

SC Taxation Realignment Commission (“TRAC”)

Minutes

Thursday, November 12, 2009 at 10:00 AM

The meeting was called to order at 10:04

The following were in attendance:

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

I. Welcome

II. Adoption of Proposed Agenda

Commissioner Way moved to adopt and Commissioner Kochenower seconded the motion.

The agenda was adopted by voice vote.

III. Adoption of Minutes from Previous Meeting

Commissioner Shuler notes an error on page five of the 10.28.09 minutes. Please see section below:

*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.*

The error is noted and corrected.

Commissioner Way moved to adopt the corrected minutes and Commissioner Weaver seconds the motion.

The minutes were adopted by voice vote and will be placed on the website immediately following adjournment.

Craig updates the Commission on the BEA's latest action regarding the general fund revenue forecast. The current year estimate was reduced by \$120 million or 2%. Forecasts for 2010/11 indicate flat or no growth. He reminds commissioners and audience that this does not equate to an absence of budget cuts; instead, with no new money the budget hole is \$400 million in FY 2011.

There were no questions from commissioners.

IV. Presentation by Dr. Quirk, USC School of Law, on Internet Taxation in SC

Dr. Quirk presents on Taxation of the Internet. Physical presence must be in the state in order collect tax on state level. Businesses purposefully directing activities to a specific state can remit state taxes through due process. Congress has the full power to regulate commerce clause and until they change the 'physical presence' clause, it would be very hard to enforce a sales tax on internet purchases. Several states have decided to tax internet sales without a change in Federal Law. This is referred to as the Amazon Statute and the following states have enacted it; NY, NC, RI. They believe physical presence is constituted by 'click through' advertisements on smaller websites with an actual presence in the state.

Commissioner Maybank asks if State Supreme Court is the entry level for lawsuits in NY state.

Dr. Quirk indicates that yes, the NY Supreme Court made that decision in January 2009. The next level is Superior Court. Dr. Quirk believes that in state courts the Revenue Department will have an advantage in law suits. Amazon has now begun cutting off affiliates found within states that are pursuing internet taxation.

Chairman Maybank questions the necessity of having affiliates in South Carolina and the possibility of pursuing other avenues of taxing internet sales.

Dr. Quirk clarifies that there is no other way to tax internet sales without changing the law.

Commissioner Kochenower wants to clarify that the US Congress is the only entity that can address this issue currently.

Dr. Quirk states that the statement is true unless the United States Supreme Court decides to intervene. He also states that at this time it does not appear that they have an inclination to intervene.

Chairman Maybank informs the Commission that a bill is introduced by the states, in Congress every year to address this issue.

Commissioner Moody inquires if there is an academic cure for internet taxation.

Dr. Quirk explains that would be a new way of doing business, federal tax, and federal income tax. The states could collect a use tax but there would be problems on the federal level with different states.

Commissioner Stevens asks about the likelihood of a streamlined sales tax and the legislation in Congress being enacted.

Dr. Quirk believes that the likelihood is slim. Opponents are pretty well armed and it would be difficult to pass.

No other questions from Commissioners.

V. Public Testimony on Sales Tax Exemptions (to include exclusions and caps)

Note: All presentations are available on the TRAC website (where written testimony was provided).

- Dr. Holley Ulbrich, Clemson Professor, speaking on the sales tax exemption on food, the admissions tax, and the sales tax cap on motor vehicles.
- Ashlie Lancaster, speaking on the STE for Energy Star and Manufactured homes.

Chairman Maybank inquires about SC being third in the nation for manufactured homes and being the 16th highest in energy consumption and 4th in the nation for consumption in residential electricity.

Ashlie indicates that SC is still at those same levels. She also clarifies that the increased cost for energy star manufactured homes is offset by the sales tax exemption.

Commissioner Kochenower asks who monitors energy star criteria.

Ashlie answers that the Federal Department of Energy is responsible for the criteria.

- Allen Hutto, General Council for Manufactured housing Institute of SC, speaking on the sales tax exemption for manufactured homes.

Commissioner Wingate inquires about the average price of standard, non energy star manufactured home?

Allen responds that \$55- 56K is the average.

Commissioner Steelman asks if Allen recommends deleting another exemption in order to retain his.

Allen does not have a specific recommendation.

Commissioner Weaver inquires about the accuracy of \$26 million figure that is indicated as the cost of this specific exemption.

Allen does not know how that figure was reached and it does not match his. Craig indicates that this was the official estimate of the BEA.

- William Rogers, Director of the SC Press Association, speaking on the newspaper sales tax exemption.

Commissioner Steelman asks what other states do regarding newspapers.

William answers that 36 states have exemptions. He believes if a new tax is placed, it will hurt circulation in this state.

Commissioner Steelman asks what exemption William would recommend deleting in order to retain the STE on newspapers.

He has no recommendations.

- Jason Gamel, speaking on the timeshare sales tax exemption. He notes that no other state has tax on time share exchange.

