premium smokeless tobacco products, such as Skoal and Copenhagen, that are more expensive than most other brands. This means that the new quantity-based tax will have a smaller relative impact on expensive brands as compared with the cheaper ones. Consequently, the new tax would reduce the price differential between the U. S. Smokeless Tobacco brands and those of their competitors, which would improve their competitive position.

— J. Fred Giertz and Therese J. McGuire, Urbana

Full Text Citation: SB 449. Doc 2001-6957 (4 original pages)

Lawmaker Would Allow Taxpayers Not to Fund Capital Punishment

An unusual bill that seeks to direct income tax payments by taxpayers who oppose capital punishment has been introduced in the Illinois General Assembly. Rep. Mary Lou Cowlishaw (R) has proposed a bill (HB 160) that would allow income taxpayers to direct that their tax payments go entirely into the state’s educational fund and not to the general fund — a fund that might be used to carry out executions.

The bill would establish a kind of “conscientious objector” category in which an “individual taxpayer who holds a religious, ethical, or moral objection to capital punishment” would have all tax payments deposited in the state’s Common School Fund.

The proposal is obviously entirely symbolic, because other fungible funds would replace the payments lost to the general fund. Cowlishaw countered this criticism by stating even though there would be no tangible effect, objectors “would have the satisfaction of believing their money is not being used for the death penalty.”

The Illinois Department of Revenue objected to the bill on the grounds that it would be difficult to determine the sincerity of a taxpayer’s beliefs and that it might open the door to other categories in which tax payments could be directed away from state activities to which certain people object on moral grounds.

The bill is given little chance of passage, but it is likely to add to the ongoing discussion of the death penalty in Illinois, which is in the midst of a debate over capital punishment resulting from the revelation that several prisoners sentenced to death were actually innocent of the crimes for which they were convicted. Gov. George H. Ryan (R) has put a moratorium on the death penalty pending a review by an advisory committee.

— J. Fred Giertz and Therese J. McGuire, Urbana

Full Text Citation: HB 160. Doc 2001-6409 (8 original pages)

Abstracts and Citations

☆ DOR to Amend Retailers’ Occupation Tax Offset Procedures. The Illinois Department of Revenue has proposed to amend the offset procedures established for claims under the Retailers’ Occupation Tax Act by correctly citing the local taxes that must first be offset before approval of the claim (86 Ill. Adm. Code 130.1501). Full Text Citations: Doc 2001-5813 (8 original pages) or 2001 STT 42-12

☆ DOR to Adopt Fraternal Organizations Property Tax Exemption Rule. The Illinois Department of Revenue has proposed to adopt a rule that would provide guidance to applicants and local officials seeking eligibility for new preferential assessments for property owned and used by qualified fraternal organizations (86 Ill. Adm. Code 110.113). Full Text Citations: Doc 2001-5814 (4 original pages) or 2001 STT 42-13

☆ DOR to Implement Arts, Cultural Organizations Sales Tax Exemption. The Illinois Department of Revenue has proposed a new rule that would implement an exemption from sales tax for purchases of tangible personal property for use by not-for-profit arts or cultural organizations (86 Ill. Adm. Code 130.2004). Full Text Citations: Doc 2001-5824 (6 original pages) or 2001 STT 42-14

☆ DOR to Implement Telefiling Income Tax Program. The Illinois Department of Revenue has proposed to adopt 86 Ill. Adm. Code 107, to implement a program that allows for the filing of income tax returns using the telephone. Full Text Citations: Doc 2001-5838 (3 original pages) or 2001 STT 43-24

☆ DOR to Clarify Income Tax Treatment of Merchant Mariners. The Illinois Department of Revenue has proposed amendments to provide that, as with motor carriers and railroad employees, only the state of residence may impose an income tax on merchant mariners (86 Ill. Adm. Code 100). Full Text Citations: Doc 2001-5823 (13 original pages) or 2001 STT 43-25

☆ DOR to Clarify When It Will Require Alternative Apportionment Methods. The Illinois Department of Revenue has proposed to amend 86 Ill. Adm. Code 100.3380, to clarify the instances in which it will exercise its authority to require the use of alternative apportionment methods by businesses operating both inside and outside of Illinois. Full Text Citations: Doc 2001-5834 (7 original pages) or 2001 STT 43-26

☆ ALJ Affirms Tax on Transfer of Vehicle From Corporation to Individual. An administrative law judge with the Illinois Department of Revenue has upheld the $750 use tax imposed on the transfer of the title of a minivan from a corporation to an individual (MV 00-1). Full Text Citations: Doc 2001-6295 (3 original pages) or 2001 STT 46-10

☆ ALJ Orders Refund of Use Tax on Vehicle Acquired From Family Member. An administrative law judge with the Illinois Department of Revenue has ruled that the acquisition of a motor vehicle from an out-of-state family member qualified for an exception from the scheduled use tax rate and ordered a refund of tax (MV 00-2). Full Text Citations: Doc 2001-6296 (16 original pages) or 2001 STT 46-11
Iowa

Lawmakers Look at New Type of Ethanol Credit

Iowa legislators are looking for a new way to make tax incentives for the use of ethanol after failing in efforts the last several sessions to mandate the use of ethanol in all gasoline sold in the state.

Iowa already gives ethanol-blended gasoline a 1-cent-per-gallon tax break over regular gasoline but ethanol supporters — and there are many, given the importance of corn to Iowa’s farmers and agricultural products processing companies — have not been able to convince the legislature to adopt the ethanol-only standard or even to adopt a standard requiring stations to sell ethanol. Now, both the House and Senate Agriculture committees have approved measures to provide tax incentives for stations to sell ethanol-blended fuels instead of just regular gasoline. SF 320 in the Senate and HF 433 in the House would provide an income tax credit for retail gasoline dealers whose fuel sales are more than 60 percent ethanol sales. The Department of Revenue and Finance would compute the credit by multiplying 2.5 cents by the number of gallons of ethanol sold during the tax year. The credit would not be capped, and the eligible taxpayer could get a refund of the excess credit or have the excess credited against tax liabilities for the next year.

The bills also would give the Department of Revenue and Finance the authority to set the gallonage tax for ethanol-blended gasoline and for regular gasoline for the next six years, until 2007. The Department of Revenue and Finance would compute the credit by multiplying 2.5 cents by the number of gallons of ethanol sold during the tax year. The credit would not be capped, and the eligible taxpayer could get a refund of the excess credit or have the excess credited against tax liabilities for the next year.

The bills also would give the Department of Revenue and Finance the authority to set the gallonage tax for ethanol-blended gasoline and for regular gasoline for the next six years, until 2007. The Department of Revenue and Finance would be able to set the tax rate for ethanol between 19 and 20 cents per gallon and for regular gasoline between 20 and 20.8 cents per gallon. Both bills are in their respective Ways and Means committees waiting for further action. The legislature is approaching a deadline of March 16 for committee action on most bills that don’t originate in the Appropriations or Ways and Means committees; SF 320 and HF 433 have survived that deadline. However, the agriculture committees have traditionally treated ethanol bills more favorably than the Ways and Means committees, so it remains to be seen if this new approach will appeal to the chairs of those committees, who have both said that any further tax cuts this year should be those that spur economic development.

— Jack Hunt, Des Moines

Full Text Citation: SF 320. Doc 2001-6886 (8 original pages)

Senate Panel Eyes Breaks For Stock Options, S Corporations

Iowa state Sen. Larry McKibben (R) has said that the Senate Ways and Means Committee will look at moving three tax break bills out of committee in the next several weeks.

McKibben said two of the bills — SSB 1074, which would establish a deduction for capital gains resulting from the exercise of stock options, and SSB 1039, which would change the allocation of federal taxes for subchapter S corporations that do business in Iowa and in other states — are designed to spur economic development in Iowa. McKibben said he does not believe that either will lead to significant revenue losses, but he does believe that SSB 1074 will make the state more attractive to entrepreneurs by allowing companies that lack the capital to pay high salaries a way to compete in the marketplace for employees.

SSB 1039 is designed to level the playing field for Iowa shareholders in subchapter S corporations that do business in Iowa and other states by allowing those shareholders to allocate 100 percent of the federal taxes paid to Iowa rather than just 50 percent.

McKibben said that given the current downturn in state revenues, targeted tax cuts are more likely to meet the approval of Gov. Tom Vilsack (D) than broad reductions.

McKibben also said he will start the subcommittee work on SF 226, which would impose a cap on increases in local property tax rates, immediately. The bill is opposed by many officials in local government but has already passed through one committee, on a largely bipartisan vote, and Republicans have said that property tax reform is one of their priorities this year. The bill has the added advantage of not affecting state tax revenues.

— Jack Hunt, Des Moines

Full Text Citations

The full texts of the following documents are available as indicated:

- SSB 1039. Doc 2001-6453 (2 original pages) or 2001 STT 46-13
- SSB 1074. Doc 2001-6452 (4 original pages) or 2001 STT 46-12
- SF 226. Doc 2001-6552 (24 original pages)

Abstracts and Citations

- Revenue Department Amends Income Tax Regs Regarding Military, Disabled. The Iowa Department of Revenue and Finance has amended regulations to provide income tax benefits for taxpayers who serve in hazardous duty areas and to increase the income tax exclusion for retirement benefits received by the disabled (ARC 0421B). Full Text Citations: Doc 2001-5777 (2 original pages) or 2001 STT 43-28

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**Kansas**

**Senate Panel Approves ‘Family Development Accounts’**

The Kansas Senate Assessment and Taxation Committee has approved a bill (SB 231) that would enact the Family Development Account Program, a program under the Department of Commerce and Housing that would enable eligible families and individuals to establish tax-advantaged accounts for the purpose of funding specific purchases.

Families or individuals with household income less than or equal to 200 percent of the federal poverty level would be eligible to open family development accounts earmarked for higher educational expenses, job training costs, purchase of primary residence, major repairs or improvements to a primary residence, or start-up capitalization costs for small businesses.

The Kansas secretary of commerce and housing would be required to adopt rules and regulations and prepare a request for proposals from nonprofit or charitable community-based organizations seeking to administer the Family Development Account Reserve Fund. The reserve fund would be created to fund administrative costs of the program incurred by financial institutions and community-based organizations and also to provide matching funds for money in family development accounts. No more than 20 percent of all funds in the reserve fund could be used for administrative costs during the first two years of the program, and the limitation would be set at 15 percent in subsequent years.

The following tax provisions would be effective starting in tax year 2001:

- Money deposited into family development accounts by account holders would be exempt from Kansas income tax unless withdrawn for an unapproved use.
- Interest earned on family development accounts also would be exempt from income taxes.
- Financial institutions would receive a privilege tax exemption for earnings attributable to family development accounts.
- A program contributor, defined to include “a person or entity who makes a contribution” to a family development account reserve fund would be allowed income tax credits up to $50,000 per contributor or 50 percent of the contribution amount, whichever is less. The total amount of all such tax credits authorized could not exceed $500,000 in any fiscal year.

Account holders making nonqualified withdrawals from family development accounts would be required to forfeit all matching money in the accounts, which would then be returned to the family development account reserve funds of the contributing community-based organizations.

Family development account funds, including accrued interest, would be disregarded when determining eligibility for public assistance or benefits.

Subject to appropriations, the Department of Commerce and Housing would be required to award up to $100,000 annually for an independent evaluation of the program.

The latest fiscal information available suggested that the tax provisions of the bill would be expected to reduce receipts by about $684,000.

— Chris W. Courtwright, Topeka

**Full Text Citation:** SB 321. Doc 2001-6521 (5 original pages)

**House OKs Expanded County Sales Tax Authority**

The Kansas House has approved and sent to the Senate a measure (HB 2221) that would grant Riley and Labette counties sales tax authority for financing economic development initiatives or public infrastructure projects and provide that such taxes not be shared with cities located therein. Normally, counties are required to share countywide sales tax revenues with cities.

Any such taxes would be required to expire not more than 10 years after first being imposed. Labette County also would be granted additional rate authority for such purposes relative to current law of 0.5 percent.

Cowley, Russell, and Woodson counties currently have similar authority for economic development initiatives and public infrastructure projects.

The final House vote on HB 2221 was 106 to 16. The bill has been referred to the Senate Assessment and Taxation Committee.

— Chris W. Courtwright, Topeka

**Full Text Citation:** HB 2221, as passed by the House. Doc 2001-6556 (9 original pages)

**Louisiana**

**Governor Calls Special Session On Gambling Tax Changes**

Louisiana Gov. Mike Foster (R) has called the Legislature into a special session to begin Sunday, March 11, primarily to raise gambling taxes to help pay for public schoolteacher and college faculty pay raises.

The governor, who decides what lawmakers can consider in a special session, outlined a seven-item agenda that includes making changes to the tax structure of the state’s only land-based casino and raising riverboat casino taxes in exchange for allowing wide-open dockside gambling statewide. The Louisiana Legislature is prohibited by the state constitution from considering most tax issues during regular sessions in odd-numbered years, so Foster had to call a brief special session to take care of the gambling taxes and several other relatively noncontroversial tax measures. The special session must end by 6 p.m. on Thursday, March 22.
Foster’s chief of staff, Stephen Perry, outlined a complex administration plan for providing pay raises for public school teachers and college faculty.

The plan rests heavily on increased gambling revenue, but it includes several other pieces that will be put before lawmakers during the regular session that begins March 26.

Foster will push two major gambling measures during the special session:

- Restructuring the state tax on Harrah’s New Orleans Casino. Under current state law, Harrah’s New Orleans Casino is granted a monopoly as the only land-based casino in the Crescent City. In return, casino operators must pay the state a minimum $100 million in annual tax. But the casino, which has already been in and out of bankruptcy reorganization once, isn’t doing enough business to pay the tax and turn a profit. Casino developers recently filed again for bankruptcy reorganization and have threatened to close the gambling hall permanently at the end of March if they don’t get a break on their state taxes. Foster wants to keep the casino in operation, reasoning that the state is better off with a smaller piece of a going concern than seeing the casino close and getting nothing.

Foster and casino developers have negotiated a plan that calls for the casino to pay the state $50 million in fiscal 2002 and $60 million a year in ensuing years. Casino developers also would agree to a rolling three-year guarantee. It would work like this: as one year’s worth of taxes are paid, another would be tacked onto the casino guarantee so the state would always have at least three more years of taxes coming to it. While the state has been receiving daily tax payments from the casino since it reopened in October 1999, Louisiana leaders considered the revenue so uncertain that they used it for only onetime spending, such as construction and helping build a rainy day fund. Foster said the three-year rolling guarantee would allow him to use the casino tax for ongoing state spending.

Foster wants to use next year’s $50 million like this: $29 million to help provide college faculty pay raises; $16 million to help with public school teacher pay raises; and $5 million to help the state provide incentives to keep the New Orleans Saints professional football franchise in the city.

- Raising riverboat casino taxes in exchange for allowing dockside gambling. Louisiana law currently provides for an 18.5 percent tax on riverboat casinos throughout the state. The law also provides that casinos on most Louisiana waterways must make periodic cruises in order to conduct gambling operations. The only exception is the Shreveport-Bossier City area, where the Red River is too shallow for the five boats there to navigate safely.

Foster wants to raise the riverboat casino tax to 21.5 percent in exchange for letting nine boats in southern Louisiana stop sailing and operate exclusively at dockside. In addition, Foster wants to allow riverboat casino operators to replace their boats with stationary barges in exchange for upping the tax rate to 23.5 percent.

Perry estimated that the changes in riverboat casino taxes would generate an extra $54 million in fiscal 2002 and that the extra riverboat revenue would grow to as much as $90 million a year within four years as boats are traded for barges. Perry said Foster wants to dedicate all of the extra riverboat revenue in fiscal 2002 to public school teacher pay.

The growth in casino and riverboat tax revenue in future years would be divided 70 percent for public school teachers and 30 percent for college faculty pay raises.

If Foster gets what he wants, the governor will have $104 million in gambling revenue for recurring spending in fiscal 2002. He wants to use $70 million for public school teacher raises, $29 million for college faculty hikes, and $5 million for the Saints football team.

Perry said the gambling money would provide only a portion of the money Foster wants to put into pay raises for the education community.

Under the Louisiana Constitution, state government is required to increase state funding for local school districts by at least $70 million. Foster wants to earmark the entire $70 million in new education spending for teacher pay.

Taken together, the extra education money and the new gambling revenue would generate about $140 million for public school teacher pay raises in fiscal 2002 — enough for an across-the-board $2,000 pay raise for Louisiana public school teachers. Perry said Foster wants to augment the gambling money to provide additional money for college faculty pay raises as well.

The state constitution requires that the state pay off a $5.9 billion unfunded liability in its public retirement systems by 2029. Perry said Foster wants to pay off that long-term obligation by issuing “pension obligation bonds.” Perry said such bond financing would save the state $50 million to $80 million a year on its annual obligation to pay off the unfunded liability of the retirement systems. Perry said Foster wants to use the savings to help with college faculty pay raises over the next few years.

Besides the gambling-related items, other tax issues on Foster’s special-session agenda include:

- extending for four more years a tax-free shopping program that offers international visitors sales tax refunds on purchases made in more than 1,000 participating stores throughout the state;

- removing legal restrictions that stop the secretary of revenue from refunding inadvertent overpayments of state taxes;

- bringing Louisiana laws on unemployment taxes and benefits for Indian tribes into compliance with changes in federal law in that area; and

- expanding a sales tax break for utilities that Bayou Steel, located in southern Louisiana, purchases in its steelmaking processes. Bayou Steel was not covered when the original exemption was approved by lawmakers a few years ago.

Foster has one nontax measure on the special session agenda — allowing the Esler Industrial Development District to transfer ownership of an airport in central Louisiana to the Louisiana
National Guard. Perry said the airport item could have waited until the regular session but that it seemed like a good idea to go ahead and get this transfer completed as quickly as possible. — Carl Redman, Baton Rouge

Maryland

Abstracts and Citations

☆ Comptroller Clarifies Application of Sales/Use Tax to Room Rentals, Signs. The Maryland comptroller of the treasury has amended Regulation .23 and adopted Regulation .36 under COMAR 03.06.01 to clarify the application of the sale and use tax to room rentals and signs. Full Text Citations: Doc 2001-5979 (1 original page) or 2001 STT 43-29

Massachusetts

Rulings and Regulations

TAX BOARD ABATES SALES TAX ON OUT-OF-STATE DELIVERIES. The Massachusetts Appellate Tax Board has ruled that a retail store was not subject to state sales tax on items purchased and then shipped to other states (The Neiman Marcus Group Inc. v. Commissioner of Revenue, Jan 24, 2001).

Neiman Marcus Group Inc. is a Delaware corporation with its principal offices in Massachusetts. Neiman Marcus sells apparel and other products through retail stores. As part of its service to its customers, Neiman Marcus would offer them the option of having their purchases at its stores delivered to third parties outside the state. The out-of-state deliveries were characterized as either “send” transactions or “gift-send” transactions. For gift-send transactions, the item was usually gift-wrapped and the price was not included with the item. Neiman Marcus would have a common carrier deliver the goods to the out-of-state recipients. Customers had no liability or risk of loss for the deliveries, and Neiman Marcus would absorb the cost of refunds or replacements of lost or damaged items. In the case of a send transaction, Neiman Marcus did not collect or remit Massachusetts sales tax. If Neiman Marcus had a retail store in the state where the delivery was made, it would collect and remit the sales tax imposed by that jurisdiction. In a gift-send transaction, Neiman Marcus collected and paid Massachusetts sales tax if the item was not otherwise exempt from Massachusetts sales tax. Neiman Marcus also collected and remitted Massachusetts sales tax on send transactions involving shipments from its out-of-state stores. Neiman Marcus filed timely Massachusetts sales and use tax returns and, despite the payments it made, the commissioner of revenue assessed additional sales taxes on the send transactions for which Neiman Marcus had not collected sales tax. Neiman Marcus received a notice of assessment, which it paid, and was subsequently denied an abatement. Neiman Marcus appealed to the Appellate Tax Board.

The board found that sales of property are subject to Massachusetts sales tax if either title to or possession of the property passes to the purchaser in the state. Also, sales of items delivered to states outside of Massachusetts are not subject to Massachusetts sales tax if neither title nor possession passes to the purchaser or its designee in the state. The board determined that, in accordance with the Uniform Commercial Code, title passes when the seller completes the physical delivery of the goods. Because of Neiman Marcus’s practice and custom to insure the goods and take responsibility for replacing or refunding lost or damaged goods, the board found that title did not pass until a delivery was made and the item was received by the out-of-state designee. Therefore, the board concluded that Neiman Marcus was not subject to Massachusetts sales taxes on the send or gift-send transactions when items were delivered to parties outside of Massachusetts.


Abstracts and Citations

☆ DOR Announces Voluntary Disclosure Policy for Unfiled Returns. The Massachusetts Department of Revenue has reduced the period for which a taxpayer who voluntarily discloses a failure to file any tax returns the tax will be assessed to the most recent three years for which the tax is due (TIR 00-13). Full Text Citations: Doc 2001-5910 (4 original pages) or 2001 STT 43-30

☆ DOR: Shipping, Handling Charges Not Subject to Sales Tax. The Massachusetts Department of Revenue has determined that shipping and handling charges constitute a transportation charge that is deducted from the sales price upon which sales and use taxes are assessed (LR 00-15). Full Text Citations: Doc 2001-5917 (5 original pages) or 2001 STT 43-31

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Minnesota

Governor Scales Back Relief Proposal

Responding to a 20 percent reduction in Minnesota’s projected budget surplus, Gov. Jesse Ventura (Independence Party) has scaled back his tax relief proposal.

A revised revenue forecast for the next 28 months reduced the projected surplus from $3 billion, the amount forecast in November, to $2.4 billion. That’s the figure Ventura and legislators must work with as they set the state budget for the biennium that begins this July 1 and ends June 30, 2003.

In a letter to legislative leaders, Ventura made these adjustments to the tax cut proposal he put forth in January:

- A 2001 sales tax rebate of $856 million instead of the $924 million he previously had proposed. An $856 million rebate reflects the surplus that’s projected to accumulate in this fiscal year, ending June 30.
- A slower phase-in of income tax rate reductions. In January, Ventura had proposed reducing rates in all three tax brackets by 0.4 percentage points in 2001, followed by an additional 0.1 percentage point cut in 2003, bringing the total reduction to 0.5 percentage points. The new proposal would reduce rates by 0.3 percentage points in 2001 and an additional 0.2 percentage points in 2003. The revised proposal provides less relief in 2001 and 2002 but eventually reaches the same 0.5 percentage point reduction in 2003 as Ventura’s original proposal.
- A year’s delay in reducing the auto license registration tax. Ventura had proposed limiting license tab renewals to $89 per vehicle, instead of the current $99, starting in January 2002. His new proposal would implement that change in January 2003.
- A one-year delay in repealing the June sales tax acceleration shift. This shift, instituted in the 1980s to get through a fiscal squeeze, requires businesses to estimate sales tax receipts and remit them earlier than in other months. Ventura had proposed eliminating the requirement in June 2002; he now proposes ending it in June 2003.

Ventura also proposed speeding up the timing of one tax break. He had proposed eliminating the requirement that state and local governments pay sales taxes on purchases effective in January 2002. Now he’s proposing that the repeal take effect July 1.

“Repeal of the sales tax on state and local purchases remains the right public policy and I am recommending that it be implemented six months earlier,” he wrote in the letter.

— Dennis J. McGrath, Minneapolis

Senate Considers Numerous Sales Tax Exemption Bills

In bills presented to the Income and Sales Tax Division of the Minnesota Senate Taxes Committee, lawmakers sought sales tax exemptions for transactions ranging from sales of unmarked police cars to admission tickets for nonprofit dance clubs.

The bills that the committee gave hearings include the following:

- SF 32, sponsored by Sen. Linda Scheid (DFL), would provide a sales tax exemption for sales of animals by nonprofit animal shelters.
- SF 113, sponsored by Sen. Tony Kinkel (DFL), would exempt unmarked vehicles purchased by counties, cities, and townships for general police work, liquor investigations, or arson investigations.
- SF 138, sponsored by Sen. Ann Rest (DFL), would exempt material and supplies used in the construction, improvement, or expansion of low-income housing projects owned by a public housing agency.
- SF 195, sponsored by Sen. Arlene Lesewski (R), would exempt admission charges to nonprofit dance clubs. Also exempt would be sales of food and drink at a dance sponsored by such an organization. To qualify, the club must be organized for the purpose of promoting square dancing, folk dancing, polka, or ballroom dancing, and the gross annual sales of the organization must not exceed $10,000.
- SF 475, sponsored by Sen. Jim Vickerman (DFL), would exempt county purchases of gravel, machinery, snowplows, and dump trucks used for road or bridge maintenance.
- SF 791, also sponsored by Vickerman, would exempt materials, supplies, machinery, and equipment used in the construction of an agricultural processing facility if the facility is operated by a cooperative and the total capital investment in the processing facility is between $1 million and $100 million.
- SF 800, sponsored by Kinkel, would exempt construction material and supplies used to expand or improve small resorts, which are those classified as Class 1c or Class 4c.

The Income and Sales Tax Division took no action on the bills, which will be considered for inclusion in the omnibus tax bill.

— Dennis J. McGrath, Minneapolis

Full Text Citations

The full texts of the following documents are available as indicated:

- SF 32. Doc 2001-6563 (1 original pages)
- SF 113. Doc 2001-6565 (3 original pages)
- SF 138. Doc 2001-6564 (2 original pages)
- SF 195. Doc 2001-6566 (1 original page)
House Tax Panel Ponders Vending Machine Exemptions

Vending machine diners would be able to satisfy their hunger without having to pay sales tax on certain items under two bills being considered by the Minnesota Sales and Income Tax Division of the House Taxes Committee.

HF 502, which was sponsored by Rep. Erik Paulsen (R), would provide the tax break only to healthy eaters. The bill would extend a sales tax exemption to nutritional food sold in vending machines, including drinks that contain milk or milk products; drinks containing at least 15 percent fruit juice; fruit and fruit products; vegetables; granola bars, breakfast bars, energy bars, and similar foods; and yogurt and pudding.

