TAYLOR
STRATEGIES & CONSULTING

JOINT REVENUE COMMITTEE – THERMOPOLIS – AUGUST 8-9, 2017

RECENT REVENUE UPDATE FROM THE CONSENSUS REVENUE ESTIMATING GROUP –

The July update from the Consensus Revenue Estimating Group (CREG) was released this week revealing the fiscal year end capital gains. As of July 28, 2017, FY 2017 actual general fund revenue across all sources, including distributed capital gains and losses, is $143.6 million or 14.2 percent above expectations for the year. Without including capital gains and losses, general fund revenue is outpacing projections by $14.2 million or 1.4 percent. Remember, the CREG does not profile any capital gains, so the realization of capital gains is important for the overall revenue picture for the state. The Revenue Committee did not discuss the CREG report.

JOINT REVENUE COMMITTEE MEETING –

Members of the Joint Revenue Committee met in Thermopolis on August 8-9 to continue working on the mandates from Management Committee to come up with revenue for the looming education funding crisis. To begin, Chairman Madden outlined his "road-map" for how the Committee will eventually vote on legislation. Here is the outline:

- **May** meeting - overview of Wyoming's tax system
- **August** - Review of Tax Reform 2000
- **September** 12-13 meeting - other topics - Statewide lodging tax, remaining discussion of fees, local government revenue options, moneys owed the state and anything carried over from the August meeting
- **November** 6-7 meeting – To prepare for the November 10 deadline to report on revenue raising options of $100, $200, and $300 million to offset the deficits in state government operations and in public education for school operations, school facilities and major maintenance to the Joint Recalibration Committee, more bills will be drafted at this meeting. The goal will be to have a ranked menu of options to present to the Recalibration Committee in November (meets Nov. 29)
- **December** 4-5 meeting – The Committee will act on the menu of revenue raising options as presented to the Recalibration Committee.

TAX REFORM 2000 RECAP – PAST FIFTEEN YEARS –

Dan Noble, Director of the Department of Revenue gave the committee a quick recap of the history of the Tax Reform 2000 project and outlined the key issues in the report, including:

- Tax collections in Wyoming are not as stable as other states due to volitivity of commodities
- Taxation on food was highly regressive, as were sin taxes
- Tax structure not balanced, yet lowest tax burden on a family of four at that time
- Tax structure may contribute to lack of economic growth in the state
- Wyoming does not divert enough revenues into savings to help with future needs, and does not manage PMTF to maximize income
- Agriculture land values exceed productive value

- Local revenue streams may not be enough to fund the demand for services
- Local governments do not have equal funding and have limited taxing authority
- Mineral severance tax reporting is confusing and burdensome
- Administrative authority for property taxes is unclear
- Assessment practices of county assessors vary from county to county
- Special district legislation varies widely
- Use tax statutes remain largely unenforceable
- Need to look for a "stable" tax structure (three-legged stool) – taxing consumption, assets and income – Wyoming does not tax income.

The final Tax Reform 2000 report made several recommendations:

- Make the 4th cent sales and use tax permanent – was implemented
- Examine excise taxes on alcohol, motor fuel taxes, and cigarettes
- Examine all exemptions
- Rail mile tax and coal transportation tax should be considered– rail mile (NE does it) – coal transportation tax implemented, but only for a year
- Real estate transfer tax should be implemented
- Increase deposits into PMTF
- Establish a maximum number of mills for each taxing district
- Property tax refund program should be developed (money for the fund was taken away last year)
- Implement a personal and corporate income tax
- Manage permanent funds better
- Form committee to deal with mineral taxes and one collection method, look at tax exemptions, use tax compliance, etc.

Several of these recommendations were acted upon, however, others were briefly considered and then shot down. Other considerations included statewide lodging tax, electric generation tax, and a gross receipts tax also came along because of the Tax Reform 2000 discussions.