Commissioner Kochenower inquires about the number of people who actually use their time share and do not exchange it.

Jason states that 50 – 55% of time share holders use their time share and do not exchange it from year to year.

- Jameson Taylor, Director of Policy with SC Policy Council.

Jameson recommended that 100% of sales tax exemptions be deleted.

- Rick Todd, President and CEO of SC Trucking Association speaking on the fuel tax and the sales tax cap on commercial vehicles.

Commissioner Way inquires about intrastate fuel purchases.

Rick explains that South Carolina sees a lot of intrastate fuel purchases because of the low gas tax, as SC is the lowest in the South East.

Commissioner Wingate inquires about the Trucking Association's position on a fuel tax increase.

Rick explains that the association would not specifically state an amount they could be on board with but the tipping point would be for carrier's profitability purposes and should probably stay just under what SC's competitors charge. If SC were to go with an index, it should be pegged to average of states around us.

Commissioner Wingate inquires about neighboring state's rates.

Rick explains that Georgia's pump price is 28 to 36 cents per gallon. North Carolina tried to index and settled on cap of 29.9 cents per gallon rate. Tennessee is 17 cent for IFTA and 18.4 cents at the pump. IFTA does not calculate any fuel tax that is not levied by state or collected on uniform basis so it can be converted to per gallon rate.

Commissioner Wingate asks how much an increase would generate.

Rick explains that one penny would be \$32 million.

Commissioner Cosgrove inquires if the best option is to raise the tax to just below the neighboring states because of the other advantages in regard to truckers filling up in South Carolina.

Rick agrees and sees the benefits.

Commissioner Weaver asks if SC does not retain the \$300 cap on vehicle sales tax, would truckers buy their parts/trucks in other states.

Rick assumes that yes that could happen. Bordering states have outright exemptions, some are for interstate carriers only.

Commissioner Weaver if the association would support an increase in diesel fuel as well.

Rick informs the commission that they would support that as well.

- Dewey Roof, SC Medical equipment services association, sales tax exemption on medical equipment.

*Chairman Maybank calls for a five minute break at 12:00 PM. The meeting is called back to order at 12:15.

- Rick Doran, Newberry Dairy Farmer, speaking on agriculture sales tax exemptions.

Commissioner Cosgrove inquires about the average growth profit margin of a farm in SC.

Rick can only speak to his industry and it is negative growth right now.

- Jim Faulkenberry, Jeff Stoudt, speaking on sales tax exemption for machines used in manufacturing.
- Lewis Gossett, manufacturing exemption.
- Ted Creech, AT&T, speaking on the telecommunications tax policy.

Chairman Maybank clarifies that for sales tax purposes you are not considered a manufacturer.

Commissioner Stevens also clarifies that telephone was a service. Manufacturing is exempt because of tangible products.

Chairman Maybank inquires how many states have this exemption.

Ted replies that there are two, Georgia and South Carolina.

Commissioner Steelman asks for more information about call centers.

Ted explains that other states have brought a lot of jobs through this. SC is a very good place to bring a call center. Call centers provide variety of jobs, baseline jobs to very sophisticated jobs and employ a lot of people. Call centers often have high turnover leaving a fairly steady supply of jobs. There are ten to twelve call centers in Charleston and Berkeley County.

- Pharmaceutical Work Group; With Jack Wells, MD., Jesse Anderson, Dr. Parker, Mary Lee Hutto; Speaking on a new exemption for physician administered medications.

Commissioner Kochenower inquires about the cost of the drug and what Medicare pays.

The actual cost is \$1950. Medicare pays cost plus 4% for handling of the drug. Doctors must pay \$137 in sales tax every time they buy a dose. The specific drug being used for example is for macular degeneration.

- Dr. Elizabeth Christian, Oncologist in Charleston speaking on exemption regarding prescription medicines used in the treatment of cancer. Also speaking is her patient, Betsy Parker.

Chairman Maybank asks why should cancer drugs be exempt and not HIV or Swine Flu?

Dr. Christian explains that cancer treatments are often IV drugs which are expensive. Most HIV medicines are given by mouth.

Commissioner Kochenower inquires about Medicaid reimbursement.

Dr. Christian explains that Medicaid does reimburse but the amounts have declined but that most cancer patients are on Medicare.

- Dr. Greg Niemer, Rheumatologist., speaking on exemption regarding intravenous drugs.

Chairman Maybank asks for the basis regarding exempting arthritis medications.

Dr. Niemer explains that these medications cost thousands of dollars and there are less than fifty Rheumatologist in this state. The practices are not large and therefore cannot absorb the tax.

- Melanie Hill, Outsource SALT, LLC. . Speaking on streamlining, sales tax exemption for postage on advertising for non- profits and the exemption for cooperative direct mail promotional advertising materials.

VII. Future Meetings

VIII. Adjournment

The meeting adjourned at 2:18 PM.