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THE UTAH TAXPAYER

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Utah's 58th Legislative Session Begins

Utah's 58th legislative session is underway and your Taxpayers Association continues in its efforts to promote sound tax policy and fiscal responsibility in the midst of tough economic times and a gaping budget hole. Your Taxpayers Association is keeping close watch over a variety of issues in order to prevent tax hikes, increase transparency and discourage government intervention.

One of the top priorities of your Taxpayers Association during this legislative session is to hold the line on tax hikes. Governor Gary Herbert has proposed a balanced budget without an increase in taxes, however members of the legislature seem determined to raise taxes. Rep. Brian King has proposed HB 90, a bill to reinstitute a graduated income tax that would result in higher taxes. Additionally, there continue to be rumors of various severance tax hikes. Your Taxpayers Association stands in strong opposition to these proposals and continues to monitor their progress. On the other hand, Rep. Carl Wimmer has proposed fiscally responsible legislation, HB 217, that would reduce the corporate franchise tax and individual income tax. The Taxpayers Association strongly supports this legislation.

State Representative
Carl Wimmer

Another top priority for your Taxpayers Association is the preservation of transparency through the budget and bond processes. The Taxpayers Association supports Rep. Fred Hunsaker bill, HB 94, which clarifies the requirements for public notification when cities, towns or counties transfer enterprise funds to the general fund. In addition, your Taxpayers Association is currently working to oppose efforts by the tax-and-spend lobby to water down bond notification and voter education requirements. Look for future updates as this issue develops.

Your Taxpayers Association is also focused on keeping government out of the business of business. As previously reported in the August 2009 and September 2009 editions of the Utah Taxpayers, Salt Lake County continues in its attempts to subsidize the building of a 1,000 room hotel adjacent to the Salt Palace Convention Center. Despite declining hotel revenues and low occupancy rates throughout Utah, this hotel proposal may resurface as legislation. While legislation regarding this situation is still in the development process, your Taxpayers Association is monitoring the situation closely and will strongly oppose any effort to subsidize this unnecessary hotel project.

In addition to these specific priorities, your Taxpayers Association is tracking over fifty pieces of legislation. The following table shows the priority bills being monitored by your Taxpayers Association. This priority list will continue to grow throughout the legislation session. Be sure to visit utahtaxpayers.org in order to view the full Utah Taxpayers Association legislative watchlist and keep updated on the legislature's progress. For additional information, join the Utah Taxpayers Association at its weekly legislative committee meetings on Thursdays at 7:00 am in the Seagull Room in the East Annex building of the Capitol.

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Utah Taxpayers Association Priority Legislative Watch List

Bill Number	Title	Sponsor	Description	Position
HB 94	Uniform Fiscal Procedures Act Amendments for Towns, Cities and Counties Amendments	Hunsaker	Clarifies that towns, cities and towns must notify residents whenever they transfer funds from an enterprise fund to another fund, except for reasonable allocations of cost.	
HB 196	Tobacco Tax Revisions	Ray	Increases the tobacco tax in 2010-2011 by 88.5%; thereafter raises the tobacco tax to the national tobacco tax average plus .1%. Tobacco producing states are excluded from the national average. Dedicates $1M of the funds from this tax increase to the Department of Health's Gold Medal Schools Program.	
HB 203	Repeal of sales and use tax exemption relating to mining	Watkins	Repeals the sales and use tax exemption for mining equipment purchases.	
SB 40	Cigarette and Tobacco Tax Amendments	Christensen	Raises the cigarette tax to $2 per pack.	
SB 55	Authorization of Charter Schools by Higher Education Institutions	Adams	Allows institutions of higher education to authorize charter schools, in addition to the State Charter School Board.	
SB 87	School Property Tax Equalization Revisions	Davis	Repeals the equalization of school district property taxes in Salt Lake County.	
SB 92, S1	Amendments to Revenue and Taxation Title	Bramble	Brings Utah's penalties and interest requirements into line with similar IRS provisions; requires quarterly payments of estimated taxes.	

**Vice-President
Royce Van Tassell**

Due to Howard Stephenson's service in the Legislature, February's My Corner article comes from Association Vice President Royce Van Tassell.

