

# SC Taxation Realignment Commission (“TRAC”)

## Minutes

Wednesday, October 28, 2009 at 10:00 AM

The meeting was called to order at 10:07

### **In attendance:**

- Kenneth Cosgrove
- Jack Shuler
- Ben Kochenower
- Charlie Way
- Don Weaver
- Ken Wingate
- Ray Stevens
- Bob Steelman
- Brian Moody
- Burnie Maybank
- Jimmy Addison

### I. Welcome

The Chairman explains there is overflow space for the audience in Room 207 of the Gressette building should Room 209 be at full capacity. Craig states that the next TRAC meeting will be November 12, in Room 308 of the Gressette building.

### II. Adoption of Proposed Agenda

Commissioner Way moves to adopt the proposed agenda. Commissioner Shuler seconds his motion. The agenda is adopted by voice vote.

### III. Adoption of Minutes from Previous Meeting

Commissioner Kochenower moved to adopt minutes from the 9.30.09 meeting. Commissioner Way seconds the motion. The minutes are adopted by voice vote with no additional corrections or comments.

IV. Presentation of the Unconstitutionality of Sales Tax Exemptions Supreme Court Case: *Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue* by Chairman Maybank.

Chairman Maybank offered a brief summary of the Robinson Dry Cleaning case, noting that Robinson narrowly lost on a 3-2 vote, with the now current Chief Justice, Justice Toal, actually writing a dissenting opinion, actually recommending remanding the case “to determine whether the entire retail tax exemption statute is unconstitutional based on its whimsical treatment of various entities for tax purposes.” Chairman Maybank notes that Toal comments further on the “arbitrary and capricious” nature of the (then) current exemptions”. He further notes that in 1951 there were only 19 sales tax exemptions, in 2003 there were 61 and today there are almost 80.

V. Sales Tax Exemptions (to include exclusions and caps) Technical Review (Part II) by the Department of Revenue

Commissioner Stevens presents and details the remaining sales tax exemptions and exclusions. Chairman Maybank explains that the sales tax exemptions can be found under tab 21 in the notebook. Commissioner Stevens has his own handout he is speaking from and will provide the Commission with.

\*Chairman Maybank calls the Commission to recess at 10:35 to work on technical issues with sound in the room 207.

During recess staff provided copies of Commissioner Stevens’ handout to the commissioners.

\*The Commission reconvened at 10:55 in room 105 of the Gressette Building due to the technical issues mentioned above.

There were no questions from commissioners about the remaining sales tax exemptions.

VI. Presentation by Secretary Buck Limehouse, SC Department of Transportation: Comparative Review of SC Fuel Tax Structure

Secretary Limehouse, SCDOT, Presentation on Gas/Fuel Tax in SC.

The Department of Transportation is funded almost solely from a motor fuel tax. SC is a donor state. At all times we receive less than we pay in. In some states 50% of DOT funding comes from General Assembly the other 50% comes from motor fuel tax. SC almost receives 100% funding from motor fuel tax. Electric and hybrid cars are problematic in essence because they do not purchase gasoline as often or at all, and essentially can use SC roadways for free or very little. The high price of gasoline has led to declining revenues while the cost of road maintenance rises. The last increase on the gas tax was in 1987 bringing it to the current level of 16 cents. NC charges 17 cents per gallon in conjunction with a 7% sales tax. They have a floor of 29.9 cents. North Carolina’s system of taxing gasoline generates twice the revenue as that of SC. DOT receives \$116K from the General Fund for mass transit and rest

areas. Secretary Limehouse notes that Utah has determined that 17% of their state sales tax was from vehicle and auto part usage. They now give 8% of sales tax revenues to their Department of Transportation.

Secretary Limehouse notes that South Carolina has a \$300 cap on the sales tax of vehicles. SC is now the only state with that cap. A 5% sales tax on cars would bring \$110 million to SC. North Carolina has a 3% tax, with a cap, that goes into their Highway Trust Fund and another portion to the NC General Fund. Virginia charges a 3% sales tax on vehicles, no cap. Secretary Limehouse also notes that Virginia and Florida charge a user fee on rental cars.

Chairman Maybank clarifies for the Commission and audience that South Carolina exempts motor fuel from sales tax and imposes a flat fee of 16 cents per gallon.

Secretary Limehouse notes that the SCDOT has \$1.1 billion budget. It has been increasing since 1987 due to increased consumption with a decline in the past two years due to higher gasoline prices resulting in decreased consumption. SCDOT collected \$30 million less in the past year. A 1 penny increase in the SC gasoline tax would generate \$32 million.

Chairman Maybank requests to know how the State Infrastructure Bank was originally funded and how/if it is funded now. Debra Roundtree, Executive Director of the State Infrastructure Bank explains that initially truckers in SC had to approve the fee that funded the SIB. The SIB is out of money and has been without funding for the past year.

South Carolina has the fourth largest state maintained road system with over 42K miles of roads in the system. In other states, local entities are more responsible for the upkeep and maintenance of roadways. Secretary Limehouse explains that there are many roads in the state system that should not be.

Commissioner Way asks about the stimulus money and how those funds have affected the SCDOT. Secretary Limehouse explains that we received \$500 million and those funds have a 'use it or lose it' policy. ARRA (stimulus) funds doubled SCDOT's construction budget with resurfacing, bridge repairs, safety projects, and state maintenance being the focus. This year's SCDOT budget is \$2 billion. Secretary Limehouse also reiterates that this is one time money.