Committee discussion:

- **Rep. Connolly** – regarding income taxes and the three-legged stool – what does the fiscal impact look like? How much revenue would be generated from an income tax?
    - **Mr. Noble** – that is difficult, the Wyoming constitution requires that a credit be offered for any sales or property taxes paid. Therefore, it is difficult to model for average people at different income levels.
    - To generate $155M in income tax, we would need 7.5% income tax. Anything below $30,000, there is no tax generated. The actual provision of the sales and property taxes somewhat made it a regressive tax (this was in 1999).
    - Mr. Noble said he would work to update the numbers, however the percentage would likely remain high.

Gross Receipts Tax Discussed in the Tax Reform 2000 Report –

Ms. Nicole Kaeding, Tax Foundation, visited with the Committee about a gross receipts tax (click here to see her presentation). She presented an overview of what makes up a gross receipts tax and what states currently impose one:

- Taxes all levels of the final sale (pyramiding)
- Treats similarly situated taxpayers differently
- Not transparent
- Generally, generate a lot of money
- States are moving away from this structure
- Wyoming one of five other states that are considering a gross receipts tax currently
- DE, OH, TX, NV, WA currently. LA, OK, OR, WV, WY considering

- Considerations:
  - Setting the rate (traditionally low because the base is broader than the economy)
  - One rate for the entire state's economy is ideal (only OH does this) - See presentation for rates across the states
  - Level of receipts, exclusions for small businesses, etc.
  - Reductions and deductions
  - Inclusion of non-profits (such as hospitals and government transactions)
  - Pass throughs
  - Bad debts and when to exclude
  - Nexus – several court challenges in other states, as still an open question (US courts have not ruled yet) – be very careful when considering how to capture out of state companies.
  - Rules for service-based companies (market based sourcing or cost of performance)
  - Rules for closely-held firms

- Case study about Oregon – goal was to add revenue and stability to their tax structure, like Wyoming
  - Very high rate
  - Adapted a model from OH – see the presentation for details
  - Results:
    - Regressive nature, increased prices, decrease in nominal income, increase in income and wages, loss in private sector funding and increase in public sector hiring, less investment in OR as a result (broken down by industry in presentation)
    - *Therefore*, adjusted rates by industry and quickly became complicated. Exemptions were added for tech companies and data centers and goal was lost.
    - The tax was not ultimately passed in OR due to complications.
- No other states have gone down this road since OR.

Committee questions:

- **Kinner** – what about TX?
  - The state has a margins tax, but the goal of the legislature is to repeal and phase the tax out.
- **Obermueller** – The problem in TX is that they must replace with other revenues (currently in a special session right now to deal with this).
- **Madden** – how do other states deal with industry specific gross receipts taxes?
  - It is done differently in different states – some are utility and financial services specific. OR did an excellent job of talking with the revenue department in OH to get an idea of estimating impacts on specific industries.

- **Connolly** – for the example of a gallon of milk – how much more does it cost in OH due to the pyramiding? Also, has the Tax Foundation done any specific work in Wyoming?
  - Yes, OH did a study by industry (some items are 6.7 times more in OH).
  - If the concern is how to capture revenues leaving the state to out-of-state corporations, there are other ways to capture those revenues without hurting Wyoming businesses and consumers.
  - Other ideas include taxing food, services not already taxes, hospitality and tourism taxes, corporate income taxes – a gross receipts tax is the *worst* option in the toolbox.
- **Case** – not so sure it is easy to get at the revenues that are "leaking" out of the state. What other options do you have in the toolbox? The Committee previously considered a gross receipt option that would be imposed unless you pay some sort of sales and use or property taxes in the state.
  - The message was not intended to imply that it is easy. The constitutional question is difficult in trying to tax only out of state businesses.
- **Kinskey** – questioned how inputs are taxes with pyramiding and how that fits in with Wyoming's current tax structure.