My Corner: Cut Spending to Balance Budget

With the Legislature in full swing again, lawmakers are more focused on balancing Utah's budget than they have been in many years. Last year they could rely on largesse from President Obama's stimulus plan to cover gaping holes between the on-going costs of state programs and the on-going revenues necessary to fund those programs. Without that fig leaf this year, appropriations committees, legislative leadership and the Governor are all focused on finding either "revenue enhancements" or opportunities to cut spending.

Governor Gary Herbert submitted a budget to the Legislature without any general tax increases, and his State of the State address reiterated his commitment to "no new taxes." Unfortunately, some in the Legislature are still determined to raise taxes.

The most common tax hike proposals on Capitol Hill focus on increasing the tobacco tax. Representative Paul Ray wants to nearly double the tobacco tax, while Senator Christensen wants to nearly triple the tobacco tax. Both Rep. Ray and Sen. Christensen want the tax increase so fewer Utahns will smoke, but many of their colleagues are eyeing a tobacco tax increase to help balance the budget. If the latest state revenue numbers are any indication, increasing tobacco taxes will make it even harder to balance Utah's budget.

The latest TC 23 monthly report, which compares actual and projected revenues, argues powerfully against relying on a tobacco tax increase to help balance the state budget. As the nearby table indicates, tobacco tax revenues collected during the last six months of 2009 dropped a collective 17.5%, as compared with the same six-month period in 2008. A drop that sharp demands explanation, and two possibilities seem plausible. First, the recession may have been deeper in 2009 than it was in 2008. In other words, during 2009 Utah consumers had less discretionary income, so they bought fewer cigarettes. There is little doubt that fact is partially responsible.

However, it simply begs credulity to lay this drop solely at the feet of the recession. The second contributing factor is the $0.60 per pack increase in the federal tobacco tax which took effect on April 1, 2009. In response, Utahns bought fewer cigarettes.

As noted above, some tobacco tax advocates celebrate that as a success. Whether you celebrate fewer smokers or not, this evidence argues strongly against any hope that a tobacco tax increase will help balance the budget. It won't. Raising Utah's tobacco tax will instead only deepen the already gaping budget hole.

Instead of raising taxes, the Legislature should be looking for ways to cut unnecessary spending. Louisiana offers a reform model Utah officials should consider replicating. Louisiana is in a similar boat, facing a $3 billion deficit over the next two fiscal years (representing roughly 12 percent of the general fund budget in FY2011 and rising upwards of 24 percent in FY2012). Accordingly, Pelican State policymakers—led by Governor Bobby Jindal—have embarked on a proactive, wide-ranging package of reforms to reduce the size and cost of state government.

Last spring Louisiana created a Commission on Streamlining Government that presented the Louisiana governor and Legislature 238 recommendations which would save over $1 billion. The recommendations include adopting a statewide spending limit, shifting all of the state's retirement funds to 401-K style defined contribution plans for all new hires, and revamping state education finance to promote a student-based budgeting approach where education dollars directly follow children into the classroom.

Louisiana policymakers also improved their budgeting process by eliminating many protected funding streams. Instead of having funds automatically flow to specific projects, Louisiana removed some statutory limits on how far they could cut certain programs, and piloted with some agencies an outcome based budgeting process. The result was that government could fund first things first, focus on performance measurement and results, and allow Louisiana more flexibility in adjusting and potentially eliminating funding streams.

Similar to Louisiana, Utah Governor Gary Herbert has also raised the issue of government efficiency in his creation of an efficiency panel chaired by former Governor Norm Bangerter. Your Taxpayers Association encourages the panel to consider the success of Louisiana as it creates recommendations for the Utah Legislature. These common-sense reforms will do far more to balance Utah's budget, now and into the future, than any constellation of tax increases. Your Taxpayers Association is working to make sure Utah's elected officials cut spending, manage their budget wisely, and stop dipping into your pockets.

