

Meeting Minutes
Finance and Tax Committee
Taxation and Budget Reform Commission
301 Senate Office Building
Tallahassee, Florida
Thursday, January 17, 2008
1:30 p.m. – 5:00 p.m.

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

Members Present:

Susan Story, Chair
Barney Barnett
Martha Barnett (by phone)
Julia Johnson
Patricia Levesque
John McKay
Randy Miller
James Scott (by phone)
Kenneth Wilkinson
Brian Yablonski

Other Commissioners Present:

Allan Bense, TBRC Chair
Jacinta Mathis
Nancy Riley

Members Absent:

Bruce Kyle

Committee Chair Susan Story called the meeting to order at 1:35 p.m. Staff called the roll and announced the presence of a quorum

Chair Story announced that the committee would hold a workshop on CP0012 by Finance and Tax, related to exclusions from sales tax on services on January 25. She indicated that the Governmental Procedures and Structure Committee had favorably recommended CP0002, as amended, by Commissioners John McKay and Darryl Rouson, at its meeting this morning and the Finance and Tax Committee would entertain discussion about that proposal at the January 25 meeting, as well. Commissioner McKay asked the Chair to postpone that discussion, as the Governmental Procedures and Structure Committee had raised some issues that will require some in-depth study and drafting, and that language most likely cannot be perfected in a week's time. Chair Story noted the request and indicated that the committee would not put CP0002 on the agenda for a workshop next

week, but that it would be on the agenda, along with other legislation related to sales tax exemptions, exclusions, and property taxes, for voting purposes on February 11, 2008.

Chair Story noted that the February 11 meeting will be a major voting meeting and members need to be in attendance, either in person or by phone, in order to allow for the work of the committee to move ahead.

Commissioner Randy Miller was recognized to give an overview of SR0017 and CP0018, relating to the national Streamlined Sales Tax pact. Commissioner Miller explained that the proposals do not create any new taxes, they merely address the issue of collection of unremitted taxes already owed to the state. He noted that the proposals address an issue of fairness and equity. Commissioner Julia Johnson joined Commissioner Miller in his comments and added that the revenues lost by the state through the improvements made by technology and the ease of use of the internet will continue to grow if no action is taken.

Commissioner Martha Barnett asked about the need for a constitutional proposal on the issue, and Commissioner Miller and staff explained that while enabling language already exists in Florida Statutes, a constitutional proposal, or the possibility of a constitutional proposal, could cause the legislature to move ahead in a timely manner in adoption of the implementing language needed to become a member of the pact.

Commissioner Miller noted that while he does not believe that there is a need for the constitutional proposal, he would like to have it move ahead so that it could be in the proper posture if needed later in the process should the legislature fail to address the issue. He then discussed the fact that the amount of money potentially available for collection is unknown, and would vary depending on whether the vendors were complying voluntarily or under mandatory compliance requirements. Participation in a national pact, without a mandatory requirement by Congress, will most likely result in a lesser amount of revenues collected, but would still be more than is currently collected. Should Congress act affirmatively to adopt national standards, the state's share could be substantially more. Estimates for voluntary compliance range somewhere in the area of \$100 million, while a University of Tennessee study several years ago indicated that Florida could gain in the neighborhood of \$2.7 billion under a mandatory collection scenario.

Commissioner Brian Yablonski asked why the state should act in advance of any possible action by Congress. Commissioner Miller replied that Florida had already waited too long to become an active participant, as it had missed the opportunity to have influence on some of the decisions and definitions adopted by the pact steering committee that will have a direct effect on Florida law if the state becomes a member of the pact.

Commissioner Johnson noted that having the states acting together helps overcome the argument made in a U.S. Supreme Court case that collection of taxes across state lines is too burdensome, as states working together can show that the burdens are reduced through cooperation within the pact states.

Mr. Mark Micali, Vice-President of Governmental Affairs for the national office of the Direct Marketers' Association, addressed the committee in opposition to the proposals. He noted that such legislation would expose member states to audit liability across state lines. He disagreed with estimates given for potential remission of taxes and stated that the University of Tennessee study was completed prior the "internet bubble". He indicated that his group estimates that Florida's collections may be more in the range of \$300 million, noting that the discrepancy between businesses with nexus and those without is "self-correcting" over time as more and more businesses expand to retail locations in more and more states. He made the point that since the inception of the original attempt to institute a national sales tax process, over sixteen years ago, not one committee or subcommittee in Congress has passed the needed legislation to implement the concept. Commissioner Yablonski asked why Congress had failed to address such legislation and Mr. Micali indicated that, among other reasons, the legislation could be seen to be a burden on both established and emerging companies, the concern over how to deal with conformance of over 7500 taxing districts nationwide, and concerns over the audit liability issue across state lines have kept Congress from taking up the legislation for votes. Chair Bense asked why, if groups such as the Florida Chamber, the Florida Retail Federation, AIF, and their national counterparts are supportive of such legislation, it has not ever gotten any momentum. Mr. Micali responded that neither the U.S. Chamber of Commerce, nor the U.S. Manufacturers' Association have ever taken a proactive stance on the legislation.

Mr. Scott Peterson, Executive Director of the Streamlined Sales Tax pact governing board, addressed the committee in support of the proposals. He indicated that any state that uses the services of a certified service provider for tax collection purposes will be protected from the audit liability concerns raised by Mr. Micali. He discussed the requirements for states to have no more than two tax rates per county, one for the state sales tax and one for a local sales tax.