Public Comment:

- **Former Rep. Kroeker** – business declined dramatically and then remains flat over recent years. His business in Casper competes with out-of-state business and has low margins. Does not know how his business would survive is a gross receipts tax would be added.
  - **Obermueller** - Can you quantify how this tax would be different than an additional sales tax? The easiest way to quantify is the loss in accessories and that is pure sales and use tax.
- **President Bebout** – overall comments:
  - We do not have a revenue problem, we have a spending problem. A lot of folks have made efforts to make cuts, including agencies and UW and the community colleges. We used $1.3B to get through recent tough times.
  - Local governments, capitol construction, LSRA, 1% severance tax diversion – therefore the legislature has done several things to get us through tough times.
  - Best thing is to truly broaden our tax base.
  - Re, production, Wyoming has some of the highest severance and ad valorem taxes in the nation.
  - Regarding the ideas the Committee is kicking around:
    - <u>Gross receipts</u> – don't like it, but we might have a way to make it work in Wyoming to target the big box stores and not harm the small businesses. Therefore, what about a threshold of $25M?
    - <u>Ad valorem</u> - take 100% FMV for minerals and lower it to 90% (best thing is to get it out of the ground) and add a percent to each of the other three categories, industrial, residential and all other (broadens the tax base). That way everyone pays and we incentivize business.
    - Tourism – if after responsible cuts are made, a <u>statewide lodging tax</u> could help.
    - Add an <u>additional sales tax</u> on the tourist season.
    - <u>Sales tax on food</u> – very sensitive, but it should be on the table and should go to the locals.

        - Sin taxes – good luck. Beer and alcohol taxes do not generate very much in terms of revenue but he would be open to raising the cigarette tax.
        - Income tax – does not like at all.
- **Kinskey** – question regard to big box retail stores and how we could capture that revenue.
- **Bruce Hinchey** – PAW – position has not changed on gross receipts tax. We do not want to see additional taxes for those companies that are drilling in the state right now.
- **John Corra** – WMA – echo PAW.
- **Charles Curly** – Thermopolis resident. Several republican county parties recently passed resolutions in opposition to the gross receipts tax.
- **Rep. Sweeney (R-Casper)** – urge the Committee to move the concept forward for further consideration. Agree with President Bebout about the big box stores and not paying their fair share.
- **Laurie Urbigkit** – Wyoming Housing Network and Real Estate Assn. – OH legislation has language that can help clarify sales of houses.
- **Brett Moline** - Farm Bureau Federation – opposed.
- **Rep. Winters** – concerns for aging oil fields like those in Hot Springs County.
- **Cindy DeLancey** – Wyoming Business Alliance – business community, big and small, offers caution with moving this forward.

Committee Action:
Chairman Madden – To move forward with a gross receipts tax, there are things that need to be done on the SOS business form to figure out how much revenues are even on the table. He would like to ask LSO to draft a bill to allow the Secretary of State to collect the information on their business form such as percentage of business in Wyoming and NAICS code.

BROADENING STATE SALES TAX TO INCLUDE SOME SERVICES AND OPTIONAL STATEWIDE SALES AND USE TAX – REVENUE ESTIMATES AND OPTIONS FOR LEGISLATION –

Dan Noble presented similar information from the May meeting where the DOR estimated several business categories that are not already taxed (based on how the state of South Dakota taxes services). The bottom line is that an additional $80M could be collected (split state general fund $40.5M and local government revenue3 $38.6M).

Additionally, certain exemptions were presented as options ($234M total) including:

Food for home consumption	$56M
Newspapers	$1M
Farm implements	$817,000
Religious & Charitable	$306,000
Manufacturing machinery	$9.5M
Repair railroad rolling stock	$1.4M
Data centers	$17M
Total exemptions	**$86.4M**
Excise tax on contractors	$68M (gross receipts)

As for logistics of a potential bill, it would likely be best to say that all services are taxable and specifically address items the Committee does not want to tax.

Public Testimony:

- **Gail Simons** – in her experience, the first three numbers of the NAICS codes may be sufficient to get you the information you need.
- **Marsha Shanor** – Wyoming Trial Lawyers Assn. – the issue will be on the agenda at their next meeting. This proposal is not one they can support.
- **Worland Citizen** - Urged the Committee to accept the money from the Medicaid expansion.
- **President Bebout** - Regarding school capitol construction and major maintenance – the legislature really made a mistake by not considering the impact of funding major maintenance. Another option would be to make sure there is some local "skin in the game" – this might require a constitutional amendment.
  - **Rep. Connolly** – What about raising the level of major maintenance for state buildings from the "fair" level to "good" or even higher level. Bebout suggested it is something the legislature should consider.