Table 1: Tobacco Tax Revenues, July through December 2009 compared with July through December 2008

	2009	2008	Change	% Change
Cigarette Licenses & Fees	$4,768	$38,686	$33,918	-87.70%
Cigarette Taxes	$20,723,181	$26,122,138	$5,398,957	-20.70%
Tobacco Products Tax	$4,360,521	$4,219,594	($140,927)	3.30%
Cigarette Tax - Tobacco Prevention - Restricted	$3,356,537	$4,099,191	$742,654	-18.10%
Total	$28,445,007	$34,479,609	$6,034,602	-17.50%

Source: Calculations by the Utah Taxpayers Association using data from the Utah State Tax Commission's Revenue Summary for the first six months of FY 2010

Arizona Supreme Court Strikes Down RDA Corporate Welfare

Arizona's Goldwater Institute has opened up a new tool in the fight against corporate welfare disguised as economic development. In a lawsuit brought against the City of Phoenix, the Goldwater Institute convinced the Arizona Supreme Court that higher sales tax revenues do not justify the corporate welfare known as RDA financing.

Under Phoenix's "CityNorth" RDA, the city of Phoenix would pay the developer, NPP CityNorth, up to $97.4 million over as long as 11 years and three months. In exchange, the developer agreed to build a parking garage and one million square feet of retail, and give the city exclusive use of 200 of the parking spaces.

As is typically the case when RDA projects are proposed, the CityNorth advocates argued that "the project would not locate in [Phoenix] in the same time, place or manner" unless subsidized by the city. Without that project, Phoenix argued it would lose out on the increased sales tax revenue associated with the retail sales in this development.

Bringing suit on behalf of six small business owners in Phoenix, the Goldwater Institute argued that the "Gift Clause" of Arizona's Constitution prohibits Phoenix from subsidizing any corporation. A unanimous Arizona Supreme Court ruled that the $97.4 million subsidy offered by Phoenix to the developer is "grossly disproportionate" to the value of the consideration, in this case 200 parking spaces, provided to the city.

Pointedly, the Court ruled that the projected increase in sales tax revenue the city would receive does not factor into the decision of whether the RDA violated the Arizona Constitution's "Gift Clause." It does not.

It is not yet clear how this ruling will impact proposed RDA subsidies in Utah, though it's clear that some Utah cities are still convinced that corporate subsidies will benefit their communities. Your Taxpayers Association continues to oppose corporate welfare RDA subsidies. Not only does this form of corporate welfare take dollars our of school budgets, it creates unfair competition as the government subsidizes one corporate development over all others. The latest example of callous disregard for Utah's school children is in Draper, where the city recently convinced the Canyons School Board to approve RDA subsidies to redevelop the VF Factory Outlet.

Under the agreement, the Canyons School Board will give the developer millions in property tax revenue to help the developer upgrade the retail stores in and around the VF Factory Outlet, and to build another movie theater in the south end of Salt Lake County. Your Taxpayers Association reviewed the RDA proposal and urged all board members in the strongest possible terms to reject the proposal. However, Draper City contends that these subsides will bear fruit in the form of higher retail sales, and thus higher property values and property tax distributions to both the city and the Canyons school district.

Nothing could be further from the truth. Like the RDA subsidies struck down by the Arizona Supreme Court, the millions of dollars in subsidies provided in the redevelopment of the VF Factory Outlet are not offset by increased retail activity. In fact, these corporate subsidies will not increase retail sales in the south end of Salt Lake County at all.

Whether the Canyons School Board provides these subsidies or not, residents of the south end of Salt Lake County will still go to the movies. The presence of an additional movie theatre will not increase the number of tickets sold. Residents who previously watched movies at Jordan Landing in Sandy or the District in South Jordan will simply change which theatre their patronize, not increase their ticket purchases. This same principal applies to other retail offerings in the VF Factory Outlet. An additional shoe store will not increase shoe demand. An additional restaurant will not encourage residents to eat out more often. Instead the current retail activity in Salt Lake County will continue, but simply be shifted to a different location. Unfortunately, after spending million of classroom dollars and creating an unfair business climate, Draper will have nothing to show for it. And in the end, they will have increased the pressure to raise taxes to compensate for the millions lost to the failed RDA.