Another bill (HF 858), sponsored by Rep. Ron Erhardt (R), would provide a broader exemption. It would extend the exemption to all foods sold in vending machines that are nontaxable when sold in grocery or convenience stores. However, the exemption would not apply to bakery products or to noncarbonated, noneffervescent bottled water sold in containers of less than a half gallon.

The Department of Revenue estimated the cost of HF 502 at $1.3 million and the cost of HF 858 at $11.5 million over the next biennium.

The division took no action on the bills, which will be considered for inclusion in the omnibus tax bill. — Dennis J. McGrath, Minneapolis

Full Text Citations

The full texts of the following documents are available as indicated:

- **HF 502.** Doc 2001-6570 (4 original pages)
- **HF 858.** Doc 2001-6571 (4 original pages)

Abstracts and Citations

* DOR News Release: Surveys Show Citizens Support Broader Sales Tax. The Minnesota Department of Revenue has issued a news release to announce that three independent surveys have shown that the majority of citizens support the broadening of the sales tax as proposed in the governor’s tax reform plan. Full Text Citations: Doc 2001-5985 (2 original pages) or 2001 STT 43-32

To Order Documents: To find out how to order documents listed in *State Tax Notes*, see box on the last page of the news section.

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**Mississippi**

Governor Approves Exemption For Certain Storage Charges

by D. Carl Black Jr. and J. Paul Varner,
Butler, Snow, O’Marra, Stevens & Cannada, PLLC, Jackson

On February 28, Mississippi Gov. Ronnie Musgrove (D) approved HB 897, which exempts from the 7 percent state sales tax the gross income of a public storage warehouse derived from the temporary storage of tangible personal property pending the shipping or mailing of the property to another state.

Although the measure is effective statewide, it is designed to assist storage facilities in communities near the Oklahoma state line in competing with similar facilities in adjoining states.

The exemption is effective from July 1, 2001.

Full Text Citation: HB 897, as signed. Doc 2001-6479 (4 original pages)

**Missouri**

State High Court: Fitness Center Membership Fees Subject to Sales Tax

The Missouri Supreme Court has overruled its decision regarding the taxation of fitness center membership fees and ruled that athletic and exercise or fitness clubs are places of recreation and thus fees paid to them are subject to sales tax (Wilson’s Fitness Center Inc. v Director of Revenue, Mar 6, 2001).

Wilson’s Total Fitness Center Inc. operates three full service fitness centers in Columbia and St. Louis, Mo. Along with offering strength, cardiovascular, aerobic, swimming, massage, basketball, racquetball, and other related activities, Wilson’s promotes a four-step “healthy heart program.” Approximately 80 percent of Wilson’s members become involved with this program. The cost of the program is included within the membership fee. Throughout the 1998 tax year, Wilson’s paid sales tax on its membership fees under protest. The director of revenue denied Wilson’s protest. In May 2000, applying the “primary purpose” test adopted by the state supreme court in *Columbia Athletic Club v. Director of Revenue* (1999), the Administrative Hearing Commission (AHC) also denied Wilson’s protest. Wilson’s appealed.

The issue before the state supreme court was whether athletic and fitness centers are subject to sales tax on their membership fees under section 144.020.1(2), RSMo 1994. The court ruled that they are subject to tax. The court noted that it recently struggled with the proper interpretation of section 144.020.1(2) in *Columbia Athletic Club v. Director of Revenue* (1998) and
In Columbia Athletic Club, the court noted that there was “a fine line between exercise that is primarily focused on health benefits and exercise that is primarily focused on recreation” and then held that a fitness center that offered “facilities for noncompetitive activities including aerobics, strength training, cardiovascular training, and nutrition/weight control training but does not offer facilities for tennis, racquetball, basketball, or swimming,” was not subject to sales tax because the basic purpose of the fitness center was improvement of health through physical exercise. Relying on the court’s decision in Columbia Athletic Club, Wilson argued that the primary purpose of its facilities was the improvement of health and fitness through exercise. Also relying on the Columbia Athletic Club decision, the director argued that the “primary purpose” of Wilson’s facilities was recreation.

After reviewing the AHC’s decision and noting the difficulty faced by the AHC in attempting to sift through details that would distinguish Wilson’s from Columbia Athletic Club, the court noted the difficulty inherent in the approach adopted in Columbia Athletic Club, which focuses on the dual nature of exercise and attempts to determine its primary purpose. The court determined that the “fine line between exercise that is primarily focused on health benefits and exercise that is primarily focused on recreation” simply cannot be distinguished in a meaningful and consistent manner. Accordingly, the court overruled its decision in Columbia Athletic Club and reinstated the de minimis test previously set out in Spudich v. Director of Revenue (1988), which stated that athletic and fitness clubs are places of recreation for the purposes of section 144.020.1(2), and the fees paid to them are subject to sales tax.

Full Text Citation: No. SC82732. Doc 2001-6887 (5 original pages)

Abstracts and Citations

Hearing Commission: Sales Tax Due on Returned Motor Vehicle. The Missouri Administrative Hearing Commission has sustained a sales tax assessment against a couple that signed a sales agreement and then returned a vehicle to the dealer because the dealer did not rescind the sale (Hays v. Director of Revenue, No. 00-1079 RV, Jan 2, 2001). Full Text Citations: Doc 2001-6311 (5 original pages) or 2001 STT 46-25

Hearing Commission Affirms Sales Tax Assessment Against Successor. The Missouri Administrative Hearing Commission has upheld an assessment of sales tax and interest against a restaurant purchaser as a successor (Riley Enterprises Inc. v. Director of Revenue, No. 99-3062 RV, Jan 9, 2001). Full Text Citations: Doc 2001-6075 (3 original pages) or 2001 STT 46-26

Montana

Abstracts and Citations

DOR to Correct Property Tax Valuation Period Rule. The Montana Department of Revenue has proposed an amendment that would correct a clerical error that exists in ARM 42.18.124, related to the clarification of valuation periods for Class 4 property. Full Text Citations: Doc 2001-5829 (1 original page) or 2001 STT 42-25

Nebraska

Revenue Panel OKs ‘Streamlined’ Sales Tax Bill

On March 1, the Nebraska Revenue Committee advanced LB 172 to the floor of the Legislature. The bill would authorize the tax commissioner to negotiate and the governor to sign a multistate, uniform, simplified agreement for sales tax administration and collection. In other words, Nebraska would take the next step in creating the Streamlined Sales Tax System toward which the Streamlined Sales Tax Project is working on a national level. (For the full text of LB 172, see Doc 2001-1209 (8 original pages) or 2001 STT 11-15.)

The Streamlined Sales Tax Project was created by public-and private-sector participants, and sponsored by the National Governors’ Association. Model legislation and a model agreement were approved by the project in December and introduced into several states, including Nebraska, in January. However, when the National Conference of State Legislatures (NCSL) approved the legislation and model agreement in January, several changes were made. Many merely clarified and reworded provisions, so those changes were not of major importance.

Among the most significant however, were a dramatic softening of the “uniform and simplified state rates” language and the deletion of any reference to uniform definitions of products and services. Under the model act approved in December, the agreement was to require states to work toward eliminating dollar-denominated exemptions or thresholds or limiting the number of state and local sales and use tax rates. Under the act as approved by NCSL, the states are to work to limit the number of rates over time.

Under the act as approved in December, any agreement would have uniform definitions of goods and services, with states to decide which to exempt and which to tax. NCSL rejected any reference to this simplification.

The NCSL modifications also called for each state to be represented by up to four delegates in administering the multistate system. And finally, NCSL insisted on a public-private study to determine the cost of compliance for retailers with sales tax requirements under the act.

The Revenue Committee considered changes to LB 172 to make the bill more like the NCSL version, but rejected all that were significant. The committee preferred to send as strong a message as possible about the need for uniformity and simplification in the administration of sales taxes. As a result of this decision, Nebraska is moving forward with the Streamlined Sales Tax System with as little other baggage as possible. To ensure that the bill will be debated this session, the Revenue Committee designated it a priority bill.
Lawmakers Move on Incentive Bills

Also advanced from the Revenue Committee was LB 507, sponsored by committee Chair Sen. Bob Wickersham, which would require an independent audit of Nebraska’s economic development tax incentives. The audit would be done to determine the level of compliance with the act and the extent to which the new jobs claimed by recipients were actually new jobs, and not jobs moved to the project from somewhere else or created by greater use of overtime.

The bill was amended by the committee to strengthen the confidentiality of tax information provisions. It awaits an uncertain fate on the floor, absent priority status.

Killed by the Revenue Committee were LB 100 and LB 119, which would have eliminated (the former) or extended (the latter) the sunset on Quality Jobs Act applications; that date was February 1, 2000. The committee began discussion of, and showed interest in, LB 620, sponsored and made an individual priority by Speaker Doug Kristensen. LB 620 is different from the Quality Jobs Act in many significant respects but is seen as a replacement. By naming the bill his individual priority, Kristensen has indicated a desire to replace the Quality Jobs Act rather than seek to extend it. The committee apparently agrees.

For the full text of LB 507, see Doc 2001-6748 (6 original pages) or 2001 STT 39-19.

Full Text Citations

The full texts of the following documents are available as indicated:

- LB 172 amendments. Doc 2001-6750 (2 original pages)
- LB 507 and amendments. Doc 2001-6749 (6 original pages)

Revenue Panel Finishes Hearings As Priority Deadline Looms

The Nebraska Legislature’s Revenue Committee held its final hearing March 7, almost two weeks earlier than usual. This early wrap-up was achieved in spite of the fact that the committee was sent about the same number of bills as in earlier long sessions.

The last day’s hearings included a bill to loosen the levy limits placed on local governments three years ago. LB 624, sponsored by Sen. Nancy Thompson, would allow schools to finance building projects with a special levy of up to 14 cents per $100 of valuation outside the limit. Currently, only projects that were started before April 1, 1996, are exempt.

Also heard was a bill to allow counties that have turned over their assessment function to the state to take it back after five years. LB 651 would also prohibit any counties with a population greater than 15,000 from turning over their assessment function in the future.

March 9 was also the deadline for naming individual and committee “priority bills.” In Nebraska, each senator is allowed to name any bill his or her individual priority bill, to ensure that it will be debated by the full Legislature if advanced from committee. Each committee is allowed to select two committee priority bills and thus ensure that they are likely to be debated. Under the rules of the Legislature, individual priority bills are the first priority for debate. However, most committee priority bills are considered. The speaker is also allowed to select 25 speaker priority bills that may be debated, and that have priority over nonpriority bills. Starting this month, nearly all of the remaining activity on the floor of the Legislature will deal with priority bills, the state budget, and redistricting.

— George Kilpatrick, Lincoln

Senate Panel OKs Property Tax Relief Amendment

by Maud Naroll, Nevada State Budget and Planning Office, Carson City

Nevada is working on amending its constitution to allow a partial property tax exemption to homeowners in serious financial straits. SJR 11 of the 70th session would allow the Legislature to exempt part of the assessed value of a single-family owner-occupied residence “to avoid severe economic hardship to the owner.”

The resolution passed last session, and this session Senate Taxation sent it to the Senate floor. State constitutional amendments in Nevada must pass in two legislative sessions. If the resolution passes this Legislature, it will go on the November 2002 ballot. If voters approve as well, it will amend the state constitution — and open the door for the 2003 Legislature to pass a property exemption. (For the full text of SJR 11, as passed by the Senate in 1999, see Doc 1999-8303 (3 original pages) or 1999 STT 45-34.)

Nevada

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**Senate Approves Personal Property Tax Installments**

by Maud Naroll,
*Nevada State Budget and Planning Office, Carson City*

The Nevada Senate has passed SB 64, which would allow large personal property tax bills to be payable in installments. Bills over $10,000 could be split into four approximately equal installments if the property owner contacts the county and, if the owner is a business, it has been around at least three years. SB 64 has been sent to the Assembly Taxation Committee.

Also passed by the Senate and moved to the Assembly tax panel is SB 59, which would change the name of the motor vehicle privilege tax to the “governmental services tax”; the bill would not change rates.

**Full Text Citation:** SB 64, as passed by the Senate. *Doc 2001-6477 (4 original pages)*

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### New Hampshire

**Study: School Funding Deficit Could Reach $540 Million**

The Granite State’s education funding deficit could reach $540 million by 2005, according to the latest study by the New Hampshire Center for Public Policy Studies.

It is the latest report in the center’s “Plumbing the Numbers” series on the public school funding issue. The Legislature approved a temporary funding plan that will sunset in early 2003. The report, by the center’s executive director Douglas Hall, notes that the Legislature could extend the current law and that is the basis for the study, which projects figures through 2005.

“If the New Hampshire Legislature were to leave in place the current mix of revenue sources and public obligations for school financing, the state’s Education Trust Fund would accumulate a deficit of roughly $543 million by the end of Fiscal Year 2005,” the report states. “The state’s General Fund would be unable to offset those losses, because it would have accumulated its own deficit of roughly $51 million during the same period, if current trends in spending and revenues were to continue.”

The report, writes Hall, “underscores the need for continued action on education financing to avoid creating the large deficits that would result if the present system were kept in place without modification.”

**Full Text Citation:** “Plumbing the Numbers #3.” *Doc 2001-6802 (10 original pages; tables and figures available by microfiche and Access Service only)*

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**Business Groups Differ On Governor’s Sales Tax Plan**

Business groups, retailers, and industry associations are weighing in on Democratic Gov. Jeanne Shaheen’s EXCEL New Hampshire plan, her blueprint for solving the public education funding crisis, which includes a 2.5 percent sales tax.

(For the full text of Shaheen’s announcement of her plan, see *Doc 2001-3959 (6 original pages)* or *2001 STT 29-18*.)

Jerry Garbacz, who chairs the Business and Industry Association of New Hampshire (BIA), said the goal of his organization is to solve the education funding shortfall with minimal economic impact.

“While none of us look forward to paying more taxes, this plan is the best that we could hope for in this situation,” Garbacz wrote in a memo to members. “It is a fully viable option that should be the least disruptive to the state’s economic climate and the ability of BIA’s members to successfully conduct business. It is important that we put the education funding crisis behind us and not invoke temporary or interim solutions that could jeopardize the state’s financial standing.”

Glenn Lawson, president of the New Hampshire High Technology Council (NHHTC), said his membership also supports the sales tax, over an income tax, with a caveat.

“The NHHTC supports the governor’s EXCEL plan, contingent upon its understanding that the proposed sales tax will not be applied to raw materials used in production, plant and capital equipment purchased by manufacturers, or products intended for resale, and upon its understanding from the governor that new tax revenues are necessary to resolve the education funding issue facing the state of New Hampshire,” he said.

In testimony last month before a House committee, Nancy Kyle, president of the Retail Merchants Association of New Hampshire, said enacting a sales tax would take away the state’s tax-free advantage.

“A sales tax is the only option that not only will affect the bottom line by increasing expenses, but will also take revenue right off the top by driving business back into neighboring states, causing other taxes to fall,” she said. “The Education Funding Commission’s report details that a sales tax would cause sales to drop. If sales were to drop, this would lead to stores closing. State revenues from the business profits and business enterprise taxes would fall. As people stop driving to the state to shop, rooms and meals taxes would also fall. This is very significant to you who are responsible for monitoring the revenues that fund the rest of the state’s budgetary obligations.”

An overview of the state’s Tourism Advisory Council notes: “Research shows that visitors choose NH because of the assets of the destination, not the tax rate. Shopping is the number one activity for all tourists everywhere — 40 percent of what they buy is clothes which, under the sales tax proposal, will not be taxed.”

The statement also noted that the proposed sales tax, at 2.5 percent, would be the lowest in the nation and that 40 percent of the tax would be paid by businesses making purchases.

— *Lorna Colquhoun, Lincoln*
State High Court: City Must Pay Full Share of County Taxes

In City of Berlin v. County of Coos, the New Hampshire Supreme Court has ruled that requiring Berlin to pay its county taxes in full, without a partial refund to reflect a subsequent local abatement, would not violate the state constitution (Mar 1, 2001).

Berlin is a municipality located in Coos County, N.H. According to RSA 29:11 (2000), the city must assess, collect, and pay to the county its just proportion of county property taxes. In August 1996, the Department of Revenue Administration determined that Berlin’s share of the 1996 county tax was approximately 24.74 percent. The calculation was based on the equalized valuation of all taxable property in the county. The total county tax bill for the 1996 tax year was $5,196,125, and the county issued a warrant to Berlin in the amount of $1,285,450, representing its proportional share. Berlin did not appeal the department’s equalized valuation of its property but, in December 1996, Berlin voted to withhold $475,617. It did so because the city’s largest taxpayer, Crown Vantage Corp., claimed that Berlin had overassessed its property for the 1996 tax year and refused to pay an identical amount in local property taxes. In September 1997, the county served a notice of distraint on the bank account holding Berlin’s deposits. The amount representing back taxes and interest, $512,234, was later removed from Berlin’s account and placed in escrow.

In November 1997, Berlin filed a petition for declaratory judgment seeking to determine whether it was obligated to pay the balance of the 1996 county tax, plus interest. In its answer, the county asserted that Berlin was estopped from contesting the department’s equalized valuation because it failed to appeal under RSA 71-B:5, II. The county contended that Berlin was obligated to pay its full portion of the county tax and was not entitled to any remittance should Crown Vantage prevail in its abatement litigation. Berlin and the county subsequently negotiated a resolution pending the outcome of the Crown Vantage litigation. Essentially, Berlin and the county agreed that Berlin would pay the portion of the county tax that would not be affected by any abatement secured by Crown Vantage, plus interest. The parties, however, reserved the right to bring the matter forward for a hearing on the merits, which the county did in early 1998. Following the hearing on the merits, the trial court ruled that the county’s refusal to repay Berlin for its portion of the Crown Vantage taxes in the event they are eventually abated results in disproportionate taxation against the city’s taxpayers. The court fashioned an equitable remedy, ruling that Berlin would not be required to pay the county the balance of its 1996 and 1997 tax warrants until the litigation involving Crown Vantage is resolved, unless the county agrees to refund to the city the portion of the Crown Vantage taxes eventually abated. When its motion to reconsider was denied, the county appealed.

Before the supreme court, the parties disputed the constitutionality of the lack of a statutory remittance process for county taxes when municipalities provide abatements to local taxpayers. The city contended that the trial court properly ordered equitable relief to correct the unconstitutional dis- proportionate county tax that would have occurred in the event Crown Vantage secured an abatement. Berlin’s position was premised on the belief that to satisfy the constitutional requirement of proportional and reasonable taxation, the value of Crown Vantage’s property, as determined in the abatement proceeding, constitutes its true value and that the department must recalculate Berlin’s equalized value for past tax years to reflect this revised value. The court concluded, however, that the constitution does not compel this result and that Berlin’s county taxes would not have been unconstitutionally disproportionate, regardless of the outcome of the Crown Vantage abatement litigation.

Berlin also contended that the county is bound by the negotiated settlement and that by its terms, under which the county only reserved the right to bring forward issues related to tax years after 1996 and 1997. The court noted that in February 1998, the city and county entered into a stipulation regarding the 1996 and 1997 county taxes. The stipulation stated that the parties agreed to a compromised negotiated settlement, pending the outcome of the case involving Crown Vantage, which was then pending in the supreme court. No language in the stipulation shows that the county ultimately waived its rights to litigate the merits of Berlin’s refusal to pay the 1996 and 1997 county tax assessments in full. Accordingly, the court rejected the city’s argument that the 1998 stipulation prevented the county from litigating the balance due from Berlin for the 1996 and 1997 tax years.

New Jersey

Abstracts and Citations

Tax Court Dismisses Untimely Corporate Tax Complaint. The New Jersey Tax Court has dismissed a complaint regarding an amended corporate business tax return because the return was filed more than four years after the tax was due (Godwin Pumps of America v. Director, Division of Taxation, No. 001789-2000, Jan 22, 2001). Full Text Citations: Doc 2001-5990 (3 original pages)

New Mexico

Senate OKs Budget Bill, Panel Backs Income Tax Cut

The New Mexico Senate has passed a $3.9 billion budget bill that provides for an 11 percent increase in spending next year and makes room for the first installment of a proposed two-year $72 million tax reduction.

The budget (Senate Finance Committee Substitute for HB 2) was passed March 6 on a 25-13 vote, with a coalition of Democrats and Republicans supplying the needed majority for
approval. The bill returns to the House for consideration of the Senate revisions. It’s expected that a joint House-Senate conference committee will be formed to negotiate the final version of the budget and resolve differences between the two chambers.

The Legislature’s 60-day session ends March 17. Gov. Gary Johnson (R) has called lawmakers back to work in special sessions the past two years because he wouldn’t accept the Legislature’s initial budget packages.

The Senate budget provides for spending $3.87 billion from the state general fund in the fiscal year starting July 1. That’s an increase of $388 million, or 11 percent, from currently budgeted amounts. The Senate budget spends $40 million more than the version passed by the House last month. Both legislative proposals were above the governor’s budget recommendations. Johnson proposed an 8.7 percent increase in general fund spending next year, or $304 million. The governor also has recommended an across-the-board reduction in personal income taxes of about $73 million next year.

Senate President Pro Tem Richard Romero (D) said the budget set aside enough revenues to allow for a $35 million tax reduction next year. That would grow to $72 million the following year — roughly the same size as the tax reduction sought by the governor.

The income tax relief measure (CS/SB 124) would lower personal income tax rates over the two years. The $35 million reduction next year includes a $4.5 million expansion of the existing Low-Income Comprehensive Tax Rebate program to provide more cash assistance to poor families with children.

The Senate will consider the tax bill later. The Finance Committee endorsed the proposal the day that the budget passed the Senate. The tax bill would reduce income taxes by an average of $55 for each tax filer in the first year and $122 when fully implemented.

Romero said the bill “eliminated the red flag to business relocation and development in New Mexico” by lowering the top marginal tax rate from 8.2 percent to 7.8 percent.

The Senate budget provides for total spending of slightly more than $9 billion for all government operations. That includes spending from the general fund, federal money, and earmarked fees and revenues. The state Highway and Transportation Department receives no money from the general fund, for example, and pays for its more than $600 million operation with earmarked revenues from fuels taxes, fees on truckers, and federal dollars.

The budget bill provides about $1.8 billion for operations of the state’s 89 school districts and the Department of Education. That’s an increase of $180 million, or 11 percent.

House OKs Credit For New-Tech Companies

The New Mexico House of Representatives has approved a tax incentive proposal for new-technology companies (HB 470) that would offer a credit for “start-up” companies in the industry.

House Minority Leader Ted Hobbs (R), who sponsored the bill, said the measure would help create jobs in the state.

“The hardest time for small businesses is in the earliest years,” Hobbs said when the House debated the measure on March 5. The bill passed 56 to 11, and was sent to the Senate for consideration.

Under HB 470, qualifying businesses could receive a credit for any gross receipts, compensating, or withholding taxes paid for as many as five years.

To be eligible, a business must have yearly revenues of $10 million or less, spend at least 20 percent of its revenues on research and development, and have fewer than 50 full-time employees.

— Barry Massey, Santa Fe

Full Text Citations

The full texts of the following documents are available as indicated:

- **HB 470. Doc 2001-6988 (5 original pages)**
- **HB 470 amendments. Doc 2001-6990 (2 original pages)**

Legislature to Consider New Tribal Gambling Compact

The New Mexico Legislature will decide the fate of a new gambling compact with Indian tribes that could resolve a lawsuit brought by New Mexico against tribes operating casinos in the state. (For prior coverage of the proposed gaming compact, see State Tax Notes, Mar 5, 2001, p. 781; 2001 STT 41-13; or Doc 2001-5911 (3 original pages).) The joint legislative Committee on Compacts voted 11 to 4 on March 6 to approve the proposed gambling agreement.

Gov. Gary Johnson (R), 10 tribes with casinos, and one tribe planning a casino support the proposed compact. Two other tribes with casinos remain opposed.

The Senate will be the first to consider the compact. Last year, senators turned down a gambling agreement that is similar to the latest proposal. The House and Senate cannot amend the compact when it is considered during debate. Lawmakers only can vote for the proposal or against it.

The 14-year compact is aimed at ending a dispute over how much tribes must pay the state — “revenue sharing” — from proceeds at their casinos. Attorney General Patricia Madrid (D) sued tribes in federal court last year after they all refused to make payments.

Under compacts approved in 1997, tribes must pay the state 16 percent of their net proceeds from slot machines. Tribal
leaders contend that this is illegally high under the federal law that permits tribes to operate casinos in states with similar forms of gambling. The proposed compact would reduce the payment rate to 8 percent, except for the smallest casinos.

A casino that took in less than $12 million a year would pay 3 percent of the first $4 million and 8 percent of the rest.

The state Gaming Control Board estimates that tribes owe New Mexico about $100 million. Under the proposed compact, a tribe must agree to pay the state all it owed under the current 16 percent requirement to be eligible for the lower rate. Madrid has pledged to continue the lawsuit against any tribe that does not sign a new compact and agree to make the back payments.

If the Legislature ratifies the compact, the agreement would become effective only if approved by the U.S. Department of Interior. The compact would expire June 30, 2015.

Under the proposed agreement, tribes would be relieved of their payment obligations to the state if:

- slot machines are allowed to expand beyond horse racing tracks and veterans’ and fraternal clubs, which can operate them currently because of the 1997 deal that legalized Indian casinos; or
- casino table games, such as blackjack, are permitted off-reservation.