Committee Action:
Chairman Madden made the motion to have a bill drafted like HB 243 from last session. No votes looked like Reps. Laursen and Paxton.

OPTIONAL STATESIDE SALES TAX –

Dan Noble visited with the Committee about how to make sure an additional statewide sales tax would be used for school facilities and maintenance, as opposed to the state's general fund. He suggested that we could treat it like we do other specific purpose taxes, earmark it and attached a time frame. Recall, the LSO reminded the Committee that an additional 1% sales and use tax imposed at a statewide level would generate $140M annually ($118M is needed annually).

Public Comment:

- **Commissioner Rusty Bell** (Campbell County) – Any sales tax that is imposed at the state level would make it harder for the local optional sales and use taxes to be passed – and that one option might be to allow the local taxes to become permanent.
- **Brett Moline** – Farm Bureau Federation – is there a way to make sure this additional sales tax would not apply to the purchase of a vehicle.

Committee Action:
Chairman Madden made a motion to have LSO draft a bill to add an additional ½ percent statewide sales tax with a four-year sunset for major maintenance. Senator Case voted no.

PROPERTY TAX STRUCTURE AND ASSESSMENT RATIO – FAIRNESS IN PROPERTY TAXATION ACROSS DIFFERENT CLASSES OF PROPERTY DISCUSSED IN THE TAX REFORM 2000 REPORT–

Brenda Arnold, Director of the Property Tax Division for DOR, reminded the Committee that the current ratios have been in place since 1990 when the state when to a tiered system. She told the Committee that it is easy to adjust the levels of the percentages. Referencing HB 162 from the last session, she ran some numbers based on increases of .5% and 2.0% ($85M would be generated for education based on 2016 numbers – some of the revenue generated would go to cover the Property Tax Refund Program that was cut during the last session). The total increase in tax dollars generated when level of assessment is increased using the 2016 average statewide mill levy is $142M. Brenda will bring a spreadsheet of how much the suggested increases would yield per taxpayer.

Public Comment:

- **Bruce Hinchey** – PAW – opposed as they have been in the past.
- **John Corra** – WMA – echo PAW.
    - **Chairman Madden** does not think the additional $2B is a big deal to the industry. How much of that could be made up of the mines?
- **Dixie Huxtable** - Converse County Assessor, speaking for the Wyoming County Assessors Association – DOR was given the ability to use other methods to value minerals such as discounted cash flow (DCF). Under this method, part of the locally assessed industrial sector could get bumped into the statewide DCF model and therefore would decrease revenues to the local governments.
    - **Dan Noble** reported that the DOR has the data they need to start moving to the DCF and have been working with the state of Utah. DOR is training staff members and hopes to report on their progress at the September meeting.

Committee Action:
Chairman Madden made a motion to draft a bill like HB 162 and a corresponding fiscal note. There were some no votes (verbal).

FEE STATUS FOR DEPARTMENT OF REVENUE, LIQUOR DIVISION – ADEQUACY OF CURRENT FEES –
Tom Montoya, Director of the Wyoming Liquor Division, presented the Committee with several pages of data illustrating the Division's history of fees collected. The largest category in terms of revenue generated from the Division's fees comes from the out-of-state wine direct shippers ($46,650 annually). Montoya mentioned that the Division is in the process of updating the website so that these shippers will soon be able to do most everything via the website rather than by staff.

Chairman Madden reminded the Committee of the questions from the May meeting – what costs are the fees intended to offset? And how appropriate are the fees since they were set many years ago? Some fees were set as long ago as 1935, 1978, etc.

Madden asked where the Division is in terms of costs incurred as compared to revenue generated. Montoya noted that it takes very little time to process these fees. Perhaps the biggest cost of the Division's time was the out-of-state shippers and they are addressing that issue via the website redesign (cost to do this was less than $100,000). All the licenses are inspected on a regular basis. The Division does not feel that they are upside down on any of these fees and the revenues generated are adequate.

The Division's largest expense is cos-of-goods -sold as an enterprise agency. One week out of every month is spent inspecting license holders across the state.

