

Meeting Minutes
Finance and Taxation Committee
Taxation and Budget Reform Commission
301 Senate Office Building
Tallahassee, Florida
Friday, November 16, 2007
8:30 am – 10:30 am

Committee Members: *Susan Story, Chair; Barney Barnett, Martha Barnett, Julia Johnson, Bruce Kyle, Patricia Levesque, John McKay, Randy Miller, James Scott, Ken Wilkinson, Brian Yablonski*

Members Present:

Susan Story, Chair
Barney Barnett
Martha Barnett
Julia Johnson
Gwen Margolis, ex officio (by phone)
John McKay
Randy Miller
Ken Wilkinson
Brian Yablonski

Members Absent:

Bruce Kyle
Patricia Levesque
James Scott

Chair Susan Story called the meeting to order at 8:38 a.m. Staff called roll and announced the presence of a quorum.

Chair Story reminded the committee of the last conference call meeting and the decision to consider a list of issues as possible committee measures. As was discussed at the earlier meeting, Chair Story assigned individual members who were not personally vested in particular issues to work with TBRC staff in drafting proposals for the committee's review. She noted that she had made the following assignments: 1) Portability – John McKay, 2) Replacement of Required Local Effort Property Tax – Ken Wilkinson, 3) Fairness and Equity in Property Taxation – Barney Barnett, 4) Sales Tax Exemption Review – Martha Barnett, Streamlined Sales and Use Tax Collection – Julia Johnson, Spending Caps – Brian Yablonski, Sales Tax Exclusions – Patricia Levesque.

In addition to the subject areas noted above, Chair Story indicated that there were other issues that had been discussed that may rise to the level of consideration as committee proposals, as they seem to have the support of most members. She observed that the conservation tax issues discussed by Commissioner Brian Yablonski, and the hurricane

mitigation / energy efficiency issues already put forth by Commissioner Gwen Margolis in Proposals 0004 and 0005 are the types of issues that the committee might want to consider. She asked members if there were other such issues that might rise to that level of consideration.

Commissioner John McKay indicated that he thought the issue of “Highest and best use v. Value in use” should be discussed. Commissioner Randy Miller agreed and noted that the resolution of the issue would be statutory,

Commissioner Ken Wilkinson asked that the issue of “Working Waterfronts,” as described in the recent legislative draft proposals be considered, and commissioners determined that the issue should be included in the discussion of highest and best use and / or fairness and equity in property taxation.

Commissioner Martha Barnett asked that the group consider funding for land acquisition such as Florida Forever, either in the proposals being developed by Commissioner Yablonski, or as a separate proposal.

Commissioner Julia Johnson made a presentation on the merits of taking up the issue of collection of unremitted sales and use tax, and the national streamlining project. She noted that the facts on the need for better rates of collection of unremitted taxes are clear. In testimony before the committee, DOR staff indicated that as much as \$2.7 billion may be uncollected in fiscal year 2008. Commissioner Johnson noted that the legislature has made a couple of attempts to address this issue, but the concern that some might view the collection of unpaid use tax as some sort of new tax has made it politically difficult. She made it very clear that collection of taxes already owed are not the same as new taxes.

Commissioner Johnson then addressed Florida’s role in the national streamlining project. While the legislature has voted to be a part of the voluntary compact, implementing legislation to allow for the needed changes to Florida law have not been enacted, thus keeping Florida from joining the other 22 states now voluntarily participating. She noted that while legislation to implement changes to Florida’s tax laws to comply with the national voluntary compact would be needed to bring the state along, there may be a need to require the legislature, by constitutional amendment, to collect all unremitted sales or use taxes, thus encouraging a more proactive position on the national project. Commissioner Johnson then asked General Counsel Tom Cibula to give an overview of the two draft proposals which staff prepared for consideration.

Mr. Cibula gave a brief overview of the concepts found in the statutory proposal, Draft FT-B, and noted that there are about 7500 individual taxing jurisdictions in the United States. Such large numbers of taxing authorities make it difficult for companies doing business nationally to comply with local tax laws. By adopting statewide administrative schemes for such tax collections, there is a belief that compliance levels for collections will improve. Compliance by out-of-state sellers would remain voluntary.

Commissioner Randy Miller stated that the legislation is very important to retailers in the state. Without some assistance with out of state sellers, the very backbone of the economy becomes at risk. Catalog sales and e-commerce are taking revenue dollars out of state. In years past, the state had plenty of money, but now we need the money.

Commissioner Martha Barnett asked about the experience in the other 22 states. Commissioner Miller replied that no state has opted out, but that some have asked for extensions of time to come into compliance. He gave examples of how some products may be classified differently from state to state for taxing purposes. For example, in Florida, orange juice must be 100% pure juice in order to be classified as food. Under the national compact, products with only 50% juice would be classified as food. Wheat producers were successful in getting the national requirements to state that any product containing flour would be classified as food, so that a candy bar that contains a cookie center (such as a Kit-Kat bar) now classified as candy (and taxable) in Florida would no longer be taxable as a food product.