— Barry Massey, Santa Fe

Abstracts and Citations

Tax Department Amends Filing, Reporting Requirements Reg. The New Mexico Taxation and Revenue Department has amended 3 NMAC 1.4 regarding the filing due dates for gross receipts tax, withholding tax, and compensating tax and the requirements and procedures for obtaining income tax filing extensions. Full Text Citations: Doc 2001-5892 (10 original pages) or 2001 STT 42-28

Tax Department Amends Recordkeeping Requirements Reg. The New Mexico Taxation and Revenue Department has amended 3 NMAC 1.5 in relation to the guidelines for maintaining tax records including the consistency of accounting methods and records reconstruction. Full Text Citations: Doc 2001-5921 (6 original pages) or 2001 STT 42-29

Sales Tax Exemption Available For Nonresident Purchasers of Vessels

by Robert D. Plattner, McNamee, Lochner, Titus & Williams, P.C., Albany

Effective March 1, 2001, sales of vessels to out-of-state purchasers who take physical possession of their vessels in New York State are exempt from sales and use tax provided that:

- the purchaser, at the time of taking delivery, is not a resident of New York State, has no permanent place of abode in the state, and is not engaged in carrying on in the state any employment, trade, business, or profession in which the vessel will be used in the state;
- the vendor of the vessel does not assign the vessel a New York registration number or issue the purchaser a temporary registration for the vessel;
- the purchaser does not register the vessel in New York State prior to registering the vessel in another state or jurisdiction; and
- prior to taking delivery, the purchaser furnishes the vendor a properly completed Certificate of Nonresidency of New York State and/or Local Taxing Jurisdiction (Form DTF-820) (Ch. 481, L. 2000, Tax Law sections 1117, 1214).

As a result of this change, the tax treatment of vessels now mirrors the long-standing treatment of motor vehicles; that is, sales or use tax is collected by the vendor based on the purchaser’s place of residence, not on the place of delivery.

The term “vessel” includes a vessel as defined in the Vehicle and Traffic Law, including any inboard or outboard motor and any trailer sold with the vessel for use with the vessel. “Vessel” does not include a vessel weighing 200 pounds or less, inclusive of any mast and sail or other rigging, that is not equipped with a motor and is exempt from registration under the Vehicle and Traffic Law. (For the full text of TSB-M-01(4)S, see Doc 2001-5107 (3 original pages) or 2001 STT 36-31.)

Abstracts and Citations

Tax Department Announces Sales Tax Exemption in ‘Empire Zones.’ The New York Department of Taxation and Finance has issued Important Notice N-01-7 to explain that, beginning March 1, Qualified Empire Zone Enterprises are granted an exemption from sales and use taxes for purchases of goods and services used in the empire zone. Full Text Citations: Doc 2001-6549 (2 original pages) or 2001 STT 46-32

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North Dakota

Senate OKs Disclosure By Tax Commissioner

The North Dakota Senate passed SB 2063 on January 30 by a 47-2 vote. The bill would amend section 57-39.2-23 of the North Dakota Century Code by providing for the release of certain confidential sales and use tax information by the state tax commissioner.

SB 2063 would allow the commissioner to make available on request information pertaining to city lodging and restaurant taxes and city or county sales and use taxes to a member of the governing body of the city or county for which collection and administration of the tax is required by statute or a collection agreement administered under section 57-01-02.1.

The person receiving information from the tax commissioner may not disclose the information obtained unless the disclosure is by judicial order and is for tax administration purposes only.

— Albert R. Hausauer, Golden Valley, Minn.

Full Text Citation: SB 2063, as passed by the Senate. Doc 2001-6410 (2 original pages)

Ohio

State Supreme Court: Church Property Exempt

The Ohio Supreme Court has ruled that a house owned by a church that is used exclusively for evangelical purposes is exempt from property tax under the charitable use exemption (True Christianity Evangelism v. Zaino, Mar 7, 2001).

True Christianity Evangelism (TCE) sought a property tax exemption for a house under R.C. 5709.12, which exempts real property exclusively used for charitable purposes. The property at issue is neither open to the public nor used in public worship. The court previously remanded the matter to the Board of Tax Appeals (BTA) to determine whether TCE uses the property exclusively for charitable purposes. After remand, the BTA denied the exemption because it found that the property is used by TCE’s president in the preparation of his evangelistic message and not for “charitable purposes.” TCE then appealed the BTA’s decision back to the supreme court.

The supreme court explained that for a property to be exempt under R.C. 5709.12, the property must belong to an institution and be used exclusively for charitable purposes. Because there was no dispute as to whether the property belongs to an institution, the only issue the court considered was whether the property is used exclusively for charitable purposes.

The court considered the fact that TCE disseminated information aimed at encouraging people to read the Bible and to live up to certain moral standards. The court also noted that under the definition of charity followed by the court, TCE’s activities constitute charitable purposes. Although the court acknowledged that the General Assembly did not have a definition of what constitutes charity in connection with the relevant statute, it stated that in past cases, the court has defined charity as “the attempt to advance and benefit mankind in general, spiritually, socially and intellectually.” The court found that the activities of TCE constitute charitable purposes because they “are a good-faith attempt to disseminate information to spiritually advance and benefit mankind in general.” The court concluded that the BTA found that the property was used exclusively for evangelistic purposes, which is equivalent to saying that it was “used exclusively” for evangelistic purposes, which the court held to be the same as charitable purposes. The court therefore ruled that the BTA’s decision was unreasonable and unlawful, and allowed the property tax exemption for TCE’s property.

Full Text Citation: No. 00-292. Doc 2001-6885 (8 original pages)

Appeals Court: Successor Liable For Unpaid Sales Taxes

The Ohio Court of Appeals has ruled that the purchaser of a company is liable for the company’s unpaid sales taxes because the purchaser was the successor to the company’s liability claims (Department of Taxation v. B/G 98 Co. LLC, Mar 2, 2001).

When Berger McGill (McGill), a custom printing shop, filed for bankruptcy, it owed the Department of Taxation unpaid sales taxes. B/G 98 Co. LLC (B/G) was formed to acquire the assets of McGill and did so following negotiations. In the bankruptcy court’s order affirming the sale of McGill, specific language was included stating that the claims of the department may continue to be asserted against B/G, provided that they were only asserted liability claims. The department did assert its claims against B/G, and a trial court ruled for B/G, finding that the sale of McGill’s assets in the bankruptcy court was a judicial sale and that successor liability statutes did not apply to that type of sale. The department appealed to the Court of Appeals, arguing that the sale of McGill’s was not a judicial sale.

The Court of Appeals agreed with the department and found that the judicial sale exception is based on the principle that in a judicial sale the court replaces the debtor as the vendor. According to the new bankruptcy code, the court stated that the role of the bankruptcy court is to supervise and provide a forum for the sale. In this case, the court found that the bankruptcy court did supervise and provide a forum for the sale, and that the debtor, McGill, remained the vendor. Therefore, the court ruled that the exception did not apply here.

This court further held that B/G had a statutory duty to withhold the taxes owed to the department. B/G argued that it...
House Approves Monthlong Sales Tax Holiday

The Oklahoma House of Representatives has unanimously passed HB 1002, which would provide a sales tax holiday for back-to-school purchases. A provision in the bill — one of more than a dozen legislative proposals that would establish a sales tax holiday patterned after Texas’ one-weekend holiday — would extend the Oklahoma holiday from a single weekend to the entire month of August.

As originally proposed, HB 1002 called for a one-weekend exemption from county and municipal taxes for purchases of shoes and school clothing items up to $100 per item. It also called for reimbursement of lost municipal and county sales tax revenues out of the state’s general revenue funds. However, House members loaded HB 1002 with the following items: (1) the exemption was expanded to cover all school supplies (including clothing and shoes) in general; (2) the per-item dollar limit was increased to $200; and (3) the holiday period was extended from a three-day weekend to the entire month of August.

While there is no estimate of the revenue for the amended HB 1002, the original version was estimated to reduce revenue by about $4 million.

Full Text Citation: HB 1002, as passed by the House. Doc 2001-6478 (7 original pages)

House Panel Chair Calls for Tax Structure Overhaul

The new Oklahoma House Revenue and Taxation Committee chair, Rep. Clay Pope (D), has said he believes the time has come not for piecemeal tax changes but for a review of the entire Oklahoma tax structure. Pope said he wants to conduct a comprehensive survey of Oklahoma taxes during the 2001 legislative interim.

As well as conducting his own review and hearing testimony from Oklahoma and other states’ tax experts, Pope intends to use the work of other recent legislative panels and groups that have studied the state’s tax system. He said special attention will be focused on the largest sources of Oklahoma’s tax revenues — sales taxes, income taxes, and property taxes (on which a significant portion of county and school funding is based). His goals also include a review of other states’ tax laws and how revenues lost in economic downturns are made up.

Pope’s tax committee has been very busy this session with hundreds of tax and revenue bills. At a recent meeting, the committee approved the following five bills, addressing a variety of taxes:

- Pope’s own bill, HB 1456, designed to promote rural population growth, would provide a $2,000 additional homestead property tax exemption for people who (a) move into a county that has lost population over the last decade and (b) invest $30,000 or more in a new homestead or improvements thereto. This bill has since passed the House.
- HB 1671 would change the apportionment of motor vehicle registration fees and fuel taxes between Oklahoma and Tulsa counties and other counties adjacent to these two counties so that adjacent counties would get additional revenues.
- HB 1005 would exempt from corporate franchise taxes entities whose tax liability would be $20 or less (this would affect nearly 50,000 corporations but reduce the state’s revenues by less than $500,000). This bill has since passed the House.
- HB 1219 would extend until January 1, 2009, the income tax credit for investment in alternative fuels and exempt school vehicles that use alternative fuels from a special tax.
- Substitute HB 1681 would provide special tax benefits for low-speed electrical vehicles (top speed of about 25 miles per hour).

— Kenneth L. Hunt, Tulsa

Full Text Citations

The full texts of the following documents are available as indicated:

- HB 1456, as passed by the House. Doc 2001-6586 (9 original pages)
- HB 1671, as passed by the House Revenue and Taxation Committee. Doc 2001-6585 (26 original pages)
• HB 1005, as passed by the House. Doc 2001-6584 (2 original pages)

• HB 1219, as passed by the House Revenue and Taxation Committee. Doc 2001-6583 (7 original pages)

• Substitute HB 1681, as passed by the House Revenue and Taxation Committee. Doc 2001-6582 (19 original pages)

Is Third Time Charm For Gas Sales Tax for Rail Service?

Oklahoma state Sen. Dave Herbert (D) has introduced SJR 4, marking his third attempt to pass an increase in the gasoline tax to fund improvements to Oklahoma’s railroad infrastructure.

The resolution calls for raising the state’s gasoline sales taxes by 1 percentage point over a nine-year period. All of the increased revenue would have to be used to pay for improvements to the railroad infrastructure. Additional gasoline tax revenues of $265 million are projected. With these funds, the state might bring in $1 billion in federal funding.

The resolution would require a public vote on the gasoline tax increase. Similar proposals by Herbert have died in the House in two prior legislative sessions.

— Kenneth L. Hunt, Tulsa

Full Text Citation: SJR 4. Doc 2001-6476 (5 original pages)

Abstracts and Citations

• Tax Court Upholds Residential Property Assessment Despite Error. The Oregon Tax Court has dismissed the appeal of taxpayers whose residential property was valued based on the incorrect square footage because the error was not a correctable clerical error (Su v. Department of Revenue, et al., Case No. 4502, Feb 21, 2001). Full Text Citations: Doc 2001-5995 (5 original pages) or 2001 STT 44-43

• Tax Court Affirms Real Market Value of Residential Property. The Oregon Tax Court has upheld the corrected real market value of a residential property that was substantially remodeled and for which the land value was omitted from the property tax statement (Strom v. Department of Revenue, et al., No. 4493, Feb 22, 2001). Full Text Citations: Doc 2001-6068 (9 original pages) or 2001 STT 45-40

Pennsylvania

Bill Would Exempt Fire Prevention Equipment

A bill introduced recently in the Pennsylvania House would exempt fire prevention and fire safety equipment from state sales tax.

Under HB 772, the 6 percent sales tax would not be applied to smoke detectors, fire extinguishers, and other fire prevention and fire safety equipment.

State Rep. Tony DeLuca (D) said there are a number of items and services considered to be “in the public interest” for which the sales tax is not charged. Some of those items include caskets, prosthetics, prescriptions, and religious items. “Fire prevention equipment certainly fits in that category,” he said. “As a matter of public safety, the purchase of essential fire safety equipment should be encouraged and purchasers should not be further burdened by the imposition of a sales tax.”

The bill was sponsored by Rep. Jane Orie (R).

DeLuca said certain goods and services periodically are added to the list of items exempt from the sales tax. A new law enacted last session removed the sales tax from clothing patterns, material, and other parts of clothing, and molds and related equipment used in manufacturing a product. During the current fiscal year, two successful sales tax holidays were held for personal computer purchases.

DeLuca said he is drafting another bill that would exempt wigs and hairpieces purchased to counteract hair loss due to medical reasons from the sales tax.

— Ken Dilanian, Philadelphia

Full Text Citations: HB 772. Doc 2001-6484 (2 original pages) or 2001 STT 46-38
South Dakota

State Enacts Study Of Streamlined Project’s Report

South Dakota SB 166, titled “An act to provide for a Streamlined Sales Tax Project Task Force,” was signed into law by Gov. William Janklow (R) on March 5. The act would establish a 15-member task force to study the final report of the multistate Streamlined Sales Tax Project. As stated in the act, the purpose of the study is “to determine how the requirements found in the report impact the sales and use tax laws of South Dakota.”

The task force, whose members will represent the business community, municipalities, the Legislature, and the public at large, is instructed by the act to “include an analysis on how the requirements found in the report will impact the businesses and citizens of South Dakota” and to report findings to the Legislature and the governor by December 1, 2001.

The Streamlined Sales Tax Project, through a cooperative effort by 26 member states, addresses the reporting and payment of state sales taxes by businesses that have sales in multiple states.

— Jim Corning and William Koupal, Pierre

South Carolina

Income Tax Again on the Agenda

Two major tax proposals before the Tennessee General Assembly contain plans for adoption of a personal income tax.

Gov. Don Sundquist (R) proposed sweeping changes to the Tennessee tax code when he submitted his fiscal 2002 budget on February 20. Facing a projected budget deficit of $785 million, Sundquist proposed to tax the incomes of highly paid professionals and business owners. Sundquist also would like to greatly expand the sales tax base to include most goods and services.

The governor’s plan would raise an additional $880 million that would cover a looming deficit and provide more money for education, raises for government employees, and the TennCare health care system. Sens. Jerry Cooper (D) and William Clabough (R) and Rep. Steve McDaniel (R) are sponsoring legislation (SB 1917 and HB 1946) in support of the governor’s proposal.

Under Sundquist’s proposal, only professionals licensed by the state (such as attorneys, physicians, and accountants) and owners of at least 1 percent of a company would be subject to the tax. For those individuals, a 6 percent tax would be levied on all income over $72,600.
In conjunction with the new tax (referred to officially as an excess compensation tax), the governor would make significant changes to the state’s sales tax. Specifically, he would lower the sales tax rate from 6 percent to 4 percent, but he would also expand the base to include goods and services not now taxed. Among the items that would be taxed are prescription medicine and residential utility charges.

The governor’s plan will vie with a graduated income tax plan proposed by three legislators. On February 20, Sen. Robert Rochelle (D) proposed a graduated income tax for the third consecutive year. Rochelle’s bill (SB 1920) is cosponsored by Sen. Gene Elsea (R) and Rep. Tommy Head (D). Under Rochelle’s plan, the state would adopt an income tax with rates starting at 3.5 percent and rising to 6 percent. Rochelle’s office emphasized to State Tax Notes that a family of four with income up to $41,000 would be not be liable for income tax. The tax rate would be 3.5 percent for income between $41,000 and $55,000; 4.25 percent on the next $20,000; 5 percent on the next $30,000; and 6 percent for all income over $105,000.

Rochelle’s plan would also lower the combined state and local sales tax rate from a maximum of 8.75 percent to 7 percent. In addition, food for home consumption, clothing, and nonprescription drugs would be exempt from the sales tax. Rochelle is also proposing increased taxes on cigarettes and alcohol.

Several other major tax proposals are being considered by the Tennessee legislature this session. They include a 2 percent sales tax on all services, including legal and medical services, proposed by Sen. Douglas Henry (D). Henry’s bill (SB 1558) would exempt charitable organizations from the tax. It would raise an estimated $800 million. Senate Minority Leader Ben Atchley (R) is proposing a property tax on motor vehicles; Atchley has not released details of his proposal.

Traditionally, the Tennessee legislature does not debate tax proposals until near the end of the session, which usually concludes in late April or early May.

Abstracts and Citations

☆ DOR: Diabetes Testing Equipment Subject to Sales Tax. The Tennessee Department of Revenue has ruled that sales of glucometers and related supplies to diabetic individuals are not exempt from sales and use taxation because the materials are not prosthetic devices (No. 00-27). Full Text Citations: Doc 2001-6291 (3 original pages) or 2001 STT 44-45

☆ DOR Rules on Sales/Use Tax Liability of Property Installation. The Tennessee Department of Revenue has clarified the application of sales and use tax to the installation of personal property by an independent contractor for a retailer that sells property that either becomes part of real property or remains personal property (00-39). Full Text Citations: Doc 2001-6294 (7 original pages) or 2001 STT 44-46

☆ DOR: Downloaded Computer Software, Advertisements Subject to Sales Tax. The Tennessee Department of Revenue has ruled that sales of canned computer software delivered by electronic means and advertisements sent by common carrier are subject to sales and use tax (Letter Ruling 00-32). Full Text Citations: Doc 2001-6297 (5 original pages) or 2001 STT 44-47

☆ DOR Explains Taxation of In-State Company’s Sales. The Tennessee Department of Revenue has issued a letter ruling, stating that when possession of property is taken in the state or title is passed in the state, sales tax is due on a transaction (No. 00-26). Full Text Citations: Doc 2001-6401 (3 original pages) or 2001 STT 46-41

☆ Comptroller: Bank Conversion Creates New Entity for Franchise Tax. The Texas comptroller of public accounts has upheld a ruling that a state bank’s charter conversion to a national bank was a merger, which required the successor bank to file an initial bank franchise tax return (Hearing No. 38,433). Full Text Citations: Doc 2001-5900 (4 original pages) or 2001 STT 43-35

☆ Comptroller Announces Plan to Expand Sales Tax Holiday. The Texas comptroller of public accounts has issued a news release to announce a proposal to expand the sales tax holiday from three to five days and to add safety equipment, school supplies, and materials used to make clothing to the list of tax-exempt items. Full Text Citations: Doc 2001-5946 (1 original page) or 2001 STT 43-36

☆ Comptroller Announces February Sales Tax Rebates. The Texas comptroller of public accounts has issued a news release to announce that $335.3 million in monthly sales tax payments was allocated to cities and counties in the state for the month of February. Full Text Citations: Doc 2001-5964 (1 original page) or 2001 STT 43-37

☆ Comptroller Announces Recommendations to Ensure Equal Retail Opportunities. The Texas comptroller of public accounts has issued a news release announcing six recommendations made in the E-Commerce and Technology Advisory Group report to create a more equitable tax structure between electronic commerce and “brick and mortar” retailers. Full Text Citations: Doc 2001-5968 (1 original page) or 2001 STT 43-38

☆ Comptroller Affirms Wholesale Sales/Use Tax on Grocery Bags. The Texas comptroller of public accounts has upheld the revision of a sales and use tax audit assessment against a wholesale grocery supplier that removed tax assessed on bags sold to customers for use in processing food but affirmed the tax on grocery bags (37,381). Full Text Citations: Doc 2001-5775 (13 original pages) or 2001 STT 44-48
Utah

Governor Says He’ll Sign Semiconductor Sales Tax Exemption

Utah Gov. Mike Leavitt (R) said March 1 that he will sign a bill granting a sales tax exemption to semiconductor processors. The comment came at a question-and-answer session with reporters immediately following the February 28 midnight adjournment of the 2001 Legislature.

SB 174, First Substitute, was the subject of a behind-the-scenes veto threat by Leavitt until sponsoring Sen. Curtis Bramble (R) negotiated an acceptable compromise with the chief executive. (For the full text of SB 174, First Substitute, see Doc 2001-5707 (23 original pages) or 2001 STT 41-24.)

Those discussions emerged in the public view the final night of the session, as Bramble recalled SB 174 — which already had passed both houses — and amended it on the floor to condense the trial period for granting these industry-tailored exemptions.

The first phase of the exemption — worth 10 percent of the sales or lease amount of materials used in fabricating or processing semiconductors — would begin July 1, 2001, instead of 2002 as originally proposed. The exemption would go to its second phase, at 50 percent, on July 1, 2002, and finally become fully implemented, at 100 percent, on July 1, 2003.

SB 174 would provide that the exemption ends June 30, 2004, unless reauthorized by the Legislature. The bill’s original version had a longer five-year test period, rather than the three-year period approved in the amended bill. Bramble said Leavitt had vowed to veto the measure unless he accelerated and condensed the exemption period.

A certified public accountant, Bramble said he believes SB 174 can become a model for any future sales tax exemptions because it provides a review and cost-benefit analysis, unlike the existing 50-odd exemptions already in Utah law. The measure would require that the amounts of sales exempted be reported to the Legislature and that the exemption be reviewed annually by the Revenue and Taxation Interim Committee. The committee is to make recommendations on future retention or elimination of the exemption.

A fiscal note estimates losses of $46,800 in state revenue and $15,700 in local revenue the first year; $234,000 and $78,800 the second year; and $468,000 and $157,600 the third year.

Bramble said the primary beneficiary of the exemption at present will be Fairchild Semiconductor Corp., which has a chip-manufacturing plant in Salt Lake County. But Micron Corp. is expected to increase operations at its Lehi plant in the next few years.

The Utah State Tax Commission has estimated that should Micron hit full staffing and operation levels, the tax exemption would run into the millions of dollars annually. The fiscal note attached to the bill by the Legislature’s fiscal analyst is far more vague, stating: “The potential for loss of state and local revenues could be much larger in future years if large enterprises increase their semiconductor operations in Utah.”

— Dan Harrie, Salt Lake City

Full Text Citation: SB 174, as sent to the governor. Doc 2001-6785 (23 original pages)

Lawmakers Approve Taxes, Fees On Low-Level Radioactive Waste

Utah lawmakers have approved HB 370, Second Substitute, which would impose new fees and taxes on low-level radioactive waste being disposed of in a licensed commercial facility within the state.

HB 370, Second Substitute, would impose several different levies on such waste coming to Envirocare of Utah, the state’s only licensed commercial facility for such disposal. The bill would impose a $400,000 annual fee, with proceeds going into a newly created Radioactive Waste Perpetual Care and Maintenance Fund; a 10-cents-per-cubic-foot tax on waste coming into the facility; and a gross receipts tax on the different types of Class A radioactive waste disposed there. Additionally, customers sending their low-level radioactive waste to the Utah facility would be required to obtain a generator site access fee. Large disposers would be charged $1,300; small disposers, $500; and brokers — or those who contracted with sites to transport and dispose of waste in Utah — $5,000.

The bill sponsor, Rep. Jeff Alexander (R), said Envirocare has for too long operated within the state without paying a fair amount of taxes or regulatory fees. Alexander also is the House chair of the Executive Appropriations Committee.

The waste tax measure was amended numerous times and was the subject of intense private negotiations leading up to its final passage on February 28, the last day of the legislative session. The House passed it in a previous version February 27, by a 57-15 margin. However, HB 370 was defeated in the Senate the following day on a 20-8 vote. But it was later recalled and amended, passing on a 15-14 vote — the minimum needed to clear the Senate. House members then concurred with the amendments, 54 to 15.

Gov. Mike Leavitt (R) said he would review the bill carefully before making a decision on whether to sign or veto it.

The fiscal note attached to the final version of the bill indicates that the fees would generate $950,000 annually and taxes of $744,000 the first year (fiscal 2002) and $2.2 million in fiscal 2003.

Envirocare of Utah President Charles Judd said early drafts of the bill, which would have levied taxes estimated at more than $30 million annually, would have driven his company out of business. The final version still would impose a burden on the operation, Judd said. In an internal memo to employees apparently deliberately leaked by the company to several news organizations, Judd said some vacant positions would not be filled to help absorb the cost of fees and taxes.

— Dan Harrie, Salt Lake City

Full Text Citation: HB 370, Second Substitute, as sent to the governor. Doc 2001-6753 (17 original pages)
Governor Threatens Budget Slash to Fund ‘Car Tax’ Cut

Virginia Gov. James S. Gilmore III (R) is expected to slash $318 million out of the state’s two-year budget before the end of March to help finance his version of the “car tax” reduction he has championed.

The Republican-controlled General Assembly failed to produce a budget after its 46-day session, due to sharp disagreements with the governor over his plan to reduce the personal property tax on automobiles by 70 percent this year. Gilmore would soften the blow of impending state budget cuts by borrowing money from the Virginia Retirement System, which is described by his administration as generously funded. State law requires that the Retirement System’s board approve the reduction. The governor has promised that aid to public education and mental health will not be touched by reductions in Virginia’s $50 billion budget.

Without the additional money from the Retirement System, Gilmore would have to trim the budget by $421 million. Shifting money from the Retirement System to the biennial budget will help pay for 3.5 percent salary increases for public school teachers, college professors, and several classifications.

 believes Gilmore is on target with his insistence on removal of 70 percent of the car tax burden this year, but he suggests that the Republican governor should not insist on elimination of the unpopular tax in 2002.

Wilder made his proposal in a letter to House Speaker Vance Wilkins (R) and Sen. John Chichester (R), chair of the Senate Finance Committee. Wilder defeated Chichester in the race for lieutenant governor in 1985. Chichester and other Senate Republicans have refused to endorse Gilmore’s car tax timetable; Chichester prefers a 55 percent rollback of the tax this year. Wilder complained, “The current budget stalemate is unacceptable to me and to the people of Virginia.”

— Tom Callan, Richmond

Former Governor Suggests Compromise on ‘Car Tax’ Cut

Former Virginia Gov. L. Douglas Wilder has offered a compromise solution to end the paralysis over a proposed “car tax” cut that has blocked efforts by Gov. James S. Gilmore III (R) and the Republican-dominated General Assembly to reach agreement on a new budget. Wilder, who served in the Statehouse between 1990 and 1994, was Virginia’s most recent Democratic governor.

Gilmore has steadfastly demanded that the General Assembly reduce the personal property tax on automobiles by 70 percent this year and eliminate the levy in 2002. Wilder said he would soften the blow of impending state budget cuts by borrowing money from the Virginia Retirement System, which is described by his administration as generously funded. State law requires that the Retirement System’s board approve the reduction. The governor has promised that aid to public education and mental health will not be touched by reductions in Virginia’s $50 billion budget.