Public Comment:

- **Mike Moser**, Wyoming State Liquor Assn., feels it is prudent for the Committee to see this information. The amount brought from license fees in over 13 years' time has increased more than 400 times.

- **Senator Kinskey** – how much does an across the board comparison by volume of the type of alcohol matter as compared to the state mark-up?
  - **Moser** replied by saying that Wyomingites contribute much more to state coffers due to the mark-up than the actual tax and that is what matters most. You really cannot make an across the board comparison to other states because of the mark-up.
- **Rick Kaysen,** Wyoming Association of Municipalities, commented on the work that the local levels due to license and inspect properties (not to mention law enforcement).
- **Buck McVeigh** - Wyoming Taxpayers Assn – told the Committee that WTA is committed to help lead a coalition of other trade associations to brainstorm ideas on how legislators can raise more revenues. The association does not have a position on any of the topics before the Committee now, as no bills have been drafted.

WYOMING LIQUOR FEES AND MARKUPS DISCUSSED IN THE TAX REFORM 2000 REPORT –
Wyoming is one of 17 control states for liquor distribution. The goal of the Wyoming Liquor Division is to maximize revenue to the state, provide quality service through effective and efficient product distribution and enforce alcoholic beverage control laws. Mr. Montoya walked the Committee through a comparison of state taxes on beer, wine and spirits and taxes collected over the last 5five years.

For wine, Montoya told the Committee how the legislature increased the amount of wine that can be directly shipped to customers (to 4 cases per year per company). He also highlighted how the WLD can fill special orders for retailers – a program that is growing. Sales for wine in Wyoming have trended down over the last year, but the WLD's projections for the next five years shows increases of 2.5% per year. Trends for direct shipment of wine is 16.5% over the next five years (he said the program is a little more work for the WLD, but it is very popular with wine-of-the-month clubs).

Montoya told the Committee that it is difficult to do across-the-board comparisons on the taxes due to the state mark-up. He then gave several examples of how an increase in the mark-up may impact prices for spirits and wine. The increases included 18.6%, 19.6% and 20.6% for the mark-up.

Rep. Connolly then walked the Committee through HB 166 as presented in the last session (the bill proposed an increase in the excise taxes on beer, wine and spirits and changed the distribution from the general fund and moved it to the school foundation account). While the bill focuses on excises taxes, she told the Committee that she does like the mark-up because you do not have to mess with increasing the taxes. She did make it clear that the mark-up does not apply to malt beverages. The fiscal note was only around $2M/year for HB 166.

Public Comment:

- **Mike Moser** – Wyoming State Liquor Assn – From his experience in the Tax Reform 2000 process, the issue started at the top of the list at the beginning of the process and then moved to the bottom of the list at the end of the process because little revenue would be raised. The revenue from the WLD has more than doubled over the last thirteen years. He summarized how other states compare with retail prices for both spirits and wine. Retailers in privatized states can buy in bulk (one retailer in CO buys more than the entire state of WY through the WLD). He also talked about how cross-border sales are a major issue in alcohol retail. Moser suggested that the industry might be more open to a general sales tax that would apply to everyone, not just one industry.

- **Kinner** – Looking at a retail comparison with UT, MT or ID, how do we compare?
  - **Moser** - With the privatized states, their prices are all lower. Other control states are hard to compare – they can be comparable or even higher than Wyoming.
  - **Kinskey** – Would like the WLD to make a more complete comparison with other retailers in surrounding states. He would also like to know more about how other states fund drug and alcohol treatment programs like in the prisons. If it cannot come from increasing the price of liquor or beer, then from where should it come?
    - **Moser** – Why not just change the distribution and earmark it for those programs?
- **Dan Noble** – It is important for the Committee to understand the relationship between the WLD and the retailers. There is another piece to the puzzle – the state puts pressure on the suppliers to get the product out of the warehouse (the state buys it and then distributes it). If the state gets a break on the product, it is passed on to the retailer. Therefore, the shelf price is the most important price to consider, not the wholesale price.