Commissioner Martha Barnett then asked if there would be ongoing conflicts between state level and federal Commerce Clause issues related to nexus. Commissioner Miller responded that the national compact is completely voluntary and that national companies are complying voluntarily, so there does not appear to be a problem. He noted that a federal solution by Congress would allow for the compact to become mandatory, but that the proposal for consideration today would at least allow Florida to participate in the voluntary compact with 22 other states.

Commissioner Martha Barnett asked about the recently renewed federal moratorium on taxation of internet services. Commissioner Miller replied that there was a strong misunderstanding about the recent federal actions. The moratorium is on taxation of internet services or connectivity, such as taxing your Internet Service Provider (ISP) or the consumer for actually connecting to the internet. The proposals today are not at all similar to the federal action.

Chair Story asked Mr. Cibula to explain the differences between Draft FT-A and Draft FT-B. Mr. Cibula indicated that Draft FT-A is a Constitutional Amendment proposal that would require the legislature to act, whereas Draft FT-B is a statutory recommendation providing the necessary implementing language to allow Florida to participate in the national compact.

Commissioner Miller told the group that he thought that the first order of business should be to provide the legislature with a statutory recommendation in the form of Draft FT-B. He noted that if the legislature failed to act there would still be time for the TBRC to place the issue on the ballot, but that it might be hard to get 60% to pass such an amendment due to the fact that it talks about collection of taxes. Commissioner Yablonski agreed that the TBRC should express its interest to the legislature, but that it should hold off on the constitutional amendment, as if it got on the ballot and failed, it would give the legislature a reason not to address the issue in the future. Commissioner

Johnson then noted that the committee might want to recommend even broader language for a constitutional amendment addressing collections compliance if needed in the future.

Commissioner McKay suggested that the committee proceed with the recommendation to the legislature on statutory changes, and then if there has been no legislative action by the first of April the committee could still address the constitutional amendment language. The group agreed to this approach.

Commissioner Johnson made a motion to introduce Draft FT-B as a Committee Proposal. Commissioner Miller seconded. On a roll call vote, all eight members present voted in the affirmative.

After discussion about the importance of having the constitutional amendment language ready if needed, the group decided to have it introduced, as well.

Commissioner Miller made a motion to introduce Draft FT-A as a Committee Proposal. Commissioner McKay seconded. On a roll call vote, all eight members present voted in the affirmative.

Commissioner Martha Barnett made a presentation to the committee on Sales Tax Exemption reviews. She noted that Florida's tax structure is largely made up of ad valorem and sales taxes. The sales tax is the basis of the state's revenue structure. She pointed to the decline in revenues as reported in this week's latest Revenue Estimating Conference and noted that this is the first time since the beginning of the Estimating Conference in 1971 that there have been back-to-back years of decline. She stated that the problems in the economy make the point that the tax system needs to be reviewed. Many exemptions currently on the books may no longer be important or relevant in today's economy. Commissioner Barnett reiterated that a review of the sales tax exemptions is not a new issue and has been proposed, in various forms, several times over the past years.

Commissioner Martha Barnett then laid out a series of considerations, including whether there should be a constitutional amendment to require a legislative review of the exemptions, whether there should be criteria included in such a review, should there be a mandatory sunset, and whether there should be a statutory recommendation which could include principles of taxation or criteria. She asked if there should be an agreed to validation or justification of some exemptions in advance of a review. All of these considerations were laid out to show the committee the complexity of the issue of a review and to begin to structure the discussion about how to go forward, if that is the will of the committee.

Mr. Cibula then gave a brief description of four draft documents that he had prepared for the committee's consideration. He noted that there were several action options including a legislative review, a mandatory sunset review, and an individual review of each exemption requiring a one-time vote to justify or reject each exemption within a certain subset of exemptions. He provided copies of the various drafts as follows:

- 1) Draft “FT Ca 5:13 p.m. 11/15/07” – a bare bones constitutional proposal that requires the legislature to review sales tax exemptions;
- 2) Draft “FT-Cb,” – a constitutional proposal that requires the legislature to create an exemption review process and to vote on any exemption that does not meet a set of criteria for justification;
- 3) Draft “Sales Tax Rev Vote 6:54 p.m. 11/15/07” – a constitutional proposal which requires the legislature to go through each exemption (except for those not reviewed) and vote on each exemption on its individual merits one time in 2010;
- 4) Draft “Rev and Sunset Exemptions Draft 7:51 pm 11/15/07” – a constitutional proposal that requires a sunset review and a proactive vote to re-enact all sales tax exemptions; and
- 5) Draft “Comm Rev Exemptions 11:54 a.m. 11/8/07” – a statutory recommendation that requires the legislature to create an exemption review process (similar to HB 195 by Ryan.)

Commissioner Randy Miller stated that he has been involved in discussions of reviews for many years and he does not believe that businesses would be opposed to review, but having sunset as the final goal is very bad for business. He stated that he believes that the legislature has the authority to do a review and that they should do it. He acknowledged the level of frustration, but stated that the legislature really needs to address the issue.