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Without the additional money from the Retirement System, Gilmore would have to trim the budget by $421 million. Shifting money from the Retirement System to the biennial budget will help pay for 3.5 percent salary increases for public school teachers, college professors, and several classifications of state employees. With the trimmed budget, the governor indicated, it might no longer be necessary to call a special session of the General Assembly to resolve the budget impasse. Gilmore had called for such a session, to begin in late March, to address the budget situation.

— Tom Callan, Richmond
Lawmakers Again Ponder Repeal of Local ‘Car Tax’

In its first meeting following an earthquake that shook the Northwest, the Washington Senate Transportation Committee heard a bill (SB 6036) that would repeal the local portion of the motor vehicle excise tax — one more time.

In November 1999, Washington voters passed Initiative 695, eliminating the state’s 2.2 percent motor vehicle excise tax. After the courts struck down that initiative as unconstitutional, the legislators approved a law repealing the tax, to fulfill the voters’ wishes — or at least they thought they did. (For the full text of I-695, see Doc 1999-18781 (3 original pages) or 1999 STT 105-38. For the full text of SB 6865, which repealed the vehicle excise tax, see Doc 2000-9292 (3 original pages) or 2000 STT 62-35.)

The lawmakers’ action proved not to be the last word. A recent ruling by a Thurston County Superior Court judge (Case No. 00-104, 20 WTD 75 (2001)) held that both the initiative and the legislative bill failed to repeal the language allowing the local transit tax.

For many years, local transit districts have levied a 0.725 percent motor vehicle excise tax that was taken as a credit against the state tax. The local tax did not add to the state tax but simply diverted approximately one-third of the revenue to the local districts. The local tax was collected by the state along with the state tax until January 1, 2000. When the state stopped collecting its 2.2 percent vehicle tax in 2000, no more taxes were collected for the transit districts.

The districts brought legal action and were successful when the Thurston County judge, in an oral ruling last month, ordered the restoration of the local transit taxes. In the meantime, no effort has been made to collect the local taxes. (For coverage of the judge’s ruling, see State Tax Notes, Feb 12, 2001, p. 507; 2001 STT 27-40; or Doc 2001-3833 (3 original pages).)

The latest bill, SB 6036, would repeal the 0.725 percent local transit district tax effective from January 1, 2000. The bill has not been voted out of the committee, but Transportation Committee Chair Mary Margaret Haugen (D) said she believes the bill will ultimately be passed.

In the meantime, the Legislature is looking for other revenue sources to make up for the loss of revenue to local transit districts, plus the revenue needed to fund all transportation needs for the next 10 years. Gov. Gary Locke (D) has said that $9.5 billion is needed to fund state and local transportation programs over the 10-year period, including money for transit districts. The governor has not proposed specific revenue sources but indicated he would work with the Legislature when it agreed on the specific transportation programs and their cost. He said he would not let lawmakers leave Olympia until they agree on a transportation funding measure to refer to the state’s voters this November.

— Don Burrows, Olympia

Full Text Citation: SB 6036. Doc 2001-6790 (2 original pages)
West Virginia

Governor Pulls Plug On Informational Business Returns

In a move that has upset some legislative leaders, new West Virginia Gov. Bob Wise (D) has pulled the plug on a 2000 legislative directive to collect second informational corporate tax returns from approximately 10,000 state businesses this year as a way to gauge the effects of a proposed tax reform plan.

“We’ve decided to pull back the [administrative] rules bill that has to be passed to implement last year’s legislation,” said new Secretary of Tax and Revenue Mike Garrison on March 1. “But that doesn’t mean we’re abandoning tax reform efforts at all. It’s just that we sense there isn’t any consensus in the Legislature on the tax reform proposals from the previous administration.”

The chair of the Senate Finance Committee, Sen. Oshel Craigo (D), said he thinks that when legislators find out what has happened “they will find it offensive. We passed a law last year (SB 161) that said the tax department shall collect this information and now the governor has said he’s not going to do it. I’m personally disappointed. I think it would have been better to introduce a bill at this legislative session to repeal last year’s law if that’s what they want to do.” (For the full text of SB 161 of 2000, as signed, see Doc 2000-8938 (3 original pages) or 2000 STT 61-33.)

Senate Minority Leader Vic Sprouse (R) said that while he didn’t support the overall reform plan initiated by then-Gov. Cecil Underwood (R), he too is unhappy that the new administration, which took over less than two months ago, has decided to scrap the entire plan.

Garrison said that he has talked with Craigo, the only legislator willing to publicly endorse the tax reform initiative, and that “we will talk again about the kinds of tax reform he wants to accomplish.”

He said the Wise administration decided on his recommendation that it would be more prudent to save the $2.5 million that it would cost to implement the rules to require businesses to file these informational tax returns and earn tax credits of $150 to $200 each.

“This would have cost us $2 million in lost tax revenue, and we would need a supplemental appropriation of another $500,000 to cover the costs of tabulating and analyzing the returns,” said Garrison.

The decision seems to terminate any further consideration of recommendations made in 1998 by the Governor’s Commission on Fair Taxation, which called for sweeping changes in business and personal tax laws. Craigo and Sprouse have said that myriad business taxes still constitute one of the state’s major problems and that some kind of action is needed. (For the recommendations of the Governor’s Commission, see State Tax Notes, Aug 31, 1998, p. 541; Doc 98-22608 (86 pages); or 98 STN 139-32.)

— Thomas D. Miller, Charleston

Wisconsin

Governor Would Tax Corporate Partners, Move to Single Sales Factor

Wisconsin’s new governor, Scott McCallum (R), has unveiled his spending plans for the fiscal 2002-03 biennium. “We’ve been using the taxpayer’s credit card to increase spending. . . . Now we’ve got to make some painful decisions and take steps to make sure this situation is not repeated,” he told the Legislature in a late-February address.

McCallum replaces Tommy G. Thompson, who has been named Secretary of Health and Human Services in the Bush administration.

The “situation” McCallum referred to is not new, but it has worsened in recent months.

With the economy slowing, state revenue projections have twice been cut. In November, officials lowered current-year estimates by $98 million. In January, legislative analysts projected that the state would have $651 million less than previously expected between now and mid-2003.
In fiscal 2001, disregarding carryover money from prior years, Wisconsin is spending $558 million more than its projected revenues. To cover these ongoing expenses over the next two years requires double that amount, or more than $1.1 billion.

To complicate matters, past state decisions have locked in future spending. The state’s pledge to provide two-thirds of public school revenues requires an additional $558 million in the new budget.

Promises made during the 1990s to promote public safety mean that the added cost of prisons in the coming budget is over $200 million. Other costs, such as debt service on existing bonds and rising utility bills, are largely unavoidable; together, these require an additional $130 million during the fiscal 2002-03 biennium.

Adding up just the above amounts reveals that the state needs more than $2 billion to cover existing deficits and commitments. Yet, it expects to receive less than $1.8 billion in new revenues over the next two years.

Thus, there is a potential deficit before the state spends anything, to recognize the demands of, among others: senior citizens desiring drug subsidies; state employees wanting pay increases; local officials seeking increased state aid; low-income individuals wanting continued Medicaid health coverage; and college students looking for tuition aid.

The new governor and the Legislature, in short, face a budget predicament. And the obvious solutions might not be enough.

The governor has asked for spending restraint, although he has called for no major cuts. General purpose revenue spending, before state employee pay hikes, is slated to rise 3.6 percent, to $11.6 billion, in fiscal 2002 and 2.4 percent, to $11.9 billion, in fiscal 2003. State agencies have generally been asked to reduce operating expenditures by 5 percent.

Tax Changes Proposed

Although the governor’s stated goal is to avoid tax increases, he recommends changes to generate an additional $34 million in the first year and $54 million in the second.

The most notable increase is in the sales tax. The governor proposes taxing custom computer software to pick up $52 million over two years. Currently, only off-the-shelf software is taxed; custom programs have been viewed as tax-exempt services.

Another proposed change would generate $12.5 million from corporate partners and limited liability company members. This would be offset by a three-year phase-in of a change in corporate income apportionment (adopting a single sales factor) that would begin in the second half of the biennium and initially reduce corporate income tax revenues by $8 million, chiefly among Wisconsin-based firms.

The proposed fiscal 2002-03 biennial budget is balanced with money from tobacco company settlements. The governor proposes to sell in excess of $5.6 billion in future payments from tobacco companies in return for almost $1.3 billion in cash. After a reserve is established, $350 million would be used to balance the budget in the coming year, and the remaining $600 million or so would be placed in a permanent endowment fund. It is assumed the endowment, when invested, would return about 10.5 percent per year, of which 8.5 percent would generate ongoing subsidies of general fund spending and the remainder would continue to be invested.

The governor argues that “securitization” of tobacco company payments, as this approach is called, is preferable to even deeper cuts in services or to tax increases in a high-tax state facing an economic downturn. And the $600 million endowment offers financial security against the future and comfort to bond houses that rate the state.

This is a onetime “fix” that carries risk if a protracted recession ensues and the state no longer has tobacco funds on which to draw. History also suggests the tobacco endowment could be in danger if the Legislature seeks to commit an even larger portion of the onetime tobacco money to permanent spending than the governor proposed.

The governor’s proposed two-year budget opens with a projected $293.2 million surplus and ends with just $1.2 million, after the statutorily required reserve. The obvious question is whether Wisconsin will stay clear of a recession, which could further threaten the state’s budget situation. In both years of the budget, ongoing spending exceeds revenues, by $56.9 million and $91.7 million, respectively. Without the tobacco money, which in its various forms totals $659 million over two years, ongoing taxes and other revenues are less than spending by $560.3 million and $247.1 million, respectively.

Speaking for legislative Democrats, Sen. Charles Chvala (D) applauded the governor’s commitment to maintaining two-thirds funding of public schools. However, he criticized McCallum for not doing enough to offer prescription drug benefits for seniors and property tax relief. He also hit the governor’s proposed switch to single-factor apportionment of corporate income as an unjustified corporate tax break and his proposed use of tobacco settlement money as “shortsighted.”

The budget now goes to the Legislature’s Joint Committee on Finance for several months of study, hearings, and amendments.

— Todd A. Berry, Madison

Full Text Citation: Governor’s budget address, Doc 2001-6557 (5 original pages)

Wyoming

State High Court: School Funding System Still Unconstitutional

The Wyoming Supreme Court on February 23 issued the latest decision in the state’s long-running school finance case (Campbell County School District v. Wyoming, et al., No. 00-120, 00-121, 00-122, 00-123), ruling that the system still fails to pass constitutional muster.

Wyoming’s school funding system has been in the courts since 1991. In 1995, the state supreme court ruled both the
operations and capital construction funding systems unconstitutional.

In its latest decision, the court said that while many have made great effort and some improvement has been achieved, the constitutional mandate for a fair, complete, and equal education “appropriate for the times” in Wyoming has not been fully met.

The high court’s decision combines opinions on lower-court decisions covering both operations and capital construction funding. The court said that although these cases were not formally consolidated, it was issuing one opinion because the legal analyses and conclusions apply similarly to the issues raised in all the cases. A single opinion, the court, will provide clarity and consistency in the court’s direction to the legislative and executive branches.

The court came to the following conclusions:

The cost-based model approach chosen by the Legislature, which relies upon past statewide average expenditures, is capable of supporting a constitutional school finance system.

The funding legislation must be modified as follows, on or before July 1, 2002, in order to provide a constitutionally adequate education appropriate for our times:

• The model and statute must be adjusted for inflation each biennium, with 1996-97 as the base year, utilizing the Wyoming cost-of-living index (WCLI), beginning in 2002-03, so long as a cost-of-education model using historic costs is relied upon for the basis of education funding. The Legislature shall conduct a review of all components of the model in 2001 and every five years thereafter to assure it remains an accurate reflection of the cost of education.

• Administrative and classified salaries must be adjusted to account for differences in experience, responsibility, and seniority.

• Cost of maintenance and operation, including utility costs, must be determined by either development of a formula which uses enrollment measured by ADM [average daily membership], building square footage, and number of buildings in the district or actual costs fully reimbursed, subject to state oversight.

• Pending future development of an accurate formula with which to distribute adequate funds, actual and necessary costs of educating economically disadvantaged youth, and limited-English-speaking students shall be fully funded, subject to state oversight.

• The costs of providing teachers and equipment for vocational and technical training must be included as line items in the MAP [Management Analysis and Planning] model and funded accordingly.

• Any small school adjustment must be based on actual differences in costs which are not experienced by larger schools.

• Any small school district adjustment must be based on documented shortfalls under the MAF model that are not equally suffered by larger districts.

• Statewide average costs must be adjusted for cost-of-living differences using either the entire WCLI [Wyoming Cost-of-Living Index] Wyoming or another reasonable formula which includes a full housing component, including the rental of shelter costs, and a medical component to cover costs not included in the benefits portion of the salary component.

Kindergarten Error

The Legislature, on or before July 1, 2002, shall provide a one-time supplement to fully fund each school district’s 1998-99 kindergarten component cost in the total aggregate amount of the $13,930,000 funding error.

Capital Construction

The Legislature must fund the facilities deemed required by the state for the delivery of the “full basket” to Wyoming students in all locations throughout the state through either a statewide tax or other revenue raising mechanisms equally imposed on all taxpayers.

All facilities must be safe and efficient. Safe and efficient facilities are those that attain a score of 90 or above for building condition, an educational suitability score and technological readiness score of 80 or above, and a score of 4 for building accessibility. The total cost of compliance is $563,099,986. The Legislature must provide a plan by July 1, 2002, to remedy these deficiencies within six years. “Immediate need” facilities and those facilities that fall below the square footage requirements must be remedied within two years, which computes to $164,415,836. Facilities that are deemed “inadequate” must be remedied within four years, which computes to $231,309,380. These amounts are measured in 1998 dollars, which will need to be adjusted for inflation at such time as the funding is distributed.

Gov. Jim Geringer (R) and Superintendent of Public Instruction Judy Catchpole (R) have issued the following statement in response to the high court’s decision:

Over the past five years, both the executive and legislative branches have devoted enormous amounts of time, energy and resources to the development and implementation of an education finance model. The decision by the Supreme Court seems to confirm that we are on the right path, specifically that the operational funding model is constitutional.

On preliminary reading of the 57-page decision, it is apparent that additional work is required to be done. The specifics of the Court opinion need to be reviewed and discussed before any detailed public statement can be made. Our preliminary reading of the capital construction portion of the opinion raises the greatest number of questions. This area bears further review as well before we can engage in a public discussion of the state response.
Geringer and Catchpole said that it is important to note that the state — both the legislative and executive branches — anticipated certain of the issues in the court’s decision. They noted that the Legislature would likely authorize legislation to recalibrate the MAP model this summer. The Legislature also passed and the governor signed into law this session a bill to establish a Select Committee on Capital Construction. The current budget agreement would allocate more than $700 million for school operations next year.

The two officials said, “Our commitment to education remains of the highest order.” But they also expressed concern that “the court has mandated several expenditures that are not fully understood yet. We need to evaluate the full cost impact of the decision and the timing of implementation. In addition, it is apparent that certain of the matters addressed in the Supreme Court’s lengthy and complex decision have been misunderstood and will require correction.”

Geringer and Catchpole said the state’s attorneys may be directed to request a rehearing on some matters addressed in the decision.

— Michael Walden-Newman, Cheyenne

Full Text Citation: Campbell County School District v. Wyoming. Doc 2001-6918 (60 original pages)

**GOP Lawmakers Cool to School Tax Hike Urged by High Court**

The Republican leadership of the Wyoming Legislature has responded with caution to the state supreme court’s ruling in State of Wyoming, et al. v. Campbell County School District, et al., a decision that upholds lawmakers’ funding formula but orders a new capital construction funding mechanism (see previous story).

Republicans hold a two-thirds majority in both houses of the Legislature, as well as all five statewide elected offices. GOP leaders hold a two-thirds majority in both houses of the Legislature, as well as all five statewide elected offices.

GOP leaders said first that they recognize the court’s role in ensuring that the state’s education system provides an opportunity for Wyoming’s children that is second to none. They said they feel vindicated by the court’s upholding of the operations funding system.

But in response to the court’s mandate that taxes be raised to fund the court’s estimate of more than $565 million in capital needs, the Republican leaders said that only the Legislature can raise taxes. They also noted the millions in state grants already allocated in recent years and in this session for capital construction. The Legislature also created a Capital Construction Select Committee this session that will oversee school building construction and remodeling.

GOP leaders said Wyoming spending per pupil has increased by 25 percent over the past five years, from $563.7 million for almost 94,000 K-12 students to $706.9 million for 86,000 students. Forecast spending of $8,214 per average daily membership in fiscal 2002 puts Wyoming above all neighboring states and in the top 15 in the nation. (Currently, Wyoming is ranked 13th based on fiscal 2000, according to the National Center for Education Statistics.)

The GOP leaders said they look forward to working with Gov. Jim Geringer (R), Superintendent of Public Instruction Judy Catchpole (R), the people of Wyoming, and colleagues in reviewing and addressing the court’s decisions.

— Michael Walden-Newman, Cheyenne

**Governor Signs ‘Streamlined’ Sales Tax Bill**

Wyoming became the first state to approve “streamlined” sales tax legislation on March 1, when Gov. Jim Geringer (R) signed HB 259 (now Chapter 147), the Uniform Sales and Use Tax Administration Act.

The act has two effective dates. The portion allowing Wyoming to enter into a multistate agreement regarding sales and use tax administration is effective immediately, as of the governor’s signature March 1. Portions of the act changing specified sales and use statutes in conformance with the guidelines set by the Streamlined Sales Tax Project are effective July 1, 2002.

— Michael Walden-Newman, Cheyenne

Full Text Citation: HB 259 (Chapter 147), as signed. Doc 2001-6069 (18 original pages)

**Lawmakers OK Redefinition Of ‘Agricultural Land’**

In a surprise move in literally the last minutes of the 2001 legislative session, the Wyoming Senate resurrected and approved a compromise to HB 10, dealing with agricultural land classification for property tax purposes, after rejecting House-Senate conference committee proposals in the closing days of the 2001 session.

The bill, designated House Enrolled Act 126 as sent to the desk of Gov. Jim Geringer (R), defines “agricultural land” as land used for “cultivation of the soil, the production of timber products, forage or crops, and the rearing, feeding and management of livestock consistent with the land’s capability to produce.”

The bill, which would be effective January 1, 2002, would require the Department of Revenue to prescribe a sworn statement to be used by the property owner to declare that the property meets the requirements of the agricultural classification.

New specifications required for an agricultural classification are that contiguous or noncontiguous parcels of land under one operation owned or leased will qualify if the land meets each of the following qualifications:

- The land is currently being used and employed for an agricultural purpose.
- The land has been used or employed primarily in an agricultural operation that has derived annual gross revenues of not less than $1,000 from the marketing
Compromise Reached On Severance Tax De-Earmarking Bill

Wyoming House and Senate conferees have reached a compromise on SF 9, which would implement modifications to a bill enacted last year that caps mineral revenues flowing to local governments and highways (Chapter 97, 2000 Wyoming Session Laws). The measure goes now to Gov. Jim Geringer (R), who is expected to sign it. (For the full text of HB 195 (Chapter 97) of 2000, see Doc 2000-10133 (10 original pages) or 2000 STT 71-35.)

The House had earlier approved HB 119, which would have delayed the effective date of Chapter 97 until 2002. HB 119 also would have established a seven-member legislative Select Committee on Local Government Expenditures and Revenues to explore the broad issue of state and local fiscal relations, and to report to the Legislature by September 30, 2001. HB 119 easily passed the House. (For the full text of HB 119, as passed by the House, see Doc 2001-4312 (5 original pages) or 2001 STT 34-40.)

The same week, the Senate worked on SF 9, the Select De-Earmarking Committee’s bill. SF 9 did not delay de-earmarking funds for local governments. It did not include a local government revenue and spending study, either. It did require the Joint Revenue Interim Committee to review the distribution formula for federal mineral royalties and severance taxes every four years beginning in 2004, and to report whether the formulas are “understandable to public policy makers, serve the needs of the citizens of the state and whether the distinction between sustainable revenues and ‘one-time’ revenues . . . is reasonable.” The Senate chose not to work on HB 119 and passed SF 9.

SF 9 would cap the more than $500 million in mineral severance tax and federal mineral royalty revenues distributed under current formulas and place most of the amount over the caps into state accounts for reallocation by the Legislature. Most Wyoming mineral revenue distribution patterns were established years ago. Last year’s Chapter 97 and this year’s modifications under SF 9 were designed to more closely match current revenue distributions to current priorities. The new allocation plan would begin July 1.

— Michael Walden-Newman, Cheyenne

Full Text Citation: SF 9, as sent to the governor. Doc 2001-6407 (18 original pages)

Lawmakers Won’t Provide Energy Relief This Year

All Wyoming measures to provide energy tax relief have failed this session. Even proposals that would have simply expanded existing programs fell by the wayside.

Higher mineral prices gave Wyoming its $700 million projected surplus heading into the 2001 legislative session, but Wyoming residents and businesses were also hit with dramatic hikes in their energy bills. Some legislators worked to try to translate the improvement in the state’s bottom line with aid to Wyomingites’ bottom lines. They were unsuccessful.

A joint conference committee stripped from HB 135 a Senate amendment that would have provided a short-term sales tax exemption on heat and light bills. The proposal would have exempted from sales and use tax for the period April 1, 2001, through March 31, 2002, sales of gas by a gas public utility, heating oil, propane, and sales of electricity by an electric public utility for domestic, industrial, or commercial consumption. The Senate had passed SF 178 to provide the exemption, but the House Revenue Committee killed the bill. The Senate then tacked on the exemption to HB 135, which began life as a sales tax cleanup bill. (For the full text of SF 178, as passed by the Senate, see Doc 2001-4153 (4 original pages) or 2001 STT 34-37.)

HB 280, which would have expanded a current low-income rebate program by raising or removing current age and income eligibility restrictions, was never brought up on the Senate floor before the cut-off date for consideration. The bill had passed the House and the Senate Revenue and Appropriations committees.

Lawmakers are expected, however, to discuss energy tax relief during the interim.

— Michael Walden-Newman, Cheyenne

Full Text Citation: HB 10 (HEA 126), as sent to the governor. Doc 2001-6679 (9 original pages)
Budget Takes Effect Without Governor’s Signature

Wyoming’s lawmakers adjourned the 2001 general session on March 1, a few days ahead of schedule. This year’s session was much easier than last year’s because the $200 million projected surplus of 18 months ago had turned into a projected $700 million surplus by the session’s opening days.

Legislators adopted a supplement to the fiscal 2001-02 biennial budget they approved last year that sets aside half of the projected surplus in reserve accounts. Total biennial general government appropriations now stand at $1.3 billion.

Gov. Jim Geringer (R) allowed the budget to become law without his signature.

In his message to legislative leaders, Geringer said of the budget, “The theme of my State of the State address to you and your colleagues on January 10, 2001 was ‘Building Wyoming’s Capacity to Grow.’ Building capacity means investing in programs and activities that enhance our equity, that energize our effort, not just adding to the operating cost of programs. You responded to that call in a substantial way through the new spending authorization in the budget bill, even though the amount of the new spending authority was considerably higher than what I had recommended.” (For the full text of Geringer’s State of the State address, see Doc 2001-1500 (18 original pages) or 2001 STT 15-41.)

“My lack of signature approval,” Geringer said, “reflects my concern with two issues. First, since this was not a budget session of the Legislature, I did not do a full review of all state needs or a comprehensive ranking of program priorities as the basis for my supplemental budget request. That task was to be done later this year for next year’s budget session. Equally important, the Legislature faced an unprecedented demand for funding to support requests that were not a part of the supplemental budget request that I presented to them on December 1, 2000. This demand, in part, was in response to the growing visibility of a budget surplus coupled with pent-up demand from previous budget sessions. Time did not permit the Legislature to perform a constructive review of all new spending.”

“My second concern is the uncertainty introduced by [the February 23] Supreme Court decision regarding school funding. The policy and spending implications of the decision present a challenge to all Wyoming citizens to ponder as to who should set the funding and define the operation of our children’s schools,” Geringer said. (For coverage of the Wyoming Supreme Court’s decision in Campbell County School District v. Wyoming, see p. 869.)

— Michael Walden-Newman, Cheyenne

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Streamlined Project Moves Ahead
With 2001 Agenda

It’s been said that action speaks louder than words, and the Streamlined Sales Tax Project perhaps exemplified this adage at its meetings on March 5 and 6 in Dallas.

Meeting publicly for the first time since the National Conference of State Legislatures (NCSL) Executive Committee amended its model act and agreement on January 27, the Streamlined Project responded to the NCSL changes with a series of work plans for 2001 rather than public statements. Those plans will be carried out by project members on newly formed work subgroups designated to handle various aspects of the envisioned streamlined sales and use tax system, including many that were already on the project’s timeline prior to the NCSL action. (For coverage of the NCSL’s views on its differences with the Streamlined Project, see story, p. 876.)

‘Our recommendation is that states have to provide information to sellers that will enable the seller to get from an address or ZIP code to the appropriate tax rate,’ Duncan said.

Responding to the NCSL’s removal of the entire section on uniform procedures for bad debts and of language on rounding from its Streamlined Sales and Use Tax Agreement, the Streamlined Project has assigned subgroups on each topic under the auspices of its sourcing work group. Both subgroups will be headed by William Riesenberger, sales and use tax attorney for the Ohio Department of Taxation, and Larry Wilkie, director of the Minnesota Department of Revenue. According to Riesenberger, he and Wilkie will draft papers on bad debts and rounding for presentation to the project at its April 5 teleconference. (For the full text of the Streamlined Sales and Use Tax Agreement as amended by the NCSL, see Doc 2001-4508 (35 original pages) or 2001 STT 35-42. For the full text of the NCSL’s version of the Simplified Sales and Use Tax Administration Act, see Doc 2001-4507 (9 original pages) or 2001 STT 35-41.)