Ms. Keyna Cory, representing Associated Industries of Florida, noted the group's support for the proposals.

Commissioner McKay had further questions about the comment made by presenters relative to "one sales tax per state." Commissioner Miller and Mr. Peterson explained that while the federal government would find that a single rate per state would be most efficient, states need the flexibility to address local government funding concerns, thus the idea that each local government within a county would be allowed to levy taxes at the same rate, but each county's rate could be different.

Commissioner Patricia Levesque indicated that while she had learned quite a bit through the discussion and testimony, she was still concerned about raising more revenue than citizens could afford to pay and wanted to see spending caps discussed as a part of any final decisions on implementation. Commissioner Miller reminded the members that these measures are designed to provide a procedure to collect taxes already due and to put main street sellers on the same footing as remote sellers in the marketplace.

Commissioner McKay made a motion to favorably recommend SR0017. The motion was seconded and a roll call vote was taken. The measure passed, 9-1, with Commissioner Yablonski dissenting.

The committee then turned to CP0018 for discussion. After several comments related to the need for such a constitutional proposal, Commissioner Miller asked that the committee consider allowing the proposal to move ahead, and then have the measure held in abeyance from any further action by the commission unless and until it appeared that there might be a need if the legislature failed to take action on the issue.

Commissioner Ken Wilkinson made a motion to favorably recommend CP0018. The motion was seconded and a roll call vote was taken. The measure passed, 8-2, with Commissioner Martha Barnett and Commissioner Brian Yablonski dissenting.

After a brief break, the committee reconvened for the purpose of holding a workshop discussion on CP0007, relating to sales tax exemption review.

Chair Story opened the comment period for CP0007. Commissioner McKay asked about how the proposal would proceed if the committee decided to go ahead. Chair Story noted that if the committee finally determined to move ahead, a member of the committee would be asked to advocate for the proposal as it moves forward in the process.

Chair Story reminded members that staff had sent out all pertinent draft documents following the last workshop, and that the committee had discussed several different options for moving ahead. In an effort to better define the will of the committee, she then asked for a discussion covering several different options. The first option for discussion was whether the committee wanted to pursue the concept of an automatic sunset for sales tax exemptions. Commissioner Randy Miller noted that automatic sunset provisions are the biggest concerns for business and send the wrong message to the business community. He stated that business will support a review of exemptions, but an automatic sunset goes too far. He reminded members that Florida is part of a global economy and must be careful not to jeopardize our position in that economy. Commissioner Patricia Levesque agreed with Commissioner Miller and urged the group not to add any automatic sunsets in to any proposals.

Commissioner McKay indicated that he disagreed with the assessments of Commissioners Miller and Levesque that a sunset review would upset the business apple cart. He said that he thought a legitimate review is actually done, it could be beneficial, but noted that the legislature could do such a review now, and they continue not to do it. Commissioner Miller pointed out that CP0007 would require an up or down vote on each exemption and that the proposal would require a separate roll call vote on each exemption.

Commissioner Levesque then questioned the structure of the procedure in the current draft of CP0007 and noted that action by bill, as opposed to joint resolution, would be more appropriate, as it would not remove the Governor from the discussion and possible

veto of the exemption repeal or reinstatement. She asked about the need to hold separate votes on each exemption and whether that was the most beneficial way to approach the subject, especially if the goal is to replace a current tax source (such as RLE) with an array of other tax sources. Staff noted that changing the procedure is simple to do and would replace the Governor in the chain of actors in the process. Commissioner Miller agreed that the Governor should be in the process, but noted that it seemed appropriate to vote on each exemption separately so that everyone who wants to advocate for or against a particular exemption has the ability to be heard individually. Commissioner Wilkinson agreed and noted that having individual votes keeps legislators from “hiding” votes on particular exemptions.

Commissioner Martha Barnett agreed that a mandatory review seems necessary and that comprehensive review is in the best interest of the state. She noted that she still has concerns about some the draft language related to standards for justification of the exemptions, and noted that 2010 may be too soon for complete implementation of the review process. Commissioner Levesque noted that some of the language in the draft appeared to be overly instructive and could be relaxed somewhat, as well.

Chair Story then asked if there was a preference between offering a statutory recommendation, such as SR0029, or a constitutional proposal, such as CP0007. Commissioner Miller expressed his concern that he does not think a constitutional proposal is required, but understood the wisdom in keeping both options alive in the event that the legislature chooses not to move ahead on its own.

The committee then heard testimony from Mr. Gene Adams, representing a coalition of business advocates. Mr. Adams noted that the coalition continues to be supportive of a review of sales tax exemptions, but does not support an automatic sunset review. Their preference would be for the legislature to handle the review without placing a mandatory review in the constitution.

Commissioner Miller asked Commissioner McKay about next steps for CP0002 and Commissioner McKay indicated that he was going to go back and work with experts to try to address issues raised at the Governmental Procedures and Structure Committee and hoped to have new language for review in the next couple of weeks.

Chair Story asked Commissioner Miller if he would take the lead in advocating for the committee proposals, SR0017 and CP0018, as they move throughout the process. Commissioner Miller agreed to take on the responsibility.

There being no further business before the committee, the meeting was adjourned at 4:00 p.m.