Commissioner Kochenower asks if there are any payback provisions on stimulus money. Secretary Limehouse explains that there are no provisions for paying back the money in the ARRA Bill and that the only stipulation is the 'use it or lose it' policy. What states do not utilize in these funds will be redistributed to those states that did use all the funds available to them. Secretary Limehouse hopes to receive what other states have not used.

Commissioner Cosgrove notes that the Department of Health and Environmental Control needs \$40 million in SUPERB funding. He also notes with the gas tax, 16

cents goes to DOT and .5 cents to DHEC for underground tanks. There is 16.75 cents in total gas tax.

Chairman Maybank questions if DHEC spending more than they receive.

Commissioner Cosgrove submits that the .5 cents is being used for more than SUPERB fund cleanup.

Commissioner Weaver notes NC has a floor on the gasoline tax and questions if any state has a ceiling. Secretary Limehouse explains that they have a ceiling as well, for spikes and drops in gasoline prices.

Commissioner Addison would like to know an estimate of how much in SC fuel sales are for out of state purchases. Secretary Limehouse estimates that figure could be as high as one-third.

Commissioner Stevens questions what the pros and cons are of toll roads. Secretary Limehouse explains that a new toll road will struggle. He uses the Southern Connector in Greenville as an example. He explains that estimates were too optimistic. There is a lack of revenue to service bonds. He also mentions the I73 Project and explains that no Federal Funds are available for an interstate and they are looking at tolls to pay for it. Secretary Limehouse explains that SC does not have the traffic to support these tolls and citizens feel like they should not toll existing roads. New roads are always more acceptable as tolls.

No more questions from commissioners.

#### VI. Presentation by Secretary Kenneth R. Lay, North Carolina Department of Revenue: Taxation of Internet Provisions

Kenneth R. Lay from North Carolina Department of Revenue: Taxation of Internet Provisions: Online purchases, online referrals or click through. In 2009, there were \$128.9 billion in internet sales with \$3.8 to \$4 billion in internet sales in NC alone. Secretary Lay explains law on click through. Online retailers who have more than \$10K in sales through click throughs must pay sales tax in North Carolina. North Carolina replaced a term in existing law that was previously 'with mail order sales' to 'remote sales.' There is speculation that there will be legislation to grant collection authority to states. North Carolina is still fine tuning plans on how to enforce this law but the clarification has been enacted. There is the \$10K threshold so as to not unjustly target small business in NC.

Commissioner Kochenower wants clarification on whether the business representative must be in the state. Kenneth Lay says they must if they are trafficking business in NC.

Commissioner Kochenower would like details on the audit/verification process. Secretary Lay explains that it is not very simple at all. They are still learning and doing it day by day.

Chairman Maybank questions if any retailers threatened to pull out of North Carolina if the state enforced the new law. Secretary Lay comments that there will always be people threatening, offering their counter opinion but no one has left to date.

Commissioner Kochenower would like to know if we have a law similar to the one North Carolina altered to clarify the tax on internet sales. Chairman Mabank explains that there is a law similar.

Commissioner Stevens would like to know where NC is in terms of litigation from people/business who would be opposed to this. Secretary Lay explains that NC has not reached that part of the process but are looking ahead. He notes that those that threatened to pull their business out of the state are still in NC doing business.

Commissioner Weaver asks for clarification on whether local tax is also added in. Secretary Lay explains that it is.

Commissioner Wingate would like to know if there is difficulty from a compliance stand point or if they have added staff. Secretary Lay explains that they will be using the resources they have by reallocating resources, solidifying strategy, and increasing the focus of revenue generation indirectly and directly. Implementing their new tax system has allowed NC's General Assembly to approve public/private partnerships. A vendor is working to implement their new system and the vendor will get paid from the uplift of the revenue system. North Carolina is estimating they will bring in \$50 - \$60 million from the new revenue system.

Secretary Lay states that NC is at different stages of voluntary compliance and enforcement. The intent is to go after voluntary compliance but if that does not work they will go down 'enforcement route.'

Commissioner Moody inquires about the fiscal impact of how much North Carolina will collect through the internet sales. Secretary Lay states that it will fall between \$400-\$500 million annually.

Commissioner Kochenower would like to know projections on the cost of enforcement. Secretary Lay explains that North Carolina has not done a cost analysis on this. He believes that once NC begins to have success with the change, the cost of enforcement will decline dramatically.

## VII. Update of Notebook Materials - *Staff*

Craig reviews the following materials for commissioners and the audience:

- A. *Comparison of Gross and Net Taxable Sales FY 1999-FY2008*
- B. *Consumer Expenditures Trend Comparison 1984 vs. 2007*
- C. *The Tax Foundation - Updated State and Local Option Sales Tax*
- D. *SC Car Tax Comparison to NC and GA*

*E. SC Supreme Court Case - Ed Robinson Laundry vs. SCDOR*

*F. State and Local Government Sales tax Revenue Losses from Electronic Commerce*

*G. Tanking CD Sales Shutter Stores - March 19, 2009 Rolling Stone Article*

*F. Tab 23 UPDATE: Motor Fuel Tax and SC Local Hospitality and Accommodations Tax Collections by Count FY 07-08.*

#### IX. Public Testimony Protocol

Rena details protocol for the public testimony meeting on November 12, 2009. There is a handout of protocol passed out. Rena specifies that for those who unable to sign up ahead of time, they will be able to do so at the meeting. Rena clarifies that the protocol will be made available online.

#### X. Future Meetings

- November 12, 2009, 10:00 AM, Room 308
- December 2, 2009, 10:00 AM, Room 105
- January 6, 2010, 10:00 AM, Room 105

#### XII. Adjournment

Meeting adjourned at 12:28 PM.