“The rounding report is going to focus on the impacts of a rounding rule in the states and the need for a rounding rule, the reasons that one is important for consideration for the project,” Riesenberger said. “Since NCSL has chosen to pull it out of their draft, we feel we have to look at the issues and respond to them.”

On bad debt, Riesenberger said, “I think the big issue on that is who can claim it, how far it can be spread, should we reference its allowance for sellers or should we leave language that allows states to apply it to other third parties or should we leave the whole thing blank?”

“I understood [that] what [the legislators of the NCSL] were interested in doing was either not addressing bad debts or trying to come up with something that would work for the states and work for business,” added Streamlined Project Cochair Charles Collins Jr., director of the North Carolina Department of Revenue’s Sales and Use Tax Division. “So what the project is trying to do is see if there’s not some way that we can’t work that out and have some type of a uniform procedure in place.”

Riesenberger and Wilkie are also heading up a sourcing subgroup on telecommunications, which is slated to draft language on sourcing, definitions, and bundling in time for presentation at the project’s May 7 and 8 meetings in Milwaukee. Previously, telecom sourcing had been represented only by a placeholder in the agreement, and Riesenberger said the goal is to “fill that in with rules.”

In pursuit of that objective, telecommunications industry representatives “have given us a proposal on how to source telecommunications,” Riesenberger said. “The general rule is pretty much the standard Goldberg two-out-of-three rule that we have. Otherwise, they had some special rules that applied to mobile sourcing based on the Mobile [Telecommunications] Sourcing Act, prepaid cards, postpaid services like credit cards or calling cards, and private communications services.

“There were some changes that we’re going to work on, but basically I think they’re a good framework that we’re going to work from and hopefully have something put together pretty quickly,” he added.

The implementation work group’s jurisdiction/rate databases subgroup will also be looking to the Mobile Telecommunications Sourcing Act (a federal statute enacted last year that deals with the sourcing of cellular calls for tax purposes) for guidance on its work, which will be headed by Federation of Tax Administrators (FTA) Executive Director Harley Duncan.

“Our recommendation is that states have to provide information to sellers that will enable the seller to get from an
address or ZIP code to the appropriate tax rate,” Duncan said. “And so now the question is, what sort of database and information base do states provide so that they can do that? What are the basic address systems out there? What are the sort of tax rate systems? And what sort of standards can we have for the states providing that information so that a seller can use it regardless of which state is providing it?”

Duncan continued: “The FTA and the MTC [Multistate Tax Commission] have been assigned the same responsibility for establishing the standard under the Mobile Telecommunications Sourcing Act. So what we’ve done is to form a task force of eight state tax administrators that have experience in either data standards, telecommunications, or the use of these address base systems and geographic information systems.”

Duncan said that the group will commence its activities in two weeks to “make sure we understand our charge, hear from the telecommunications industry, find out what the states are doing, and set our work plan. The idea is that the work that’s done for the Mobile Telecommunications [Sourcing] Act ought to be very transferable to this. We’re going to finish that work and bring it over here and see if anything needs to be added.”

Several other implementation subgroups will be active as well, including one on audit standards headed by Nebraska Tax Commissioner Mary Jane Egr and Harold Fox, deputy director of the New Jersey Division of Taxation. According to Collins, the two were selected for their backgrounds in compliance and will be working with auditors to develop the standards. The results of this effort are scheduled for completion by the project’s tentative June 28 and 29 meetings in Raleigh, N.C. At some point this year, an implementation subgroup on audit certification standards will also begin work, basing its findings on the results of the streamlined effort’s pilot project to test the eventual system’s technology.

The pilot project, according to Collins, now has three participating vendors and is very close to getting off the ground in the participating states of Kansas, Michigan, North Carolina, and Wisconsin.

That pilot project, according to Collins, now has three participating vendors and is very close to getting off the ground in the participating states of Kansas, Michigan, North Carolina, and Wisconsin. “One of the vendors has completed their in-house testing and have made available to us a Web site that the four participating states can go to and do some test transactions to see if it’s collecting the correct amount of tax,” he said. “The second vendor has already completed their in-house testing and is doing the same thing so we can do it; we just haven’t gotten it yet. The third vendor has completed their in-house testing on test data and proof of concept, and now they’re getting some sample data from their actual clients to run against it. So we’re close to completing that so we can do the certification [of software providers]. I would anticipate now that we really are within the next two to three weeks of being able to start mapping some products.

“The pilot project will be in operation, and as far as when we stop it will be determined upon when the project and the states that have enacted the agreement are able to issue another RFP [request for proposal] and have another one to pick up where the pilot ends,” Collins added. “So we need to have other vendors or even the same vendors in place for another contract to pick that one up and move forward.”

Asked to estimate how long the pilot project would last, Collins responded: “We’ve got it for one year with the extensions for two six-month periods, so I would anticipate probably a year, but we could extend it if that other contract was not ready.”

Compensation

In conjunction with various public- and private-sector representatives, the Streamlined Project is also attempting to respond to one of the biggest concerns of business, and retailers in particular: compensation for tax collection. Collins said that this initiative, in addition to the efforts of the project itself (which he said has its own steering committee to address compensation), is currently “meeting just in the formulation stages of getting their structure together on how they need to conduct it.”

Like the upcoming papers on rounding and bad debts, Collins sees the compensation study as a response to the NCSL, which had inserted language calling for a joint public- and private-sector study of compliance costs into its amended version of the Streamlined Sales and Use Tax Agreement. However, Collins said that the Streamlined Project had already made such plans anyway.

“I think it was a concern to the business community as to whether or not the states would participate in a study,” Collins said. “And NCSL put in their act that the agreement would have language to indicate that the study would be conducted, and that states would work with them. The project is already participating in that study.”

Definitions

Notwithstanding the NCSL’s decision to eliminate all definitions from its version of the agreement, the Streamlined Project will also continue in the area of definitions in its base work group. According to Tremaine Smith, program manager of the Taxpayer Services Division of the Washington Department of Revenue, the base work group has formed separate subgroups to handle each of the following definitions:

- Prepared food, led by Vicki Gibbons, revenue tax specialist for the Wisconsin Department of Revenue;
- Vending machines, led by Terry Charlton, associate counsel for the Illinois Department of Revenue;
- Soft drinks, led by Bryant Lomax, manager of tax policy for the Texas Office of the Comptroller of Public Accounts;
- Candy, led by Lomax;
- Tangible personal property, digital products, and software, led by Christina Fletcher, attorney for the Louisiana Department of Revenue;
• Sales, leases and rentals, and use, led by Johnnie Burton, director of the Wyoming Department of Revenue;
• Medical equipment, supplies, and drugs, led by Craig Rook, chief of the New Jersey Division of Taxation;
• Bundled transactions (except telecommunications), led by Sherry Harrell, tax audit supervisor for the Tennessee Department of Revenue;
• Model sales and use imposition, led by Woody Thorne, deputy executive director of the Nevada Department of Taxation; and
• Product code, for which a leader has not been selected.

The three food subgroups and the vending machines subgroup are slated to present findings to the project at the April 5 teleconference, while the subgroups headed by Fletcher, Burton, and Rook are scheduled to present theirs at the Raleigh meeting. In addition, the subgroup on bundled transactions is set to present its definitions at the project’s tentative August 23 and 24 meetings in Minneapolis, while deadlines have not been set for the remaining two.

— Doug Sheppard

**NCSL Task Force Cochairs Outline ‘Streamlining’ Strategy**

When the National Conference of State Legislatures (NCSL) Executive Committee approved significant changes to the Streamlined Sales Tax Project’s model act and agreement on January 27, some deemed it a crushing blow to the simplification effort, accusing state legislators of sidestepping hard issues.

However, if you ask the cochairs of the task force that forwarded the amendments to the executive committee, Illinois state Sen. Steven J. Rauschenberger (R) and Tennessee state Rep. Matthew H. Kisber (D), it’s a matter of facing up to political reality. At the NCSL’s annual Leader to Leader Meeting in Washington on March 2, the two promoted their strategy on how to ensure a successful state simplification effort.

On January 27, the NCSL Executive Committee approved changes made by its Task Force on State and Local Taxation of Telecommunications and Electronic Commerce to the Streamlined Project’s model legislation. Among the changes were amended sections on governance and base rate; set aside for further review, via deletion from the approved version, were uniform definitions; uniform bad debt provisions; the uniform rounding rule; and limitations on caps, thresholds, and sales tax holidays for state and local governments. (For coverage of the differences legislators and the Streamlined Project have on this issue, see *State Tax Notes*, Feb 26, 2001, p. 710; 2001 STT 37-47; or Doc 2001-5409 (6 original pages).)

Some in the public and, especially, the private sector, including some close to the project, accused the NCSL of gutting the legislation. But Rauschenberger doesn’t see it that way.

“I know the people who work very closely on the project were disappointed that we didn’t feel the states were ready for the complete adoption of their work,” Rauschenberger told *State Tax Notes*. “But in the long run, I think the states and they will be better served by a process slow enough to allow us to educate legislators. Had we gone further faster, I’m afraid we may have faced some early legislative defeats because people didn’t have to fully understand how important this is. We’ll work hard to make sure frustrated people realize we still have a lot of determination to go forward.”

‘I think that after everybody settles down and we get a chance to see how many states enact,’ Rauschenberger added, ‘that we will be able to work with the Streamlined Project.’

Rauschenberger said that all involved could take heart in the fact that some version of the legislation has been introduced in 14 states and enacted in Wyoming. “It’s not a home run yet . . . but we’re more than halfway to first base,” he said. “This is the most progress that’s been made in any sales tax simplification effort, and I think we benefit from the intellectual work done by four or five previous projects.”

“I think that after everybody settles down and we get a chance to see how many states enact,” Rauschenberger added, “that we will be able to work with the Streamlined Project. They’re bright people; they know how to do this. They just have to be willing to take political advice from us as we’re willing to take substantive or policy advice from them.”

Right now, Rauschenberger and Kisber are promoting their strategy of getting the Streamlined Project legislation or its NCSL variation passed in as many states as possible to get momentum, a message they attempted to get across to legislators who attended the March 2 meeting.

“Progress in the states is of utmost importance,” Kisber said. “The legislation, as recommended by the [NCSL] Executive Committee, will enable as many states as possible to continue to participate in the discussion that will move toward simplification. And in doing that, it creates a governance structure in which these states are able to come together to finalize the agreement based on the discussion . . . on those issues — so we get a proper balance between pure simplicity and political feasibility issues of simplification. There is a great complexity as well as contention on some of these issues, and the only way to properly resolve them is through discussion by those who are at the appropriate levels of state government and have an understanding of policy as well as the position to come forward with the appropriate recommendation.”

“The main obligation of the act is [that] it drives states into the second level of discussion with the new governance structure, which includes people appointed by the legislative leaders and by the governor,” Rauschenberger added. “It really doesn’t obligate states to do anything that should be a problem. Any actions taken, in the end, to simplify your state sales tax are required to come back, by statute, before the legislators. But movement on that makes it clear to Congress that we’re serious in what we’re trying to do.”
Rauschenberger added that two things are “critical to continued success of this project and NCSL. No. 1 is to urge your states to exercise restraint with sales tax law over the next couple years. If states, on one hand, are participating in simplification discussions but respond to the pressure to further customize their sales tax process by adding new gimmicks or new sales tax holidays or new complexities, at the same time, we don’t want to appear to be too deliberate.

“And most of all, you all need to help us lobby Congress and make them focused and aware,” Rauschenberger added. “We have great congressmen and senators, but many times they don’t understand the importance of sales taxes to your state; sales taxes account for a third of the revenues across the 50 states. They don’t understand its importance to education funding, and they don’t understand the complexity of their sometimes thought-provoking, one-size-fits-all federal rules.”

Reactions to the Internet Moratorium

Not surprisingly, Rauschenberger listed the current Internet Tax Freedom Act (ITFA) moratorium on Internet access taxes and “multiple and discriminatory” taxes as an example of federal action that conflicts with the state sovereignty and revenue needs he referenced earlier. Currently, proponents are attempting to extend the moratorium, which expires on October 21. (For coverage of federal legislative efforts to extend the moratorium, see 2001 STT 28-55 or Doc 2001-4072 (6 original pages). For coverage of the costs to states of permanently exempting Internet access from taxation, see State Tax Notes, Mar 5, 2001, p. 796; 2001 STT 41-30; or Doc 2001-5972 (5 original pages).)

“The moratorium is really a significant danger to states,” Rauschenberger said. “It’s really the first time we’ve seen participation at the federal level in interdicting state revenue decisions. We’ve had arguments with the federal government before about regulatory issues, but it’s the first time they’ve really participated in trying to define our revenue code.”

‘The moratorium is really a significant danger to states,’ Rauschenberger said.

Reflecting the concerns of many state and local officials, Rauschenberger went on to say that his main concern is the bundling of telephony and cable service under the auspices of Internet access, which he said would allow such services to escape taxation under ITFA’s definition of Internet access. It’s those same issues that NCSL members like Rauschenberger hope to get across to Congress with the attempt to extend the moratorium — and even permanently exempt Internet access from taxation — this year.

Rauschenberger said he was encouraged by the failure of a five-year moratorium extension bill in Congress last year, believing that it displayed, in part, a willingness to acknowledge state concerns. “We’ve had exceptionally good response in the U.S. Senate,” he said. “There were moves last year by some senators to try to extend the moratorium and, in some cases, even include sales taxes in the moratorium. And a number of senators have stepped forward and said that’s not the right policy.”

In the House, it’s a different story, given the fact that legislation to extend the moratorium five years was approved last May.

‘That’s our concern: You [Congress] having the last vote on the issue,’ Finan said to a rousing ovation from fellow state legislators in attendance.

“We hope to have similar success in the House this year as we educate our congressional delegations,” Rauschenberger said. “I’m not sure that [House Speaker J. Dennis Hastert, R-Ill.] is certain of the political tenor yet on this issue. We have not been doing well with the House; they have been exceptionally busy, they’ve had very long sessions and haven’t had as much time with the states. We’re hoping we get the opportunity to brief them at a high level so they really understand the impact of this kind of legislation.”

Rauschenberger acknowledged that state officials may not get such access this year: “With the campaign last year, with reapportionment this year, it’s a tough time to have a good consultative relationship with Congress.”

Even so, reports indicate that U.S. Sen. Byron L. Dorgan, D-N.D., will introduce an amended version of a multistate sales tax collection bill he sponsored in 2000 that allows for multiple rates rather than the blended rate in the previous version, S. 2775. The blended rate was the NCSL’s main point of contention on the bill. (For coverage of Dorgan’s plans for another interstate sales tax collection bill, see State Tax Notes, Feb 19, 2001, p. 608; 2001 STT 34-48; or Doc 2001-4858 (4 original pages).)

 Asked about Dorgan’s apparent plans to allow for multiple rates, Rauschenberger replied: “That’s progress. He’s come to understand that you cannot go to the state of Illinois and order the state legislature to take away the city of Chicago’s tax authority, nor can you believe that we’re going to be able to pass legislation on a blended rate.”

Senator Kerry’s Views

The day before its March 2 proceedings, the NCSL did hear from another U.S. senator, John F. Kerry, D-Mass., on the subject of Internet tax legislation in the 107th Congress.

When asked by Ohio state Sen. Richard H. Finan (R) about where the Senate was likely to fall on the issue, Kerry responded: “My sense is that we will wind up with a moratorium that continues on all discriminatory taxes, but we will throw to you the opportunity through the [NCSL] the ability to set up a simplified sales tax base where you either have a blended rate or some other structures such as you want to do. But this will provide simplicity and capacity nationally to make sense out of the 30,000-plus jurisdictions or so, depending on who’s counting. I think that’s the smartest way to go.”
Kerry continued: “You will resubmit that compact to us and we will review the compact and vote up or down and make the determination of whether or not we think it represents the guidelines that we are looking for, which are simplicity, a national structure so that commerce is seamless throughout the nation, and also so that it’s fair. And so it’s really going to be left to you to decide to keep parts of that compact, but you’re obviously going to have to do it with the view that we’re going to have the last vote on the issue, and that’s what I think will pass.”

“That’s our concern: You having the last vote on the issue,” Finan said to a rousing ovation from fellow state legislators in attendance.

After his initial words were drowned out amid the applause, Kerry said that “our concern, at the same time, is that you don’t wind up with simplicity and that you don’t end up with a seamless web. And our responsibility, nationally, is to try and enhance the economic capacity of the country. So while I represent Massachusetts, we also want to look at this from a global perspective.”

Kerry said that over the past 25 years, members of Congress have learned that they don’t always have the answers and that states are sometimes better suited to handle certain issues. “You can decide what kind of tax rate you want; we’re not going to tell what to do. You can decide whether it’s blended or individual or two rates in your state; that’s your business,” Kerry said. “But what we want to know is, with respect to Internet sales, in the process and movement of goods, there’s a fair structure that allows everybody to understand, quickly and easily, what’s there so we’re not inhibiting the capacity of the Internet to grow and of our country to compete internationally. I think you’re going to find a Congress very wary of second-guessing you or trying to interfere with you.”

— Doug Sheppard
1994 ORANGE COUNTY FINANCIAL CRISIS EXPLORED. This article empirically demonstrates the repercussions of the 1994 Orange County financial crisis on the share prices of California municipal bond funds and in doing so, provides a glimpse into the market efficiency in the secondary municipal bond market.


NEW YORK AND NEW JERSEY COURTS REACHED DIFFERENT RESULTS IN PROPERTY TAX CASES. This article reviews the decisions in Xerox Corp. v. Duminuco and the ML Plainsboro Limited Partnership v. Township of Plainsboro and discusses how other jurisdictions may determine and interpret value-in-exchange versus value-in-use standards.


RECENT CORPORATE TAX CHANGES IN THE WEST EXAMINED. This article discusses nexus, group filing options, apportionment, nonbusiness income, flow-through entities, the definition of taxable income, and other developments for states in the western region, including Arizona, California, and Colorado.


CHANGES IN TAX AND TRANSFER PROGRAMS AFFECT SINGLE MOTHERS. Changes in social and tax policy in recent years, including those to federal and state income taxes and child care programs, have encouraged work by single mothers; this article describes how these changes differed across groups of states and types of families.


Utilities

ELECTRIC UTILITY DEREGULATION EXAMINED. Utilities must consider the varying tax structures of each state in which they operate; this article describes the various states taxes paid by investor-owned electric utilities and illustrates the differences in the tax burden between the states.


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states of mind

dot.com to dot.bomb: california treatment of severance pay, payments from buyouts

by kathleen k. wright

when the headlines blare “tech firms tighten up!” it generally means that buyouts, mergers, and outright layoffs are in the works. to name a few, dell and motorola both report significant job cuts, and even the venerable cisco says it has essentially stopped hiring. the smaller dot.coms are looking for someone to buy them out — so they don’t become dot.bombs.

the lucky workers that end up with companies that are bought out or only forced to cut back may get some kind of a package. in a buyout, it may be a covenant not to compete or a purchase of an employment contract with provisions for future employment. in a layoff, the payments may be in exchange for a release of claims against the employer, or they may be payments for past service. this article deals with the tax liabilities in california (and other states) that befall the lucky ones — the ones who get severance or termination payments or, in a buyout, a covenant not to compete.

the primary issue is how to source these payments if the worker no longer lives in the state where he or she was employed. california has provided only limited guidance on these issues. at a hearing january 19, the franchise tax board (ftb) proposed adoption of controversial regulation 17951-6, regarding sourcing of payments received under a covenant not to compete. if the payment is for something other than a covenant not to compete, little formal guidance exists. the regulations under california revenue and taxation code section 17951 provide the basic guidance for sourcing wages, salaries, and other compensation for services performed in the state, but these regulations do not deal specifically with various forms of severance pay and other termination payments. an example illustrates these issues.

assume that starsky and buck have developed their own auction site, but this one is restricted to sellers of gourmet food products and buyers. following the model of ebay (for example), the goal is to connect buyers and sellers in a select market. so far, the biggest users have been coffee growers and retail sellers of gourmet coffee. sellers list their products, and buyers list what they want to buy. this software does the rest.

to buy or sell, the business must register, which means all the basic recordkeeping is smoothed out. then the business lists what it wants to buy or sell, and the software will attempt a match, often bundling a number of small orders so that sellers’ discounts might be available to small buyers. fees are charged the sellers when a match is achieved. all this is done through software on a server located in california. starsky and buck have very little intervention on a transactional basis. although the company is organized in california, only two people staff an office location in mountain view. as things happen, most of the company’s buyers are located in california, washington, and oregon. ultimately, starsky and buck sell the software and the web site to a large coffee company for a good price and various severance agreements. starsky, the brains behind the development of the software and the successful launching and marketing of the web site, will be paid $3 million over three years under a covenant not to compete. the covenant specifically covers the states of washington, california, and oregon, and also includes certain provisions restricting development of a similar software product. starsky lives in washington and has never worked in california.

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the primary issue is how to source these payments if the worker no longer lives in the state where he or she was employed. california has provided only limited guidance on these issues.

buck, on the other hand, was under a five-year employment contract providing that at the conclusion of the five-year period, buck would provide consulting services on an as-needed basis for no less than $20,000 per year for an additional five years. buck’s primary skill regarded his contacts with colombian coffee growers, and starsky wanted him involved in the project up front to help advertise this new service to the growers. at the time of the acquisition, buck had four years remaining under the consulting contract. buck was paid $80,000 for the balance of his employment contract. buck had lived and worked in california for a portion of the time covered by his employment contract, but he now lives in nevada. the question is how these payments will be sourced if starsky and buck are
Covenants Not to Compete

Regulation 17951-6, now proposed for adoption, deals with the definition of covenants not to compete and the sourcing of these payments. (For the full text, see Doc 2001-321 (14 original pages) or 2001 STT 2-1.) These regulations adopt the FTB litigating position that the payment is a property right with its source at the location where such competition would have occurred absent the covenant. (The Korfund Co. v. Commissioner, 1 TC 1180 (1943).) The alternative argument — that the covenant represents an intangible asset in the hands of the party receiving payments — has been rejected on numerous occasions (Appeal of James B. and Linda Pesiri, State Board of Equalization (BOE), Sep 26, 1989). The covenant not to compete is deemed to be an integral part of the business activity and becomes part of the economic structure of that business more so than it is identified with the domicile of the owner. The most recent controversy is how to determine the source of payment if it is deemed to relate to the business.

The regulations state that income from a covenant not to compete will be assigned by first identifying the legally enforceable area within which the promisor forfeits the right to act. The income is then assigned to locations within the legally enforceable area according to a formula consisting of the average of equally weighted property, payroll, and sales factors for the tax year in which the business was sold (Regulation 17951-6(a)(1)).

This is not the formula used for apportionment of business income to California. Apportionment for purposes of computing the franchise tax uses a four-factor formula that double-weights the sales factor (California Revenue and Taxation Code section 25128, as amended for income years beginning on or after January 1, 1993). Use of the three-factor formula for sourcing payments under a covenant not to compete will generally provide a less favorable result to the recipient of the payment if the company is a California corporation that makes most of its sales out of state.

In addition, these regulations provide that for purposes of computing the sales factor, the sale will be assigned to the state of the purchaser where the property is delivered or shipped and the concept of “throwback” sales will not apply. (The concept of throwback sales, as provided for in California Revenue and Taxation Code section 25135(b), requires that if the seller does not have a taxable presence in the destination state, then the sale must be “thrown back” to the state from where the merchandise was shipped; it is meant to ensure that all sales are accounted for in the apportionment process.) Ignoring throwback makes sense if the payment is meant to reflect the markets where the business operates and where the seller is restricted from conducting business.

The issue of the appropriate methodology to use to determine what portion of the covenant-not-to-compete income should be assigned to California was recently discussed in Appeal of Milhous (BOE, Nov 2, 2000). (For the full text of the BOE’s ruling in Appeal of Milhous, see Doc 2000-31710 (8 original pages) or 2000 STT 240-7.) In that case, the BOE rejected a single-sales-factor approach on the basis that many fact patterns would result in distorted results. If a company manufactured goods in Arizona and sold them exclusively in California, then the single-sales-factor formula would result in assignment of all of the payments under the covenant to California, even though the taxpayer may have worked in Arizona and much of the business activity occurred in Arizona. In addition, a test that sourced payments solely based on sales would logically apply only to the owner who had sales expertise. If another owner had expertise in product development or construction and those activities occurred in Arizona, then his payments should not be sourced where the sales take place, but rather where these activities take place.

Even the three-factor formula does not fairly govern all the scenarios that come up with covenants not to compete.

But even the three-factor formula does not fairly govern all the scenarios that come up with covenants not to compete. In the example of the sale of the auction Web site and software, if Starsky enters into a covenant not to compete in California, Washington, and Oregon (where most of the buyers of the gourmet coffee beans are located), then he will have a portion of the payment sourced to California (assume that the apportionment percentage to California is 25 percent). The irony is that Starsky never actually worked in California. Query whether there is a constitutional issue associated with requiring Starsky to file a California return related to the payments received under the covenant not to compete if he never worked in the state.

To address these concerns, the regulations do provide that there may be instances in which the application of the three-factor formula will not provide for a fair and equitable result. In such a case, the taxpayer may petition the FTB for use of factors of the business that was sold for another year or combination of years or for use of a method of assigning income within the legally enforceable area of the covenant, provided that the taxpayer can prove that an alternative produces a better and fairer result.