Commissioner John McKay noted that it always sounds great to say the legislature should do the review, but it simply has not happened. At least five or six times over the past few years, he recalled that attempts had been made to get rid of the exemptions that are no longer needed, but the job never seems to get done. He stated that he understood concerns about a sunset review, but that he thought some of those concerns may be over dramatized. He recounted that in 2002, when the economy was soaring, business came to the legislature and said that it would be a mistake to do anything to change the exemptions because it might mess up the good situation. And recently, at a committee meeting, business came before the group and indicated that it would be a mistake to do anything to change the exemptions in a bad economy because it might cause further downturns and fluctuations. Ultimately, he stated, the issue boils down to money and everybody ought to pay their fair share. If one group is exempted and not paying, then everybody else ends up having to pick up the difference.

Commissioner McKay reiterated his point that the TBRC needs to focus on a structure that will last. If income tax is not a good source over time, and property tax continues to be problematic, then the committee should focus on making the sales tax base more resilient. He noted that the state can’t continue to pay for the increased needs of Floridians with a narrowing tax base. He opined that the legislature will not remove exemptions because their political opponents would call it a tax increase. He concluded by saying, “If we’re going to do something, let’s do something worthwhile.”

Commissioner Ken Wilkinson asked if there was some way to tie any revenues derived from removing sales tax exemptions to a reduction in property taxes for RLE. He indicated that the replacement cost would be somewhere in the neighborhood of \$9

billion and that perhaps a combination of the revenues collected under streamlining, a sales tax exemption review and other sources might be able to replace the RLE. He noted that something along those lines would constitute true tax reform.

Commissioner Gwen Margolis told the group that it was important to really study the cycles of sales tax. The problems in today's budget are due to a downturn in the economy which is reflected in a downturn in revenue collections from sales tax. She noted that property taxes are much more stable as a source of education funding over time.

Commissioner Miller agreed with Commissioner Margolis and stated that there is no single tax source that can adequately pick up the entire amount of the RLE.

Chair Story then asked the committee if it wanted to pursue some form of sales tax exemption review. By voice vote, the committee unanimously agreed to take up the issue.

Commissioner Brian Yablonski stated that the question before the committee was whether to have just a minimal review or a review with a sunset. He noted that economic activity is cyclical and that slowing of economic activity results in slower growth of the state. He indicated that he was worried about hamstringing Florida business by going to a full sunset process. He noted that he leaned more towards a review process.

Commissioner Martha Barnett indicated that at this point she does not think it is in the best interest of the state to foreclose a trigger mechanism. She noted the need to recognize, up from, the importance of keeping some set, but not to back away from a review process, setting criteria, etc. She expressed that she thought the committee needed to continue to discuss these points. She noted that the committee needs to give guidance, and perhaps there is some other process than a sunset process whereby the TBRC can engage the legislature in a meaningful review.

Commissioner McKay suggested that in a spirit of compromise, the committee should consider Draft "Sales Tax Rev Vote 6:54 p.m. 11/15/07". He noted the draft seemed to accomplish a middle position that the committee could use as a base for further debate. Other commissioners agreed.

Commissioner McKay made a motion to introduce Draft "Sales Tax Rev Vote 6:54 p.m. 11/15/07" as a Committee Proposal. Commissioner Martha Barnett seconded. On a roll call vote, all eight members present voted in the affirmative.

Commissioner McKay asked that Commissioner Martha Barnett be tasked with additional study on ways to address the review process short of a mandatory sunset process.

Commissioner Miller noted that the just introduced proposal was a constitutional proposal and that it might be appropriate for the committee to introduce a statutory

recommendation proposal, as well. Commissioner Miller made a motion to introduce Draft "Comm Rev Exemptions 11:54 a.m. 11/8/07" as a Committee Proposal. Commissioner McKay seconded. On a roll call vote, all eight members present voted in the affirmative.

Chair Story then asked members if there were other issues that the committee should consider at future meetings.

Commissioner Margolis spoke briefly about her proposals and Chair Story asked members to let us know at the next meeting if anyone would like to co-sponsor the proposals with Commissioner Margolis.

Commissioner Margolis brought up the fact that 40% of residential property is non-homestead and that it is important to look at providing some incentive for first-time homebuyers by offering a one-time homestead exemption to encourage people to continue to come to Florida. She noted that she has this proposal in drafting at this point.

Commissioner Yablonski indicated that he is working on language for the conservation tax issues for committee consideration and will work with the concept of a dedicated funding source for land acquisition as well.

Commissioner McKay asked if the committee should consider any outfall from the Strand v. Escambia case related to assuring TIF options. He noted that such a proposal would require a constitutional amendment. Commissioner Miller asked if it was the intent of such an amendment to validate that taxpayers do not need a referendum for use of their tax dollars. He indicated that he firmly believed that those who will pay a tax should have to vote for the tax. After a few moments discussion, it was agreed that staff should work on "shell" language for some sort of clarification in the event that the court rules in a way that is detrimental to the local governments' ability to operate.

Chair Story announced that the next meeting would be on November 30 in Tallahassee.

There being no further business, the meeting was adjourned at 10:25 a.m.