Committee Action:
Rep. Connolly made a motion to have LSO draft a bill to increase the mark up to 20.6%. Malt beverages will not be part of the bill and all monies should go to the general fund. Some members of the Committee felt it better to increase the mark-up rather than the excise tax. Motion passed.

Senator Kinskey also made a motion to increase each, beer, wine and spirits, by $0.01 and direct it to treatment program. Senator Case spoke against the motion, saying that it is not the charge of the Committee to micromanage social programs. Motion carried.

Wyoming Beer Taxes Discussed in the Tax Reform 2000 Report –

The WLD presented the Committee with tax collections on beer, as that is the only involvement the WLD has with beer.

A motion was made to increase the beer tax from $.02 to $.18. Motion passed.

Wyoming Cigarette Taxes Discussed in the Tax Reform 2000 Report –

Kim Lovett, Director of the Wyoming Excise Tax Division, presented the Committee with tax information collected on cigarettes and other tobacco products in Wyoming. Several parties testified in favor or opposed to a tax increase and a significant amount of information was presented to the Committee regarding sales on the reservation and impacts on social programs.

Ultimately, the mood of the Committee dictated that voting to draft a bill now is not warranted. They would like to gather more information and possibly make it an interim topic for the next year.

Wind Energy Production Taxes –

The Committee heard from LSO regarding an update to the E3 model. As it turns out, the E3 model is not available because the company doing the work is also now working for a Wyoming wind company and there is a conflict. Chairman Madden told the Committee that there is little to be gained from updating the model because the data has not changed. Senator Case opined that the State of Wyoming paid for that model and it showed that there was room to increase taxes on wind and now the model is not available. He encouraged whoever owns the rights to the model share it with the state.

LSO also gave a quick update on the MN wind generation tax and summarized how it compares to Wyoming. It seems it was somewhat difficult to come up with a pure across the board comparison. Senator Case commented in saying that the situations are different in two ways – MN is in a different power grid, and Wyoming has better capacity factors for wind (which he contends is a huge advantage). Therefore, his point is that there is room to raise taxes in Wyoming and a view is being severed with every tower.

Public Comment:

- **Citizen** - supportive of increasing the wind tax.
- **Karen Heath** – Medicine Bow – supportive of wind
- **Lander Citizen** – opposed to wind and supportive of increasing the tax.
- **Oftedal Construction** – Update on their work for the PCW Chokecherry project. This is a Casper-based company doing work in Wyoming.
- **Viridis** - Once again testified to support wind development in Wyoming. Senator Case asked them about some sort of sharing mechanism where if the company is doing well, then the state gets more revenue, like what happens to minerals.
- **Power Company of Wyoming** –
  - Several things have changed since the E3 model – the cost of the PCW project, for one. Also, power prices have decreased over 50% since the model.
  - State tax comparison to MN – the presentation also compares NV as another state in the Western Interconnection and one that does not have an income tax.
  - Please give the industry certainty while these projects are being developed.
- **Carbon County Council of Governments** – continued opposition to wind tax increase.
- **Jeb Steward** – Carbon County citizen in support of an increase to the wind tax.
- **Rep. Sweeney** – Good testimony from industry experts. I like the idea of "if they do good, we do good"
- **Rep. Paxton** – This is the only thing in Carbon County that is a viable development for our county.
- **Rep. Hallinan** - externalities of the projects need to be considered and the state should not be "tied" into the $1/MWh tax.

Committee Action:

Rep. Hallinan made a motion that a bill be drafted to increase the wind generation tax. Chairman Madden said the tax increase was not specifically noticed on the agenda, therefore, it might not be appropriate. He also said that the value of the E3 model might not be critical. But Senator Kinskey seconded the motion to have a bill drafted.

Rep. Furphy – we have new companies looking at Wyoming in the wind industry. They are talking about new investment in our state. But they have this uncertainty hanging over their heads. We do need to put this to bed.

Senator Peterson – again, this committee is just fulfilling our charge from the management committee and everything is one the table. He also said that his vote is still a "no" on increasing the tax, but he cannot guarantee that the topic would not be brought up again and again.

Senator Kinskey would like to see the issue put to bed today. Give industry some certainty.

Vote – the motion overwhelmingly failed a voice vote.