These regulations are controversial on many counts. Although it is undoubtedly the reputation and skill of the seller that is the reason the buyer is willing to agree to a covenant not to compete, the payment is clearly not for past service (the payment is not made by the former employer). The payment relates to future earnings of the recipient; if all he has to do to earn the money is stay home, then that money is earned for that service and is sourced where he performs the service (at home). The point is controversial, and the states are divided on the issue. Other states do uphold the view that the payments under a noncompetition agreement are an intangible right and are taxed to the state of residence of the recipient, although California did not adopt this view. (See, for example, New York’s Revised Audit Guidelines for Nonresident Allocations Sec. 313.5.E. (May 4, 1998). See also the New York State Tax Appeals Tribunal’s rulings in Matter of Haas (Apr 17, 1997) and Matter of Penchuck (Apr 24, 1997). See also Gersh v. Commissioner of Revenue, Massachusetts Appellate Tax Board, May 28, 1997. For the full text of the ruling in Matter of Haas, see Doc 97-12085 (27 pages) or 97 STN 88-20. For the full text of the ruling in Matter of Penchuck, see Doc
Payment for Termination Of Existing Employment Contract

These payments frequently are made in a buyout situation where an employee has a contract guaranteeing employment and a stated salary for a specified period. If the company is bought out and the new owners want to put in place their own management, they might agree to pay a lump sum to settle the company’s obligation to pay for future services. Because payment for future services would be sourced where the services are rendered, it would be logical to assume that the buyout of the remainder of this type of a consulting contract would be sourced where the taxpayer is physically located when the payment is received. However, an alternative view might hold that the payment should be sourced where the contracts are executed, where the employment in the past had occurred, where the employment in the future is likely to occur, or where any arbitration or other settlement conference might have been held.

The initial question that has to be answered in these cases is whether the payment is for past services or the employer’s right to future services. If the employment contract does not include any reference to a payment for future services, then if the contract is purchased it will be difficult to argue that the payment is for anything but past services (and would be sourced where those services are rendered). The payment for future services must be a contract right, not an unenforceable promise. To clearly be a payment for future services, the contract must provide for a definite term of employment. If, for example, the contract provides only for salary, bonuses, and a payment of one year’s salary if the company is taken over within the first two years of taxpayer’s employment, then there is no contract right for future employment. With the exception of a takeover, the employee can be terminated at any time. (See Matter of Laurino, New York State Tax Appeals Tribunal, DTA No. 807912, May 20, 1993. For the full text of the ruling in Matter of Laurino, see 93 STN 107-13.) In addition, most payments, which are characterized as a release by both parties of any and all claims against each other, are not payments for future services. This payment is for a prior legal claim and therefore is sourced to the state where the prior employment had occurred. (See Matter of Evans, New York State Tax Appeals Tribunal, DTA No. 813539, Jun 4, 1998.)

The analysis of the employment contract involves several steps. The first step is to determine whether the original employment agreement secured for the taxpayer the right to future employment and whether the consideration given by the taxpayer to obtain that right was the mere promise to work in the future. The right to future employment in the agreement is best evidenced by a definitive term of employment. If the contract does include a provision for future employment, then a buyout of the contract implies that the payment is for services yet to be rendered. The law in this area is well-developed in New York, and these opinions consistently hold that this is an intangible property right that has no base in New York because the service is not actually rendered there and the payment is not from property employed in a business, trade, profession, or occupation carried on in New York. (See Matter of Martin A. Davis, New York State Tax Appeals Tribunal, DTA No. 816510, Jan 14, 1999. For the full text of the ruling in Martin A. Davis, see Doc 1999-3993 (26 original pages) or 1999 STT 21-35.)

In the most current release of the New York Revised Audit Guidelines for Nonresident Allocations, section 313.6.D states that the payments to buy out an employee’s future contract rights are treated as income from the sale of an intangible asset, rather than as New York-source income. This guideline is the result of several cases dealing with the issue. In Donahue v. Chu (104 A.D. 2d 523, 479 N.Y. S. 2d 889 (3d Dept. 1984)) the taxpayer was under a 10-year consulting agreement. The termination agreement provided for a lump-sum payment to the taxpayer in exchange for the obligation to pay for future services. In this case, the taxpayer’s argument that the payment was not New York-sourced was bolstered by the fact that the corporation had moved to Connecticut at the time the contract was entered into. The court held that because the future services could not be performed in New York, the payment could not be New York-sourced.

Later, in Matter of McSpadden (New York State Tax Appeals Tribunal, DTA No. 810895 (Sep 15, 1994)), the holding in Donahue v. Chu was expanded to include facts under which the future employment would have taken place in New York. Here, the taxpayer had worked partly in New York and elsewhere, but the advertising agency that was bought out was clearly in New York and some part of the taxpayer’s future employment would have been there. The tribunal analyzed this transaction as a payment for a promise that did not relate to services rendered or to a trade or business conducted in New York. It did not relate to a trade or business conducted in New York because it was a termination payment made for not performing services. Nothing occurred in New York that would pull the payment into the state. It was, in the alternative, a payment for relinquishment of an intangible right to future employment that is not a payment that can be sourced to New York. (For the full text of the ruling in Matter of McSpadden, see 94 STN 193-16. See also the Tax Appeals Tribunal’s ruling in Matter of Brophy, DTA No. 612052 (Dec 7, 1995) and the Division of Tax Appeals’ ruling in Matter of Butler, DTA No. 812807 (Dec 14, 1995).)

California does not have a well-developed set of guidelines for termination payments related to employment contracts (outside of the area of covenants not to compete).

California does not have a well-developed set of guidelines for termination payments related to employment contracts (outside of the area of covenants not to compete discussed above). This is largely because most of the major metropolitan areas do not border other states and therefore, historically, it was uncommon for an employee of a California corporation to commute to work from a neighboring state. In many cases, the terminated employee is still a resident of California when he receives the payment. If the employee has relocated outside the state, then California has attempted to include payments received from the termination of a business (other than covenants not to compete) in the California base by arguing that the taxpayer was still a California resident when they received payment or that the right to receive the payment accrued before the taxpayer be-
came a nonresident. Under California Revenue and Taxation Code section 17554, California applies an accrual method to determine the income/deductions reportable to the state when a taxpayer changes from resident to nonresident (or vice versa).

Although California is certainly not bound by any New York pronouncement, these cases do point out several important issues to take into account when drafting employment contracts to bolster the argument that if these contracts are bought out, the payment is for an intangible right to future employment. If the employee has left the state at the time of receipt, a properly drafted contract could "save the day" if the issue of sourcing of payments is subsequently raised.
The Politics of State Taxation

Dumber Than a Bag of Hammers

by David Brunori

“The Politics of State Taxation” is a column by State Tax Notes Contributing Editor David Brunori and occasional guest columnists.

I have been ranting and raving against sales tax holidays for some time, calling them political gimmicks and pointing out that they violate all the principles of sound tax policy. Holidays cost the state money. They do not necessarily provide relief to the poor working families they are designed to help. And they ultimately enrich retailers. There is widespread agreement with these sentiments — and not just from cynical observers like me. No less a luminary than John L. Mikesell, who knows more than a thing or two about sales taxation, has criticized sales tax holidays. And other notable economists such as Richard R. Hawkins are beginning to compile research illustrating the folly of sales tax holidays. (In fact, Mikesell and Hawkins have teamed in these pages to tell you why sales tax holidays are a bad idea. See State Tax Notes, Mar 5, 2001, p. 801; 2001 STT 45-56; or Doc 2001-6282 (3 original pages).)

The experts agree that sales tax holidays do not work. But that has rarely deterred legislators who prefer expediency to principle.

Forget the intellectual scions for a moment. The best — or at least the funniest — statement I have ever heard about sales tax holidays came from a participant at the Florida Tax Conference a few weeks ago. Sales tax holidays were on the agenda. Afterward, this veteran practitioner sent me an e-mail in which he asserted that “sales tax holidays are, as my granddaddy used to say, dumber than a bag of hammers.”

Despite such homespun eloquence, the sales tax holiday parade marches on. The Oklahoma House has unanimously voted for a bill to establish a statewide sales tax holiday — lasting the entire month of August (see p. 861). The bill would exempt school supplies, clothing, and footwear from tax.

And the Kentucky General Assembly has begun debating a holiday that would exempt back-to-school supplies, clothes, and computers from the state’s 6 percent sales tax during the first week of August. As in Oklahoma, the Kentucky measure is likely to pass, because it is being couched in terms of helping poor working families.

In Kentucky, the only concerns I have heard expressed so far have been about the administrative costs borne by retailers. A legislative aide told me that his boss was worried that retailers would not like the holiday because of the additional costs involved in trying to figure out what is and what is not subject to tax. I want to assure Kentucky lawmakers that retailers like sales tax holidays. You don’t get many instances in which that state’s government essentially holds up a sign that says “shop this week and don’t pay taxes.”

But from a policy perspective, sales tax holidays remain a big bag of hammers.

Have a Drink, Send a Kid to School

I was reading our news coverage on hearings in the Kansas Senate Assessment and Taxation Committee on two controversial bills (SB 312 and SB 318) that seek to raise additional dollars for a number of state programs by hiking various alcohol, cigarette, and tobacco product taxes. (See State Tax Notes, Mar 5, 2001, p. 769; 2001 STT 41-8; or Doc 2001-5857 (2 original pages).)

That Kansas is looking at raising tobacco taxes should not surprise anyone. Everyone is doing it, and no one seems to care that taxing cigarettes is a fundamentally unfair means of raising revenue. Of course, smoking will kill you, and the tobacco industry has not proved to be a model citizen, so not many people are rising to its defense.

The eagerness to raise alcohol taxes, however, is a little surprising. Unlike with tobacco, the states have not rushed to raise alcohol taxes — even though there are many who would like to deter drinking, which has in recent years been viewed as a lesser evil (despite health problems and drunk-driving accidents) than smoking. I suspect that the hands-off approach to alcohol is left over from the ill-fated attempt that was Prohibition. In any event, the states have not clamored to tax alcohol as they have cigarettes.

I suspect that the hands-off approach to alcohol is left over from the ill-fated attempt that was Prohibition. In any event, the states have not clamored to tax alcohol as they have cigarettes.

The plan in Kansas is that all of the new money from the liquor and tobacco taxes would be earmarked for various state purposes, including K-12 funding; higher education; reduced student tuition; enhanced salaries for correctional officials, highway patrol officers, and state employees; and community-based developmental disability assistance.

Highway patrol officers may or may not be happy to learn that their pay raises will be contingent upon increased tobacco taxes. The livelihoods of these brave men and women will be tied to consumption of a known carcinogen. If I were a Kansas state trooper, I might be inclined to say, “Smoke ‘em if you’ve got ‘em.”
A proposal that would tie elementary and secondary school funding to how much booze the good citizens of Kansas drink must thrill the parents of children in Kansas public schools. When underage kids get busted for drinking, will “I was only trying to help the school” be a valid defense? Once again, an unfair tax is justified on the ground that things that it will pay for are noble.

So next time you’re at the local watering hole staring into the bottom of your glass of gin, take solace in the fact that, depending on your state of residence, you may be supporting your education system. And don’t forget to call a cab.

**Killing Reform in West Virginia**

Unfortunately, efforts to reform West Virginia’s antiquated tax system may have been dealt a knockout punch. Gov. Bob Wise (D) has rescinded a rule that would require businesses in the state to file informational tax returns to determine the impact of the tax reform proposals proffered by Wise’s predecessor, Cecil Underwood (R). The rule would have affected nearly 12,000 businesses in the state. (For coverage, see p. 868.)

The Tax Division was to submit rules detailing what information the returns would request and other regulations for approval by the Legislature this session. Wise ordered the rule withdrawn from consideration.

Most folks I’ve talked to have said that without the impact statements, further progress on reform would be impossible. I think that the purpose of the impact statements was to show businesses that they would be no worse off if the reform measures were adopted. And we all know that without business support, reform is virtually impossible politically.

And that is a shame. West Virginia’s former Tax and Revenue secretary, Robin Capehart, and many leading scholars, practitioners, and government leaders put a lot of time and effort into the reform proposals. These proposals, which among many other things called for institution of a single business tax, had merit, at least from the point of view of sound tax policy. They were aimed at making the tax system less complicated and more efficient while maintaining a modicum of equity. Now, it seems, much of that hard work will be for naught.

**Killing Loopholes in North Carolina? (Good Luck)**

In my last column, I wrote about some good tax reform proposals in Nebraska and Indiana. In his recent State of the State address, North Carolina Gov. Mike Easley (D) confronted the state’s $790 million budget crisis and called for a reexamination of a hodgepodge of tax deductions, exemptions, credits, and other preferences. In doing so, Easley announced that he would appoint a commission, to be chaired by former State Treasurer Harlan Boyles (D), to study the breaks and recommend the closing of unjustifiable loopholes. (For coverage, see State Tax Notes, Mar 5, 2001, p. 783; 2001 STT 2001 STT 41-17; or Doc 2001-5915 (4 original pages).)

With politicians allergic to raising tax rates or adopting new types of taxes, closing the plethora of loopholes may seem like a good revenue-raising alternative. Thousands of exemptions, deductions, and credits are in place nationwide; eliminating just a few could result in a large influx of cash. Just as important for those considering good tax policy, eliminating such breaks would make the system fairer, more efficient, and much more market-neutral.

**There is nothing harder to do politically than to eliminate a tax preference.**

But the truth is that there is nothing harder to do politically than to eliminate a tax preference. This is especially true if it is attempted apart from a comprehensive tax reform plan. Nebraska Sen. Kermit A. Brashear’s plan to eliminate exemptions, for example, would reduce the average person’s tax burden. Yet, as noted in my previous column, every organization affected by a closed loophole is fighting in the Nebraska Legislature.

The thousands of tax breaks in existence benefit the most powerful economic interests in the states — as well as some of the most politically sympathetic (veterans, children, the disabled). If Easley’s commission makes too many recommendations, you will see a horde of lobbyists descend on Raleigh.

Now, all this is not to say that the governor is incorrect in calling for an examination of tax breaks. That such an examination will result in political protest is no excuse for not doing the right thing. The lesson to be learned is that the time to deal with the fairness, efficiency, and efficacy of tax preferences is before they are implemented. It is difficult for politicians to refrain from giving out tax benefits. But it is a lot harder to take them back.

**Taxing Rappers?**

Perhaps the silliest tax idea to come out of a legislator’s mouth this past week (and that is saying something these days) was a proposal by a Michigan representative to impose an excise tax on music compact discs that display parental advisories for violent content.

Rep. Hansen Clarke (D) apparently wants to impose an excise tax on such music CDs to help deter their purchase. The revenue from the new tax would be earmarked for shelters for battered women and for antiviolence education programs. Clarke is reportedly upset over controversial rapper Eminem’s winning a Grammy Award. Guys like Eminem sing songs that have been heavily criticized for glorifying violence against women. Under Clarke’s proposal, if you must listen to such music, you would pay a tax on the CDs containing the songs. Then the state would use the money to pay for shelters for women hurt by domestic violence.

Clarke will not be teaching courses on classic tax or social policy any time soon. I have two words in response to this idea: First Amendment.
The International Fuel Tax Agreement: Are There Lessons Here For Sales and Use Taxation?

by Robert C. Pitcher

With the rapid development of the Internet, the problems associated with a lack of uniformity in state sales and use taxation have become much more prominent. At least partially on the ground of the lack of uniformity, elements of the retail industry were able to persuade Congress to pass the Internet Tax Freedom Act,¹ which includes a moratorium on new state taxes on electronic commerce. Internet Tax Freedom Act expires this fall; the debate over whether to extend, modify, or eliminate it will be lively. This article suggests that there are lessons for the future of the general sales and use taxation of remote sales in the history and organization of the International Fuel Tax Agreement, a base-state administrative mechanism for the collection of motor carrier fuel taxes. The agreement was effectively mandated by federal legislation a decade ago, in circumstances that are similar in many respects to those that surround the remote sales controversy today.

Although the debate over extending the Internet act will focus on Internet sales and their future, the sales and use tax problems related to the Internet are really just a subset of the general sales and use tax problems related to remote sales of many kinds, problems analyzed by the U.S. Supreme Court most recently in Quill Corp. v. North Dakota.² In Quill, the Court invited Congress to resolve this complex of issues legislatively, and although Congress has not seen fit to do this yet, the argument over the taxation of Internet sales revenue may provide the necessary impetus.

In a yet broader sense, the whole area of sales and use tax collection on remote sales is but an instance of the continual tension in the federal system between the authority of the states to collect the revenues they need and the authority of Congress to ensure that interstate commerce is not overly burdened as they do so. States are likely to claim that the revenue area ought to be sacrosanct and that every proposed federal interference with state taxation tends dangerously to diminish state sovereignty. However, where in a particular case the source of tension is nonuniformity among state tax systems, experience has tended strongly to indicate the states’ inability to fix a problem by themselves voluntarily. In such a case, a well-designed federal intervention may not only be necessary to protect interstate commerce, but can actually leave all parties, states and business alike, better off.

A recent instance of this is to be found in the area of state fuel use taxation, where, in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),³ Congress effectively required all the states to enter by 1996 what is called the International Fuel Tax Agreement (IFTA). This move, taken at the urging of interstate motor carriers, addressed an area of state tax nonuniformity that had plagued the trucking industry for decades and that the states as a group had shown themselves unable or unwilling to remedy.

IFTA’s Relevance to Sales Taxation

IFTA’s history and its current status are relevant to the sales and use taxation of Internet and other remote sales in a number of respects:

- As with sales and use taxes, almost all the states impose fuel use taxes, and in most states this tax program is administered by the state’s revenue agency.
- Prior to IFTA, the major problem in the fuel use tax area was nonuniformity in state tax laws, regulations, and administrative practices. There were, however, also legal and constitutional issues.
- The states fiercely resisted federal intervention to impose greater uniformity.

¹P.L. 105-277, sections 1100-1104, codified at 47 U.S.C. section 151nt.
• The affected industry, interstate motor carriers, cooperated closely with the states in developing IFTA as a solution to the problem.
• Collectively, the states agreed that the problems in the fuel use tax area were serious and that IFTA was an appropriate means of addressing them.
• However, the states as a group showed themselves to be unable or unwilling to adopt the solution IFTA represented.
• Federal intervention effectively required the states to join IFTA, but it left IFTA and fuel use taxes in state hands: IFTA is in no sense a federal program.
• IFTA has accomplished many of its goals. It has removed much of the burden of state nonuniformity from the fuel use tax area, and has proved itself to be a workable method for states to collect revenues from interstate business.
• IFTA is a base-state system, one of the options that has been mentioned to deal with sales and use taxation of remote sales.

In some respects, fuel use taxation is dissimilar to general sales and use taxation. First, the fuel use tax is a source of relatively little revenue to the states, while the sales and use tax is a major, and, in some cases, the primary revenue source for states that impose it. Second, fuel use taxpayers are essentially limited to interstate trucking companies and truck lessors. Although there are several hundred thousand of these entities, they are a small and homogeneous group compared with the millions of retailers that engage in interstate transactions. Third, local governments do not impose fuel use taxes; these governments have no stake in IFTA, whereas they have a very large stake in any overall solution to state sales tax uniformity issues. Fourth, mileage traveled by jurisdiction has proved a reasonable method of apportioning fuel use taxes. No single corresponding method for apportioning sales and use taxes on remote sales would seem to exist, and the very notion of apportionment for sales tax is problematic. Some means of allocation may be more feasible. Finally, IFTA embodies the base-state concept, which may be inadequate by itself to resolve a number of the issues present in the sales and use tax area. A base-state solution would seem appropriate to at least some of these problems, but, to the author’s knowledge, no detailed base-state proposals dealing with sales and use taxation have been made to date. Nevertheless, there is much in today’s sales and use tax debate that bears a similarity to the state and business experience with the International Fuel Tax Agreement, and a review of IFTA’s history, organization, and current status may be useful for those engaged in wrestling with the taxation of remote sales.

The Fuel Use Tax

The fuel use tax imposed on interstate motor carriers is not the same sort of tax as the fuel tax the drivers of passenger cars pay at the pump when they gas up. The operators of heavy trucks pay fuel tax at the pump (or on the purchase of fuel in bulk), but they also pay fuel use tax to each state on the basis of how much fuel they actually consume in their travels there. This is done through quarterly tax reports that detail the amount of a carrier’s travel in a state, the amount of fuel it purchased in the state tax-paid, and the overall miles-per-gallon ratio of its fleet. From this the carrier calculates the fuel it used in the state and takes credit for any state fuel tax it paid on fuel purchases during the quarter. It then pays the state any additional tax owed or receives a credit if it overpaid tax. The fuel use tax is largely a mechanism for redistributing fuel tax to compensate for carriers’ differential fueling among states, caused by patterns in freight movement or by discrepancies in state tax rates.

All the states except Alaska, Hawaii, and Oregon impose fuel use taxes. Before IFTA, each state in which a carrier traveled required it to file a fuel use tax report. These had different formats, different due dates, different methods of calculating the tax due, different rates of interest for underpaid liabilities, and different requirements for receipts and other records that needed to accompany a return. The underlying fuel use tax laws specified different threshold weights for vehicles subject to the tax, different tax indicia to be borne by vehicles registered for the tax, and different levels of fees to be paid for those indicia. Some states required fuel use taxpayers to post a bond when they registered for the tax. Others only required a bond — or an audit — if a taxpayer overpaid fuel tax and wanted a refund. In a few states, refunds were so hedged about with restrictions as to be practically unavailable to a carrier. Leased operations were often subject to especially complicated requirements. In the aggregate, the nonuniformity among state fuel use tax requirements became extraordinarily expensive for motor carriers that did business on more than a regional basis. Smaller and less sophisticated operations could hardly afford to comply fully, and many ceased to do so.

Carriers first voiced serious complaints about the fuel use tax and the nonuniformity of state requirements in the days of the Middle Eastern oil embargoes in the early and mid-1970s, when strikes by independent truckers caught the ear of Congress and the United States Department of Transportation (U.S. DOT). And it was at this time that the first base-state agreement for the collection of fuel use taxes was drafted by motor carrier representatives with the input of a few state administrators. As a model, they used the International Registration Plan (IRP), a multistate organization then just going into effect to handle interstate carriers’ vehicle registration fees on an apportioned basis.

—Donald P. Norris, “Motor Carrier Fuel Use Tax Proposals,” speech to the North American Gasoline Tax Conference (NAGTC), Halifax, Nova Scotia, October 1, 1974; archives of the American Trucking Associations, Alexandria, Va. The NAGTC was a subsidiary of the Federation of Tax Administrators, and has since been absorbed into that body.

4See American Trucking Associations, State Fuel Use Taxes: A Guide for Motor Carriers, ATA, Alexandria, Va., 1988. The author was largely responsible for researching this publication.

5See for example, Miss. Code sections 27-61-1, ff., and Wisc. Stats. section 341.45.


7See Donald P. Norris, “Motor Carrier Fuel Use Tax Proposals,” speech to the North American Gasoline Tax Conference (NAGTC), Halifax, Nova Scotia, October 1, 1974; archives of the American Trucking Associations, Alexandria, Va. The NAGTC was a subsidiary of the Federation of Tax Administrators, and has since been absorbed into that body.

8The IRP was important to IFTA’s development, and many of IRP’s elements were incorporated into IFTA. As with IFTA, IRP’s requirements effectively required all the states to become IRP members by 1996. IRP is a less useful analogy than IFTA to the sales and use tax area. Vehicle registration fees are commonly administered by transportation rather than revenue departments and are not always regarded by these agencies as tax programs. Nor is the IRP as tightly constructed as IFTA.
Following the deregulation of the trucking industry in 1980, the uniformity problems associated with the fuel use tax quickly grew, as thousands of new carriers, most of them small businesses, entered the market and began to operate nationwide. Very soon, there were calls on the part of the industry and the U.S. DOT for the simplification or even the elimination of the state fuel use tax.9

IFTA

The efforts to draft and implement a working base-state agreement to collect and administer fuel use taxes also continued during these years, and three states — Arizona, Iowa, and Washington — first put the International Fuel Tax Agreement into effect January 1, 1983. Significantly, these three were all states in which the fuel use tax was administered by an agency other than the state’s revenue department. Right through the enactment of ISTEA, state revenue agencies as a whole and the Federation of Tax Administrators, their association, remained opposed to IFTA.10

Right through the enactment of ISTEA, state revenue agencies as a whole and the Federation of Tax Administrators, their association, remained opposed to IFTA.

IFTA has changed little in its overall structure since it was first put into effect nearly 20 years ago.11 It is a base-state agreement, which means that a carrier fulfilling its tax obligations under its provisions chooses one of the IFTA member states as its base and registers for fuel use tax with that state alone on behalf of all the other members. The carrier files its quarterly fuel use tax reports to that state alone, on behalf of the other members, reporting its operations in all the members on a spreadsheet, and paying its base only the net tax due (or receiving a net credit). The base distributes to the other states what the carrier owes them, or accepts on its behalf credits from the other states. Finally, the carrier’s base state audits it on behalf of all the other IFTA members.

IFTA incorporates a single definition of a “qualified motor vehicle,” the type of vehicle, that is, whose consumption of fuel is the taxable incident under the agreement. IFTA specifies that a member will not tax the operations of other types of vehicle based outside its borders. IFTA also incorporates a uniform format for the fuel use tax report form, and specifies uniform due dates, methods of calculating tax liability, and interest rates on late-paid taxes. IFTA provides for a uniform set of vehicle credentials to evidence a carrier’s registration for fuel use tax and, although a state may charge its own carriers a fee for credentials, IFTA prohibits states from collecting each other’s credential fees. Bonds are not required of a carrier either to register under IFTA or to receive a refund of overpaid taxes.12 IFTA provides its members with binding guidelines for conducting IFTA audits. From a motor carrier’s point of view, IFTA has resolved most problems of nonuniformity inherent in the prior system of 47 differing fuel use tax systems. More will be said later about IFTA’s organization from the point of view of the member states.

Federal Preemption

In 1985, as the direct result of efforts by the trucking industry to have Congress mandate state participation in IFTA or a similar system and of state resistance to those efforts, the U.S. DOT funded a three-year study by states and industry of the problems faced by interstate motor carriers in the tax and fee areas caused by nonuniformity in state laws, regulations, and practices. The National Governors’ Association (NGA) and National Conference of State Legislatures (NCSL) were involved in the study, along with many individual state and industry representatives. NGA staffed the effort, known officially as the Working Group on State Motor Carrier Procedures, but commonly known as the NGA Project. The goal of the effort was to reach consensus on steps that states could take on their own, without federal intervention, to relieve motor carriers from the costs of nonuniformity.13

In the course of the NGA Project, IFTA was redrafted as a model agreement designed specifically so all states could accept it.14 When the redraft was issued, the existing IFTA members, now seven jurisdictions, adopted the model without change, and the NGA redraft of IFTA went forward as a working agreement. It is essentially the same agreement today. NGA itself endorsed the new IFTA, but the NGA declined to include IFTA membership as one of the elements of the national “consensus agenda” that it encouraged states, as the result of its three-year study, to adopt. Despite this, IFTA benefited enormously from the NGA Project in terms of favorable publicity.

The two years following the conclusion of the NGA Project were set aside so that states could voluntarily implement the various elements of the “consensus agenda.” NGA itself refused to pressure any states to do this, however, and NGA and other state organizations continued to oppose federal intervention in the state truck tax area. From the point of view of motor


10The author, employed through 1985 by the Federation of Tax Administrators, and thereafter by the American Trucking Associations, was in a position to observe these events very closely. IFTA administrators’ response to the effort at the federal level to make IFTA mandatory could be seen as somewhat contradictory. Although by the time ISTEA was enacted, about two-thirds of the then-IFTA-member states represented jurisdictions in which the tax agency administered the fuel use tax, IFTA itself protested federal intervention, in part because the National Governors’ Association did so. Communication from IFTA Inc.

11The provisions of the agreement may be found online at www.iftach.org.

12Provided the carrier has a good record of IFTA filing and payment.


14The redraft was undertaken by a subcommittee of state and industry representatives. The author, then assistant director of the State Laws Department of the American Trucking Associations, served as the sole industry representative.
carriers, the two-year implementation period led to few if any significant results. By 1990, only 14 states were IFTA members.

During this time, however, the decision by the U.S. Supreme Court in American Trucking Associations Inc. v. Scheiner cleared the way for IFTA much more effectively than the passive endorsement by NGA. In Scheiner, the Court ruled that a state could not constitutionally impose on interstate motor carriers a flat per-vehicle fee, as such a fee would necessarily discriminate against carriers operating across state lines. The fees over which this case and others had been brought in these years were those levied by nearly half the states for the purchase of decals indicating a carrier’s vehicles had been registered for a state’s fuel use tax. Running up to $180 a truck, such fees were a major source of revenue for many of the states that imposed them. The importance of these fees as a revenue source had made it very difficult for a large number of states to consider membership in IFTA, which would not collect these fees on a reciprocal basis. Scheiner, as much as the lack of tangible results from the NGA Project, served to open the way for federal preemption of state tax authority in ISTEA.

ISTEA, which was enacted late in 1991, was the first reauthorization of the federal highway program following the substantial completion of the Interstate Highway System. It was also the first suitable legislative vehicle for a number of items on the wish list of the trucking industry, including a federal requirement that all states join the International Fuel Tax Agreement. The American Trucking Associations and other industry groups pushed hard for this preemptive measure, and various states and state organizations resisted it.

Federal Provisions

The IFTA “mandate” in ISTEA was very narrow. Section 4008 of ISTEA says that after September 30, 1996, a state may not impose a fuel use tax reporting or payment requirement that is not “in conformity” with the provisions of the International Fuel Tax Agreement. The legislation specifically refers to IFTA’s definition of “qualified motor vehicle” and to the base-state concept on which the agreement was founded. ISTEA specifically leaves the determination of fuel use tax rates to state authority. Alaska and Hawaii were exempted from the section, as were the states of Maine, New Hampshire, and Vermont, which in the 1980s had entered their own small agreement that featured the reciprocal collection of these states’ decals fees. IFTA also provides for the enforcement of the fuel use tax requirement on the states, although it is not entirely clear how the process would work.

ISTEA did not actually require a state to join IFTA, but that was the result: within a few months following the September 30, 1996, deadline, all 48 continental states and all 10 Canadian provinces — for they also levy fuel use taxes — had joined the agreement. Another provision of ISTEA assisted in this rapid and timely implementation of IFTA by the states. Subsections 4008(a) through (e) of the act, now repealed, provided for a working group of state and local officials whose role it was to determine, under the auspices of the U.S. DOT, and in consultation with the trucking industry, a means of resolving conflicts that might arise among the member states of IFTA and to distribute funds to states wishing to join IFTA. These funds amounted to $5 million a year for the six-year life of ISTEA. The National Governors’ Association also managed this “Base-State Working Group,” which successfully oversaw the entry of all states into IFTA and the disbursement of all the technical assistance funds provided for by section 4008.

IFTA Today

IFTA has rendered the fuel use tax a viable means for states to collect highway revenues from interstate motor carriers without burdening them with the differing requirements that were inherent in four dozen separate state fuel use tax laws. It took federal legislation to achieve this result, but the states remain firmly in control of this tax area. Remarkably little state authority was lost in ISTEA’s IFTA provisions, and IFTA is in no sense a federal program. Rather, it has been determined that IFTA is a hybrid agreement: part interstate compact, part reciprocal administrative agreement among states, part a contract between states and taxpayers. Such a structure is unique in the federal system.

IFTA has rendered the fuel use tax a viable means for states to collect highway revenues from interstate motor carriers without burdening them with the differing requirements that were inherent in four dozen separate state fuel use tax laws.

IFTA is governed by the states and provinces that are its members. They are free to amend the terms of the agreement by a three-quarters vote, and they exercise this right, commonly in small ways, every year. IFTA’s daily operations are conducted by an incorporated repository, IFTA Inc., located in

15To illustrate: In 1984, as the NGA Project was beginning, the American Trucking Associations prepared an exhibit in order to show NGA Project participants the magnitude of the burden interstate carriers faced. The exhibit consisted of a heavy board, some four feet by six feet, to which was affixed a copy of each of the more than 100 different state credentials then required to be carried in or on a truck operating in all 48 continental states. ATA still used the exhibit for the same purpose through 1991, for there had been essentially no changes in state requirements. As noted above, the stance of some IFTA administrators toward promoting the agreement was ambivalent. Communication by IFTA Inc.

16Information supplied by IFTA Inc.


18See 49 U.S.C. sections 31705, 31706, and 31707.
Tempe, Ariz., that is governed by a board of trustees composed of state and provincial fuel tax administrators elected by their peers. Besides arranging IFTA's yearly business meeting and training seminars and workshops, the two most important functions of the repository are the coordination of IFTA peer reviews and the development of the IFTA clearinghouse. IFTA specifies that its members are to conduct periodic reviews of one another's adherence to the terms of the agreement. These reviews are made on a four-year cycle, and are taken very seriously by the jurisdictions. The IFTA clearinghouse is an automated system through which the participating IFTA members can exchange data on the motor carriers that pay taxes through the agreement. The fuel use tax is not an easy levy to enforce; the clearinghouse, and continuing base-state audits of carriers performed by the member jurisdictions, are regarded as the best means of enforcement.23

A resolution of a problem such as that posed by the fuel use tax area can take many years to develop.

Industry, which had such a large role in developing and promoting the agreement, has a continuing influence on the course of IFTA. Although not directly involved in IFTA's governance, industry representatives can and do attend all IFTA meetings, and have been encouraged to provide input to state officials through this and other means. The IFTA Industry Advisory Committee has recently been put on a more formal footing, and is expected to provide a more consistent basis for state-industry cooperation than might be possible otherwise.24

Conclusion

The International Fuel Tax Agreement has been a remarkable success. It has preserved for the states the viability of a highly problematic but important source of highway revenue, and it has removed from a key national industry much of a paperwork and tax compliance burden that, prior to ISTEA, was estimated at $750 million a year.25 This only became possible through the universal state membership in IFTA prompted by federal legislation.26 While the states recognized the problems of the fuel use tax and admitted IFTA would resolve them, they fought federal intervention in the area and many of them also resisted joining IFTA. With the help of industry, with which they had worked closely in the development of IFTA, the states could collectively arrive at a solution to the fuel use tax dilemma, but they could not implement that solution successfully without federal help. When it came, the federal intervention provided a strong impetus, rather than a mandate, for joining IFTA. Subsequently, Congress and the U.S. DOT have left it to the states alone to govern and use IFTA as they see fit. In this area of state taxation, the base-state concept has worked well, but only with an assist from the federal government.

There should be some lessons in this for those concerned with the states' future role in the sales and use taxation of remote sales. One is that a resolution of a problem such as that posed by the fuel use tax area can take many years to develop. Initially, in the mid-1970s, states and industry could agree on only five points of fuel tax administration, and then only in principle, not in detail.27 Current reports of the progress of the Streamlined Sales Tax Project are reminiscent of this stage in IFTA's development. A more realistic view of the industry's needs for fuel tax uniformity came only gradually, as years of joint meetings by government and carrier representatives brought a clearer understanding of each other's points of view. Once that understanding was embodied in an actual program — IFTA — that was put in place in several pilot jurisdictions, and could be seen to operate without disaster, the industry began to have real leverage against what looked more and more like state obstructionism. Federal intervention, when it came, proved to be no disaster for the states either. The diminution of state taxing authority was minimal, and federal oversight of implementation only temporary.

Is the base-state concept applicable to general sales and use taxation? Perhaps; base-state registration, reporting, and payment by smaller retailers in particular may be one way of dealing with the taxation of interstate transactions. Base-state or joint audits may be feasible for sales and use taxes for larger as well as smaller taxpayers. And the manner in which a base-state system necessarily incorporates certain uniform definitions and administrative methods would seem as applicable to general sales taxation as it is to the fuel use tax.

It may turn out that the base-state concept is not as appropriate to the sales tax area as some other approaches that have been suggested. But the experience of the states and industry with IFTA will still be relevant to the remote sales issues. The underlying problem is nonuniformity. Those problems are real, and technology alone is unlikely to resolve them satisfactorily. Nor are the states, left to themselves, likely to achieve a solution. Federal assistance, involving the imposition of a framework for future state taxation in the area, will probably be needed to arrive at an equitable solution. The states should not give way to their institutional fears of this result; worse things could easily happen to them.

23The enforcement of the fuel use tax is important not only to ensure each state gets its fair share of direct fuel tax revenues, and that the industry stays on a level competitive playing field, but because, for purposes of the federal-aid highway program, the U.S. DOT attributes collection of highway user taxes on trucks according to the use of diesel fuel in each state. This is measured primarily by data from IFTA. See www.fhwa.dot.gov/ohim/attrib.

24The author currently chairs the Industry Advisory Committee.

251991 estimate by State Laws Department, American Trucking Associations, Alexandria, Va.

26In the context of fuel use taxation, it was critical that all states that levied such a tax become IFTA members. One nonmember with requirements different from IFTA’s could easily double motor carriers’ fuel use tax compliance costs. This effect may prove to be important in the sales and use tax area as well.


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*Bernard Wolfman is the Fessenden Professor of Law at Harvard Law School; James P. Holden is a partner with Steptoe & Johnson in Washington, DC; and Kenneth L. Harris is a partner with Jenner & Block in Chicago.
During each of the last seven years, New York State has enacted a series of multiyear phased-in tax cuts. Taken together, these several rounds of tax cuts will reduce state tax revenues by an estimated $13.3 billion during the state fiscal year that begins on April 1, 2001. This figure includes about $2.6 billion that will be diverted from the state’s general fund to pay for a state-funded school property tax homestead exemption for owner-occupied dwellings that is known as the School Tax Relief program, or STAR.

Even for New York, $13.3 billion is a lot of money. After adjusting for the state’s transfer of receipts among fiscal years and for the way in which the state accounts for the STAR payments and the revenues that are used to fund those payments, state tax revenues are projected to be $40.6 billion during the upcoming fiscal year. Roughly speaking, this means that the tax cuts enacted in Democratic Gov. Mario Cuomo’s last year in office and Republican Gov. George Pataki’s first six years in office have reduced state tax revenues by approximately 25 percent compared with what they otherwise would have been.

Pataki recently proposed the enactment of another round of phased-in or backloaded tax cuts to take effect over the next several years. These new tax cuts, if approved by the Legislature, will take effect gradually over time, reducing state revenues by “only” $25 million in fiscal 2002. Their cost, however, will grow substantially over the next several years — doubling from an estimated $183 million in fiscal 2003 to $364 million in fiscal 2004 and growing to $528 million per year when fully implemented.

While the overall magnitude of the governor’s new proposals is modest compared with the size of the tax cuts enacted in several recent years, they would be layered on top of the several billion dollars in additional tax cuts that are already on the books and scheduled to take effect over the next several years. The real problem with this year’s tax cuts is that they are put forward in the name of “economic development” but will either have no effect or a negative effect on that objective.

The real problem with this year’s tax cuts is that they are put forward in the name of ‘economic development’ but will either have no effect or a negative effect on that objective.

Even the STAR program misses the opportunity to target its relief to those who are truly overburdened by school property taxes. The calculation of STAR benefits is not based on the school taxes that a homeowner actually pays or on his/her income, let alone on the relationship between the two — a true measure of overburden. Instead, STAR benefits are based on the median home value in the county in which a home is located and the school property tax rate to which that home is subject. The result is that many homeowners for whom property taxes are a minuscule portion of their total income receive benefits in excess of the help given to others for whom property taxes are a much higher percentage of their total income. Moreover, STAR assists only owner-occupied dwellings. This means that no relief whatsoever is given to renters or to their landlords, who, in some combination or other, frequently pay school property taxes at higher effective rates than homeowners.

Impact of the Tax Cuts On Government Spending

The magnitude of the tax cuts enacted during the last seven years has made it virtually impossible for the state government to make the investments that are necessary to strengthen New York’s physical and human infrastructure. Between 1994-95 and the end of the current 2001 fiscal year, the state government will have put a cumulative $37.3 billion into additional tax cuts. Over this same six-year period, it will have spent an additional $11.6 billion on state and local current services, and $5.8 billion
more on debt service, while putting virtually no additional state money into capital projects.

For the period from fiscal 1995 through the end of the most recently completed state fiscal year, fiscal 2000, the state comptroller’s annual financial reports indicate that actual spending from state funds for all purposes other than capital projects, debt service, and STAR increased from $39.5 billion to $44.2 billion. This amounts to an average annual increase of 1.89 percent. Over this same period, the Consumer Price Index grew by 2.38 percent per year and the size of the state’s economy, as measured by total personal income, increased at an average annual rate of 5.03 percent.

The change in the overall level of public spending obscures the fact that increases in some areas mask inadequate investment in others. From fiscal 1995 through fiscal 2000, the Judiciary and the 35 largest state agencies covered by the comptroller’s annual financial reports, the only entities whose spending from state funds (for all purposes other than capital projects and debt service) grew faster than personal income were the Urban Development Corp. (up an average of 38 percent per year, from $8.5 million to $116.5 billion); the governor’s immediate office, known as the Executive Chamber in New York (up an average of 8.7 percent per year); the Workers Compensation Board (up an average of 8.2 percent per year); the Division of the Lottery (up an average of 7.7 percent per year); the Department of Law (up an average of 7.4 percent per year); the Division of Military and Naval Affairs (up an average of 6.23 percent per year); and the Council on the Arts (up an average of 5.8 percent per year).

Over this same period, the state’s annual investment in capital projects grew from $3.6 billion to $4.2 billion (an average annual rate of growth of 3.1 percent), but most of this growth was financed with federal grants, which increased from $892 million to $1.38 billion over the course of this five-year period. Capital spending from state funds remained relatively flat during this period.

The governor’s fiscal 2002 executive budget proposes to increase capital spending from state funds from last year’s $2.8 billion to $3.5 billion in fiscal 2004, an average annual increase of 4.4 percent. While this increase is greater than the rate of inflation, it pales in comparison to the state’s infrastructure needs and ignores many critical needs. Last year, for example, the state approved the Metropolitan Transportation Authority’s latest five-year capital plan but provided no state contribution to the financing of this $16 billion effort, other than through a “Transportation Bond Act” that was voted down at last November’s general election. Even if the voters had approved that proposal, the MTA Capital Plan would still have had significant funding gaps and an unprecedented level of reliance on fare-backed bonds that will place excessive pressure, over time, on the system’s operating budget. The
revitalization and restoration of the metropolitan area’s subway and commuter rail systems has been one of New York’s major public policy accomplishments during the 1980s and 1990s, and one that should not be dissipated. The effective functioning of this transit system, the nation’s largest by far, is essential to functioning of the economy of this densely populated area, and the effective functioning of New York City’s economy is essential to the health of the state treasury.

New York also faces a number of important social challenges, some of which it has begun to address and others of which it has not. The state government has begun to deal with one of New York’s most glaring social disparities — the large and growing number of New Yorkers without health insurance — and it has begun investing in several other areas in which there are significant social investment gaps, such as child care. But more needs to be done even in these two areas. Unfortunately, we continue to miss the opportunity to use the surpluses generated by the boom on Wall Street and several other fortuitous factors to do more in these areas and to begin addressing the state’s numerous other unmet social and infrastructure investment needs.

While state revenues have been reduced by $41 billion, a much, much smaller amount has gone into the pockets of New Yorkers or into the state’s economy.

On balance, the 2001-02 executive budget misses the opportunity to address the economic and social disparities that continue to plague New York State. The most important of these challenges is the increasing divergence that exists between the relatively small number of New Yorkers who are benefiting from the current economic recovery and the rest of the state’s residents. The executive budget does little, however, to reduce the increasing number of New Yorkers who are living in poverty, or to reduce the disparities that exist within the state in terms of the educational resources available to New York children or to address the state’s substantial social investment gap. Leveling up school spending through a substantial increase and a fundamental restructuring of the school aid system will prepare New York for the future and provide more effective tax relief for all property owners than the STAR program could ever do.

The Large Multiyear Tax Cuts Enacted in Recent Years Are Soaking Up All New Resources

Under the governor’s financial plan, billions of dollars of current revenues would be rolled over to future years to “protect” the overly ambitious tax cuts that the state has enacted in the last few years, but that do not take effect until later this year or next year or the year after that. The governor knows that those tax cuts cannot be implemented without deeper service cuts than the public would find acceptable. Rather than addressing this issue head-on by proposing the repeal of some of the special-interest corporate tax breaks that are scheduled to take effect over the next several years, the governor has been delaying the state’s day of reckoning for as long as possible by neglecting essential investments, cutting important programs, tapping into the state’s TANF (Temporary Assistance to Needy Families) surplus, and “rolling over” the resulting surpluses to future years.

All of this is made necessary by the unprecedented series of multiyear, backloaded tax cuts that were enacted in the last seven years. Taken together, the tax cuts enacted in Cuomo’s last year in office and in Pataki’s first six years are reducing state revenues by $11.6 billion during the current fiscal year alone. As the governor proudly points out, the total value of these tax cuts since he became governor has been about $41 billion — growing from about a half billion in fiscal 1995 to $4.2 billion in fiscal 1997 to this year’s $11.6 billion. He never mentions the services that were cut and the investments that were not made in order to accommodate that $41 billion revenue loss. If the state had cut taxes by half that amount — $20 billion — it would have still been the biggest tax cut in the history of this or any other state, but it would have meant less deferred maintenance of the state’s physical and human infrastructure.

What the governor also says, which unfortunately is not correct, is that these tax reductions “have already saved New York a cumulative $41 billion.” While state revenues have been reduced by $41 billion, a much, much smaller amount has gone into the pockets of New Yorkers or into the state’s economy. Approximately one-third of the $41 billion has gone to the federal treasury (because state personal and corporate income taxes are deductible on taxpayers’ federal tax returns), while large portions have gone to nonresident individuals and out-of-state and foreign corporations. Thus, the tax cuts have actually taken more money out of the state’s economy than they have
pumped back in. This helps to explain the stagnancy of those parts of the state that are not being "rescued" by external forces like the boom on Wall Street or the growth of entertainment and "new media" businesses.

**How New York Has Financed Its Multiyear Tax Cuts**

The large, multiyear, backloaded tax cuts of the last seven years have been financed in large part by the revenues that the state is receiving from the boom on Wall Street. Since 1994, New York State has been doing much better in income growth than in employment growth. While the growth in personal income, as reported by the U.S. Bureau of Economic Analysis (BEA), has not returned to the rates attained during the 1980s, every year since 1994 has witnessed growth on this measure of between 4.2 percent and 5.8 percent. Moreover, capital gains income, which is not included in the BEA measure of personal income, has shown phenomenal growth in New York State, more than quadrupling — from $12 billion in 1994 to $53.5 billion in 2000, according to Division of the Budget estimates.

The result is that personal income tax receipts have grown by almost $5 billion over the last two years, helping to offset the $4.2 billion in additional annual tax cuts phased in over this same period, and the first increases in current services spending in four years.

The recent growth in personal income tax receipts masks some of the long-run problems that are being created by the evisceration of some other important taxes, particularly the corporate income or franchise tax and the estate tax, and the repeal of some smaller, but still progressive, revenue sources such as the real estate capital gains tax. Overall, despite the growth in personal income tax receipts, total state tax revenues have declined from 7.6 percent of total personal income in 1987 to less than 6.6 percent this year. This year’s executive budget proposes to add additional holes to the base of the corporate income tax in the name of economic development, but those changes are not effectively tied to job creation, let alone to the creation of good-paying jobs. In terms of revenue yield, the executive budget projects that state tax revenues relative to personal income will decline further, to about 6.3 percent, over the next three years.

In addition to the growth in personal income tax revenues, other developments have allowed New York State to implement the enormous tax cuts that it has implemented over the last seven years while still managing to balance its annual operating budget. These developments include the following:

1. The real cutbacks in current services that were discussed earlier;
2. Increases in tuition and other fees (see Figure 8, p. 898);
3. The shifting of a variety of costs to local governments;
4. The stalling of the effort to ramp back up the portion of capital spending that is financed on a pay-as-you-go basis rather than through borrowing;
5. The fiscal relief generated by the federal government’s conversion of welfare assistance to a block grant at a time when welfare caseloads have been declining substantially (see Figure 9, p. 898); and
6. The revenues from the tobacco settlement.
The State Tax Cuts Are Not Stimulating The Economy, as Promised or as Claimed

The governor defends his strategy for “protecting” the promised future tax cuts by saying these tax cuts are essential to the state’s continued economic revitalization. But the $41 billion in tax cuts that have already been implemented have produced few if any tangible benefits for the state, particularly in comparison with the growth-supporting investments that could have been made with all or a portion of those resources.

Almost all of the state’s job growth has occurred in the New York City metropolitan area and has been overwhelmingly related to the good times currently being enjoyed by the financial services sector, professional business services, and entertainment and media. The real test of the Pataki tax cuts is that they have done virtually nothing to stimulate growth in the parts of the state that are not benefiting from the strength of these industries. But, like the puppy who repeatedly bangs his head on the coffee table but can’t quite figure it out, Pataki is proposing more tax cuts to solve a problem that $41 billion of tax cuts was supposed to solve but did not.

While the boom on Wall Street has allowed New York State to get through the last several years without even deeper service cuts and less investment in the state’s human and physical infrastructure than would have otherwise been required to accommodate the Pataki tax cuts, New York State tax policy has, quite simply, had nothing to do with what is happening in national and international financial markets. If New York State tax policy had anything to do with what is going on in the financial markets, the financial press would be paying a lot more attention to what goes on in Albany and a lot less to the thoughts of Federal Reserve Bank chairman Alan Greenspan.

Wall Street is located in New York State and, as a result, the New York State treasury has been benefiting mightily from the incredible bonuses and capital gains that are being generated by the unprecedented bull market of the last several years. The bonuses paid to Wall Street executives (an estimated $13 billion last year) and the quadrupling (from $12 billion in 1994 to a estimated $53 billion last year) of the amount of capital gains declared on New York State tax revenues, have resulted in two consecutive years of unprecedented increases in personal income tax revenues. But those revenues are going to cover the revenue losses from the previously enacted multyear tax cuts that are now taking effect, rather than investing in the state’s human and physical infrastructure in ways that address the huge disparities in socioeconomic well-being that plague our state and help build a strong and large middle class for the future.

The tax cuts that are scheduled to take effect over the next several years, and those that Pataki is proposing this year, are even less logically related to boosting the state’s economy than were the tax cuts of the last several years. After all, the governor’s centerpiece, a classic “supply-side” cut in the top rates on the state’s personal income tax that is now reducing state revenues by almost $5 billion per year, did not come close to generating the number of additional jobs that the governor and his advisers promised. If those tax cuts had delivered the promised job
growth, New York State would now have 100,000 more jobs than it actually has.

$5 Billion in Additional Annual Tax Cuts Are Scheduled to Take Effect Over the Next Four Years

The tax cuts that are currently on the books will reduce state revenues by $13.2 billion during the state fiscal year that begins on April 1, 2001, and by more than $16 billion per year when fully implemented. The executive budget that Pataki recently submitted (and the budget that the State Legislature is charged with adopting over the course of the next several months) has to accommodate $1.6 billion more in tax cuts than did the fiscal 2001 budget.

Of the $1.6 billion in additional tax cuts to take effect during 2001, about $700 million is for the implementation of the fourth step of the STAR school property tax rebate program for owner-occupied dwellings, while about $335 million is attributable to cuts in the state corporate income tax, already one of the least onerous and most loophole-ridden of any state corporate income tax in the entire country. Much of these corporate tax cuts are attributable to changes in the tax law that undercut the corporate tax reforms enacted in 1987. Some do this by weakening safeguards added by that law, like the alternate minimum tax that ensures that profitable corporations cannot use loopholes to reduce their tax liability by “too much.” Others simply add new loopholes or preferences for particular industries or even for particular firms.

The Fiscal 2002 Executive Budget’s ‘Economic Development’ Tax Cuts Do Not Stand Up To Careful Scrutiny

The fiscal 2002 executive budget does not propose to repeal or reduce any of the tax cuts that are scheduled to take effect in either 2001 or during any of the subsequent years. In fact, in this year’s executive budget, the governor is asking to enact additional tax cuts, some of which will not take effect until 2006. According to the executive budget, the new proposed tax cuts would cost only $25 million in fiscal 2002, but their cost would grow to $528 million when fully implemented.

Many of the tax cuts proposed in the executive budget are presented as efforts to use the tax code to encourage firms to create jobs in New York State. While this goal is obviously laudable, it ignores the experiences of this and other states with such efforts to use the tax code for “social engineering.” The key lesson of these efforts is that these provisions will induce very little, if any, activity that would not have occurred otherwise, and simply provide other taxpayers’ money to those who happen to meet the criteria involved.

The proposal to eliminate the AMT would allow many large profitable corporations to pay virtually nothing in state taxes. The argument is that the AMT prevents firms from being able to use all of their investment tax credits (ITC). This is indeed an “Alice in Wonderland” type of argument because that was the very purpose of the AMT — to ensure that large profitable corporations could use preferences like the ITC to reduce their tax liability but not to eliminate it.
The single-sales-factor proposal would help some firms mightily but would create incentives for other firms to never locate any employees in New York State or to withdraw existing employees from New York. And, for the firms that would get big tax cuts, there is no guarantee that there would be any job creation in New York or that they would even maintain their employment levels in the state. The experience in Massachusetts with Raytheon and in Illinois with Motorola should serve as cautionary notes for New York policymakers.

The single-sales-factor proposal would help some firms mightily but would create incentives for other firms to never locate any employees in New York State or to withdraw existing employees from New York.

The proposal to double in size 22 upstate Empire Zones, from a maximum of two square miles to a maximum of four square miles, might sound defensible until one learns that the additions to many of these zones are being located far from any depressed areas. A rule change promulgated last spring by the commissioner of economic development (through an expedited rulemaking process that is supposed to be used for noncontroversial measures) allows him to approve without any public notice or comment changes in zone boundaries that can bring in an unlimited number of noncontiguous parcels. By adding parcels without any residents, even if they are located in remote towns that would not on their own qualify for zone designation, the zones will continue to meet the law’s unemployment and poverty rate requirements.

These proposals are particularly illogical in light of the fact that the state has not evaluated the effectiveness or ineffectiveness of the many similar provisions that have been enacted into law in the last several years. If serious consideration is given to these new proposals, they should be accompanied by the following “common sense” safeguards:

- Tax breaks enacted in the name of job creation should include accountability mechanisms to ensure that the promised job creation actually materializes.
- Tax breaks enacted in the name of job creation should be tied to requirements that the recipients agree to not undercut the right of workers to unionize.
- Tax breaks enacted in the name of job creation should not be available for the creation of jobs that pay wages at or below the poverty level.
- These and other tax breaks should not be available to firms that violate environmental, worker safety, or other laws.
- Because subsidies do not create markets, these and other tax breaks should only be available to retail and service businesses in extreme cases.
- Piracy is indefensible in all cases. Even those who feel that New York has to compete with other states should oppose subsidies for intrastate and intraregion relocations.
- Information on the costs and benefits of any enacted tax breaks should be publicly reported in a timely fashion. This should include disclosure of the tax liability of recipient firms both before and after the application of these new provisions.

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Letters to the Editor

Clarifying Candy Taxation In North Carolina

To the Editor:

This letter is to clarify some comments about the taxation of candy in North Carolina made by Charles Collins, cochair of the Streamlined Sales Tax Project. (For the article referenced, see State Tax Notes, Feb 5, 2001, p. 418; 2001 STT 20-37; or Doc 2001-2911 (7 original pages.).)

At the recent National Conference of State Legislatures (NCSL) meeting in Savannah that was covered in the article, I mentioned that North Carolina was considering a new tax on candy, using the new definition for “candy” drafted by the Streamlined Project. My comments were based on discussions I had earlier that week with a staff person in the Fiscal Research Division of the North Carolina General Assembly.

Information sent to me by the North Carolina Fiscal Research Division indicates that the terms they have defined (including “candy”) in the draft sales tax legislation will mean that some food items now exempt from taxation will be taxed. A copy of the draft sales tax bill I have seen clearly shows that the taxation of candy would be a new development.

Mr. Collins’s remarks gave the impression that candy was already taxed in North Carolina and so the separate definition was needed in the draft bill. He did not fully explain that all food in North Carolina is taxed at 2 percent at the local level and that all food for immediate consumption (e.g., service stations, athletic events) is taxed at the state level. At this time, food sold for home consumption (e.g., grocery stores), including candy, is not taxed by the state of North Carolina.

Therefore, there is no need to establish a separate definition for candy in the proposed legislation, and unless the draft bill is changed, the definition established by the Streamlined Project will most certainly generate a new tax on candy in the state of North Carolina. When I had raised concerns about such a scenario during the Streamlined Project process, I was told not to worry because only the states that already tax candy would have a need for the candy definition. That was obviously not the case in North Carolina, where a tax increase and expansion is now being proposed.

Thanks for this opportunity to clarify what is taking place in North Carolina regarding taxes.

Sincerely,

Stephen G. Lodge

Stephen G. Lodge is vice president of legislative affairs with the National Confectioners Association.

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Taxpayers Shouldn’t Be Denied Refunds of Unconstitutional Taxes

To the Editor:

This letter is in response to Mr. Martin Lobel’s recent letter commenting on our special report, “When Constitutional Law Clashes With Fairness and Good Policy: Remedies for Unconstitutional State Taxes.” (For the special report, see State Tax Notes, Jan 29, 2001, p. 341; 2001 STT 19-41; or Doc 2001-2677 (5 original pages).) For Lobel’s letter, see State Tax Notes, Feb 5, 2001, p. 457; 2001 STT 24-49; or Doc 2001-3663 (1 original page.).

Mr. Lobel’s letter begins, “I was a little surprised to see that the authors . . . continue to assert that taxpayers are entitled to a full refund of unconstitutional taxes.” Actually, we did not say that taxpayers are always legally entitled to a full refund of unconstitutional state taxes. We did say that as a matter of policy and fairness taxpayers spearheading the effort against an unconstitutional tax should receive a full refund, and that in the right circumstances, some taxpayers are legally entitled to a full refund. In any event, what may surprise Mr. Lobel more is that only two months ago the California Court of Appeal upheld a taxpayer’s right to a full refund of unconstitutional state taxes, consistent with our latter point. See Ceridian v. Franchise Tax Bd., 85 Cal. App. 4th 875 (2000). (For a summary of the California Appeals Court’s ruling in Ceridian, see State Tax Notes, Jan 1, 2001, p. 14; for the full text, see 2001 STT 1-7 or Doc 2001-196 (12 original pages).)

To prevent windfalls to taxpayers, Mr. Lobel asserts, a successful taxpayer’s remedy should be limited to the actual harm it can prove it suffered (i.e., the tax absorbed by the taxpayer and compensation for any lost market share resulting from the unconstitutional tax). Interestingly, rather than contradicting our article, this methodology for limiting taxpayer remedies would fit nicely in our nonexhaustive list of “state rules that may impact the crafting of remedies for unconstitutional statutes.” Allowing a refund to the extent that the tax-
payer proves actual harm seems more equitable than some of
the other tactics states attempt to avoid paying refunds of
unconstitutional taxes altogether (e.g., retaining all taxes paid
and/or assessing back taxes from parties that were not involved
in the particular litigation).

Unfortunately, the viability of Mr. Lobel’s methodology is
in doubt. The notion that taxpayers should not receive windfalls
is an equitable argument based on unjust enrichment principles.
McKesson Corp. v. Division of Alcoholic Beverages & Tobac-
co, 496 U.S. 18 (1990), and subsequent cases reveal the
Supreme Court’s aversion toward equitable arguments by
states attempting to deny taxpayers meaningful backward-
looking relief. See, e.g., Harper v. Virginia Dep’t of Taxation,
509 U.S. 86 (1993); Reynoldsville Casket Co. v. Hyde, 514 U.S.
(For a summary of the U.S. Supreme Court’s ruling in Harper,
see State Tax Notes, Jun 28, 1993, p. 1536; for the full text, see
93 STN 118-18. For the full text of the Florida Supreme Court’s
ruling in Dryden, see Doc 97-13814 (7 pages) or 97 STN
102-16.)

Indeed, at least one commentator has concluded that the
Supreme Court’s action in Dryden v. Madison County left “no
doubt that any glimmering hope the states may have had of
arguing equitable considerations as a ground to deny taxpayer
refund claims have now been snuffed out.” (See Mark E.
Holcomb, “U.S. Supreme Court Strengthens Taxpayer Refund
Claims,” State Tax Notes, Jun 8, 1998, p. 1847; 98 STN 109-3;
or Doc 98-18005 (6 pages).) This may explain why Mr. Lobel’s
methodology has not surfaced recently among the high-profile,
reported decisions regarding remedies for unconstitutional
taxes.

Sincerely,

Amy L. Silverstein
Andres Vallejo

Amy L. Silverstein is a partner and Andres Vallejo is an
associate with Morrison & Foerster LLP, San Francisco.

Letters to the Editor

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20a-00
Repeal of Federal Estate Tax Would Have Effect on States

by Federation of Tax Administrators

Summary

Repeal of the federal estate tax will effectively repeal the state estate tax in 40 states and the District of Columbia and have a fiscal and tax policy impact on the others because it would do away with the state death tax credit — a feature of the federal estate tax with which all states have, to varying degrees, coordinated their death (inheritance or estate) taxes. Repeal of the federal estate tax, presuming no countervailing state legislative action, will reduce state tax receipts by several billions of dollars annually.

President Bush’s tax reduction proposals call for elimination of the federal estate and gift tax by 2009. A similar measure was passed by the Congress in 2000, but vetoed by President Clinton. Repeal of the federal estate tax will effectively repeal the state estate tax in 40 states and the District of Columbia and have a fiscal and tax policy impact on the others because it would do away with the state death tax credit — a feature of the federal estate tax with which all states have, to varying degrees, coordinated their death (inheritance or estate) taxes. Repeal of the federal estate tax, presuming no countervailing state legislative action, will reduce state tax receipts by several billions of dollars annually.

Mechanics

The Internal Revenue Code (IRC section 2011) allows a credit against federal estate taxes (on a dollar-for-dollar basis) for state death taxes paid. The state death tax credit is limited based on the size of the estate and a set of graduated rates specified in federal law. All states have structured their inheritance/estate taxes to be coordinated with the federal state death tax credit. At the present time, 38 states and the District of Columbia [Table 1] provide that only the state death tax is a “pick-up” or “sponge” tax in which the state death tax is an amount equal to the state death tax credit allowed for federal purposes. In addition, Louisiana and Connecticut have enacted laws to move to a pure pick-up tax by 2004 and 2005, respectively.

A pick-up tax works as if the state had enacted an estate tax with rates (and base) equal to the credit schedule specified in federal law. Under a pick-up tax there is no additional net burden to the taxpayer from the state tax; in its absence, additional tax in the same amount would be paid to the federal treasury. Repeal of the federal estate tax will have the effect of repealing the state death tax in those jurisdictions that rely only on a pick-up or sponge tax.3

The remaining states employ a separate estate tax or a separate inheritance tax, although in most cases the definition of many items in the tax conforms closely to the federal estate tax.4 In each of these states, the state death tax also provides that in cases where the amount allowed under the federal death tax credit is greater than the liability computed under the separate state inheritance/estate tax, the liability of the taxpayer is the amount of the death tax credit.

The state death tax credit has been a permanent feature of the federal estate tax since 1926. At that time, the federal government was looking to reduce estate tax rates (increased temporarily during World War I) or to repeal the tax and leave the states that had traditionally made greater use of the tax than the federal government. At the same time, state leaders were seeking mechanisms to reduce what was becoming an intense competition for wealthy residents. In the years preceding 1926, some states had repealed their death taxes, and two had adopted constitutional amendments prohibiting such levies in an effort to attract wealthy retirees as residents. Enactment of the state death tax credit in 1926 served both purposes. It reduced the federal tax and reduced interstate competition by putting a floor on the level of combined state-federal death taxes.5

(Text continued on p. 906.)

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1 This count includes Louisiana and Connecticut, each of which under current state law, will have moved to a “pick-up tax” only by the time the repeal is effective. Throughout the report, D.C. is considered a state.
2 The maximum allowable credit ranges from 0.8 percent for estates with an adjusted taxable value of $40,000-$90,000 to 16 percent for estates with an adjusted taxable value in excess of $10,040,000.
4 In Nebraska, the state imposes a pick-up tax; counties impose and administer a separate inheritance tax. There is no credit for the local inheritance tax; that credit is absorbed by the state pick-up tax.
5 This is not automatically the case in New York where the state pick-up tax is based on the federal estate tax as it existed on a certain date. Repeal of the federal estate tax would leave the state with an estate tax equal to the current state death tax credit schedule. Absent any state legislative action, this would constitute a separate estate tax filing in New York.

State Tax Notes, March 12, 2000  903
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P = Pick-up tax only; I = Separate state inheritance tax; E = Separate state estate tax.

1. Connecticut is phasing out its inheritance tax; under current law, the state will move to a pick-up only tax in 2005.
2. Louisiana is phasing out its inheritance tax; under current law, the state will move to a pick-up only tax in 2004.
3. Mississippi phased out its separate estate tax. After January 1, 2000, only the pick-up tax applies.
4. Montana voters approved an initiative repealing the state’s inheritance tax effective December 31, 2000; only the pick-up tax now applies.
5. Nebraska employs a pick-up tax at the state level. Counties impose and collect a separate inheritance tax.
6. New York repealed its separate estate tax effective February 1, 2000; the state now has a pick-up tax based on the state death tax credit schedule in effect on that date.
7. North Carolina moved from an inheritance tax to a pick-up only tax effective January 1, 1999.
8. South Dakota voters approved repeal of the state’s inheritance tax effective June 30, 2001; at that point, the state will move to a pick-up only tax.

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<tr>
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(Table 2 continued on next page.)
In FY 1999, total state revenues from all types of death taxes amounted to about $7.5 billion, or 1.5 percent of all state tax collections as shown in Table 2. Death taxes ranged from somewhat over 4.5 percent of total state tax receipts in New Hampshire to less than 0.2 percent of all taxes in Alaska.

In the 35 jurisdictions employing only a pick-up tax in 1999, death tax revenues amounted to $3.95 billion or 1.2 percent of state tax revenues in FY 1999. In states employing a separate inheritance or estate tax, death tax revenues accounted for $3.6 billion or 2.1 percent of tax revenues in those states.

Projecting the fiscal impact of the federal estate tax repeal in 2009 is difficult. Such a projection would rely on changes in the value of estates subject to tax as well as the projected impact in those states having a separate state tax operating alongside the state death tax credit. The Center on Budget and Policy Priorities, a Washington-based research and advocacy group, has estimated that federal repeal in 2009 would reduce state revenues by upwards of $9.0 billion annually. By comparison, federal estate taxes amounted to $27.8 billion in FY 1999 or 2.3 percent of federal revenues other than social security and Medicare taxes.

At a minimum, it can be said that if the federal tax had been repealed in 1999, state revenues would have been reduced by just under $4 billion, not an insignificant amount. In 2000, the impact of all state legislative tax changes was projected to reduce state receipts by about the same amount.

**Other Issues**

Repeal of the federal estate tax raises additional issues. First, those states that employ a separate state estate or inheritance tax generally follow federal rules regarding the treatment of certain types of property or transactions in computing estate values or bequeathed amounts. This is generally done in the interests of taxpayers as well as compliance and trying to establish a single set of estate planning rules for taxpayers. In the absence of a federal estate tax, these rules are likely to be "frozen in time" and eventually diverge from state to state. There are some who question the ability of states to maintain a separate tax in the absence of a federal levy.

Second, repeal of the estate tax may well have implications for other taxes as it changes expected taxpayer behavior. The lack of an estate tax may well have an effect on transfers of property among individuals, charitable donations, and capital gains realizations — each of which may affect other taxes. The difficulty will be in attempting to sort out the issues so that accurate projections of the other taxes can be made.

In addition, there has been some speculation that the absence of a federal estate and gift tax would provide planning opportunities in which wealthy individuals could take advantage of state tax differences to avoid state tax on certain types of income. The New York Times in a front-page piece [01/29/2001] suggested that repeal of the federal estate and gift tax would enable some individuals to establish trusts in non-income tax states, avoid tax on the income to the trust, and recover the capital of the trust without an income tax at a later point, even though the individual was a resident of an income tax state. The article also identified that repeal of the federal tax would allow a gifting of appreciated stock to individuals with a low income or negative income, thus allowing a realization of the gain with minimal tax consequences.
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State Tax Calendar

Name for me one discriminatory tax law against the Internet. There is not one example.

—Sen. Byron Dorgan, D-N.D.

March 21

Advanced Sales and Use Tax in Virginia. This one-day seminar is designed for industrial and business controllers, CFOs, tax managers and officers, accountants, and enrolled agents. Issues on the agenda include an overview of sales and use taxes; exemption; audit strategies and techniques; current issues and a legislative update; and an electronic commerce update. Tuition for the seminar is $259 for a single registrant, $249 each for two or more from the same organization. March 21, Holiday Inn Tysons Corner, 1960 Chain Bridge Road, McLean, Va. For more information, call (715) 833-3940.

April 22-24

Pacific Region Motor Fuel Meeting. April 22-24, Radisson Hotel, Santa Fe, N.M. For more information, call Linda Palmer (505) 827-0892.

April 23-25

Fundamentals of State Income, Franchise, and Sales Taxation. This seminar, sponsored by New York University, School of Continuing and Professional Studies, will include sessions on constitutional and other constraints on state and local taxation; corporate income and franchise taxes; and sales and use taxes. Tuition is $845, with many discounts available. April 23-25, The Fairmont Hotel, New Orleans. For more information, call (212) 790-1321. Information also can be found on the Web site at www.scps.nyu.edu.

April 29-May 2

Federation of Tax Administrators Electronic Filing Symposium. April 29-May 2, Omni Netherland Plaza, Cincinnati. For more information, call (202) 624-5890.

April 30-May 2

Committee On State Taxation Spring Audit Session. April 30-May 2, Hyatt LaJolla, San Diego. For more information, call (202) 484-5222.

May 8-9

Advanced Interstate Seminar. This seminar, sponsored by Interstate Tax Corp., will update practitioners on current developments primarily in state income taxation of multistate business. The seminar will include sessions on jurisdiction and nexus; the unitary concept; business and nonbusiness income; problems; the tax base and conformity issues; apportionment factors; state tax policy; and procedural issues. The registration fee is $695, with a $30 discount available if payment accompanies the registration form and is received no later than April 10. May 8-9, Alexander All Suite Ocean Front Resort, 5225 Collins Ave., Miami Beach, FL 33140. For more information, call (203) 854-0704.

May 10-11

Advanced Sales and Use Tax Seminar. This seminar, sponsored by Interstate Tax Corp., will discuss the latest current developments. The seminar will include sessions on jurisdiction, nexus, and the Internet; mergers and acquisitions; procedural issues; leasing issues; manufacturing exemptions; services and mixed transactions; contractors and tax-exempt entities; and a problem session. The registration fee is $695, with a $30 discount available if payment accompanies the registration form and is received no later than April 12, an additional discount of $30 is available to attendees of both the Advanced Interstate and the Advanced Sales and Use Tax seminars. May 10-11, Alexander All Suite Ocean Front Resort, 5225 Collins Ave., Miami Beach, FL 33140. For more information, call (203) 854-0704.

May 14-15

Taxation of E-Commerce. This two-day seminar, sponsored by New York University, School of Continuing and Professional Studies, will include sessions on general framework and principles of electronic commerce taxation and business and practical aspects in planning for electronic commerce transactions. The tuition is $745, with many discount options available. May 14-15, The Wyndham Hotel, Washington. For more information, call (212) 790-1653. Information also can be found on the Web site at www.scps.nyu.edu.

May 21-23

Interstate Tax Planning Seminar. This three-day seminar, sponsored by Interstate Tax Corp., will study the concepts and problems involved in state income taxation of multistate business. The seminar will include sessions on jurisdiction and nexus; unitary and separate accounting; business and nonbusiness income; the tax base and conformity issues; managing the state tax function; the property, payroll, and sales factors; litigation and legislation; and state and multistate tax audits. The registration fee is $955, with a $40 discount available if the payment accompanies the registration form and is received at least four weeks before the conference date. May 21-23, Doral Park Avenue, 70 Park Ave. at 38th St., New York, NY 10016. For more information, call (203) 854-0704.

May 24-25

Sales and Use Tax Planning Seminar. This two-day seminar, sponsored by Interstate Tax Corp., is a study of the concepts and problems involved with sales, use, and gross receipts taxes. The seminar will include sessions on fundamental aspects; jurisdiction, nexus, and the Internet; determining the taxable base; taxability of special transactions; current developments; managing the sales and use tax function; and audits and litigation. The registration fee is $695, with a $30 discount available if payment accompanies the registration form and is received no later than four weeks before the conference date. May 24-25, Doral Park Avenue, 70 Park Ave. at 38th St., New York, NY 10016. For more information, call (203) 854-0704.
May 28-31

Federation of Tax Administrators Annual Meeting. May 28-31, Westin Hotel, Seattle. For more information, call (202) 624-5890.

June 3-5

Northeast Region Motor Fuel Meeting. June 3-5, Doubletree Hotel, Pittsburgh. For more information, call Maria Smith (717) 783-8087.

June 4-5

Sales and Use Tax Planning Seminar. This two-day seminar, sponsored by Interstate Tax Corp., is a study of the concepts and problems involved with sales, use, and gross receipts taxes. The seminar will include sessions on fundamental aspects; jurisdiction, nexus, and the Internet; determining the taxable base; taxability of special transactions; current developments; managing the sales and use tax function; and audits and litigation. The registration fee is $695, with a $30 discount available if payment accompanies the registration form and is received no later than four weeks before the conference date. June 4-5, Nikko San Francisco, 222 Mason St., San Francisco, CA 94102. For more information, call (203) 854-0704.

June 6-8

Interstate Tax Planning Seminar. This three-day seminar, sponsored by Interstate Tax Corp., will study the concepts and problems involved in state income taxation of multistate business. The seminar will include sessions on jurisdiction and nexus; unitary and separate accounting; business and nonbusiness income; the tax base and conformity issues; managing the state tax function; the property, payroll, and sales factors; litigation and legislation; and state and multistate tax audits. The registration fee is $955, with a $40 discount available if payment accompanies the registration form and is received no later than four weeks before the conference date. June 6-8, Nikko San Francisco, 222 Mason St., San Francisco, CA 94102. For more information, call (203) 854-0704.

June 10-12


June 18-19

Western States Economic Summit. June 18-19, Hotel La Jolla, La Jolla, Calif. For more information, contact Doug Macdonald at dmacdonnatax.state.ut.us or call (801) 279-3912.

June 25-27

Interstate Tax Planning Seminar. This three-day seminar, sponsored by Interstate Tax Corp., will study the concepts and problems involved in state income taxation of multistate business. The seminar will include sessions on jurisdiction and nexus; unitary and separate accounting; business and nonbusiness income; the tax base and conformity issues; managing the state tax function; the property, payroll, and sales factors; litigation and legislation; and state and multistate tax audits. The registration fee is $955, with a $40 discount available if payment accompanies the registration form and is received at least four weeks before the conference date. June 25-27, Hyatt Regency Atlanta, 265 Peachtree St. N.E., Atlanta, GA 30303. For more information, call (203) 854-0704.

June 28-29

Sales and Use Tax Planning Seminar. This two-day seminar, sponsored by Interstate Tax Corp., is a study of the concepts and problems involved with sales, use, and gross receipts taxes. The seminar will include sessions on fundamental aspects; jurisdiction, nexus, and the Internet; determining the taxable base; taxability of special transactions; current developments; managing the sales and use tax function; and audits and litigation. The registration fee is $695, with a $30 discount available if payment accompanies the registration form and is received no later than four weeks before the conference date. June 28-29, Hyatt Regency Atlanta, 265 Peachtree St. N.E., Atlanta, GA 30303. For more information, call (203) 854-0704.

July 15-18


July 20-22

New York State Bar Association Tax Section Meeting. July 20-22, The Otesaga, Cooperstown, N.Y. For more information, call (518) 487-5621.

July 22-27

Multistate Tax Commission Annual Meeting. July 22-27, Bismarck, N.D. For more information, call (202) 624-8699. (Editor’s note: The date of this meeting has been changed from July 17-22.)

August 11-16

NCSL 2001 Annual Meeting. August 11-16, San Antonio. For more information, call (303) 830-2200.

August 12-15

Federation of Tax Administrators Technology Conference. August 12-15, West Coast Grand Hotel at the Park, Spokane, Wash. For more information, call (202) 624-5890.

August 19-21

Midwest States Association of Tax Administrators Annual Meeting. August 19-21, Hilton Hotel at the Airport, Bloomington, Minn. For more information, call Don Trimble at (651) 296-3403.

September 9-12

Western States Association of Tax Administrators Annual Meeting. September 9-12, Hilton Hotel, Portland, Ore. For more information, call Julie Jordan at (503) 731-4691.

September 16-19

Federation of Tax Administrators Tobacco Tax Section Annual Meeting. September 16-19, Sheraton Hotel, Anchorage, Alaska. For more information, call Johanna Bales at (907) 269-6628.

September 23-26

Federation of Tax Administrators Revenue Estimation and Tax Research Conference. September 23-26, Minneapolis, Minn. For more information, call (202) 624-5890.

(Continued on next page.)
Federation of Tax Administrators Motor Fuel Tax Section Annual Meeting. September 23-26, Rushmore Plaza Holiday Inn, Rapid City, S.D. For more information, call Cindy Anders-Robb at (307) 632-3234.

North East States Tax Officials Association Annual Meeting. September 23-26, Water’s Edge Conference Center, Westbrook, Conn. For more information, call Joe Thomas at (860) 541-4501.

October 18-19

The Eighth Annual Vanderbilt-Paul Hartman State and Local Tax Conference. October 18-19, Vanderbilt Loews Plaza, Nashville, Tenn. For more information, call Donna Smith at (615) 822-6960. Detailed information will be posted at sometime in the future to the Web site: www.hartmansaltforum.org.

January 31-February 1, 2002

State Tax Conference. This conference is cosponsored by the Florida Institute of Certified Public Accountants, the Florida Bar Tax Section, the Florida Department of Revenue, and the Institute for Professional in Taxation. January 31-February 1, 2002. Caribe Royale Resort Suites & Villas, Orlando, Fla. For more information, call the Florida Institute of CPAs Member Service Center at (850) 224-2727.

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