Because the Canyons School Board refused to accept this basic economic fact, Canyons School District will have fewer dollars to improve instruction and learning in the classroom and have to find ways to compensate for that loss in the future. In a time of grave budget cuts, this kind of waste is unconscionable. Even worse, the school board's support of this corporate welfare creates unfair competition and constitutes an open invitation to other cities and developers to ask the Canyons School Board for more corporate subsidies for their pet projects. While Draper may not have learned its lesson, your Taxpayers Association will continue to oppose corporate welfare.

Uintah Basin Medical Center: Unfair Public vs. Private Sector Competition

As a general rule public funds should not be used to compete with the private sector. Unfortunately, this rule is being broken as the government owned Uintah Basin Medical Center expands from Duchesne County across county lines into Uintah County to compete with the private sector.

The Unitah Basin Medical Center (UBMC) is a county owned hospital located in Roosevelt in Duchesne County. UBMC has benefited from both public and private funding, receiving $14 million from Duchesne County Municipal Building Authority revenue bonds and $5 million from a Community Impact Board loan totaling $19 million in public funds.

Recently UBMC crossed county lines to build an urgent care facility in Vernal in Uintah County. No other county hospital in Utah provides health care outside of their county and this unprecedented move has created an unfair playing field. This new medical center, subsidized with public funds, is now in direct competition with private medical centers such as Ashley Regional Medical Center.

In a recent Vernal City Council meeting the CEO of Ashley Regional Medical Centers, Mr. Si Hutt, testified that a private hospital could not compete with government-provided services that were subsidized by taxpayers dollars. In addition, Mr. Hutt explained that the demand for specialist services within Uintah County would not support the increased supply of services provided by the UBMC expansion. Therefore, the private sector within Uintah County would suffer as Duchesne County subsidized specialists and service providers used their unfair advantage to dominate the market.

Your Utah Taxpayers Association sees the UBMC expansion and the resulting uneven playing field as a misuse of public funds. Unitah County has not shown an increased demand for medical services and has actually taken steps to protect its current private sector services by passing an ordinance that would prohibit another county from providing services in Uintah County without an interlocal agreement. Without increased demand or an interlocal agreement to compensate for the unfair competition, UBMC is acting irresponsibly and using its public funds improperly.

Your Utah Taxpayers Association has consistently opposed private vs. public sector competition on all levels. However, this specific case is especially egregious. The precedent set by UBMC's expansion would allow for other counties to profit by providing services in neighboring counties using taxpayer dollars to unfairly compete. The private sector should be allowed to continue to provide services to its community without government competition or interference. Your Taxpayers Association will continue to stand in strong opposition of the UBMC expansion and keep you informed of progress in subsequent newsletters.

Public Union Membership Greater Than Private Union Membership

For years the face of unions was the industrial laborer, truckers, assembly-line workers and miners. But, today that face has changed from private sector employees to powerful public sector lobbies. The Bureau of Labor Statistics has recently reported that for the first time in American history the number of public employee union members has surpassed the number of private sector union members.

Three times more union members now work in the Post Office than in the auto industry.

According to the report, 7.9 million public sector employees are union members, while only 7.4 million private sector employees are union members. Public sector union membership significantly outpaced private union members, despite the private workforce being five times larger than public sector. In 2009 7.2 percent of the private sector belonged to unions, down from 7.65 percent in 2008. Private sector unions lost a total of 834,000 members while the public sector added 64,000 new members in 2009. The Heritage Foundation in their January 21, 2010 report further illustrated these lopsided union membership statistics, "Three times more union members now work in the Post Office than in the auto industry."

The majority of public union membership is at the local government level with police, firefighters and teachers making up a significant portion of union members. As your Taxpayers Association has previously reported, teachers unions are the largest political contributors in the United States. The Center for Responsive Politics and the National Institute on Money in State Politics found that the National Education Association was the largest political spender from 2007-2008, spending $54.9 million in state races and $2.6 million in federal races totaling over $57 million. In short, government employees make up a minority of the workforce, but continue to increase their union membership and political contributions, thereby calling the shots for Big Labor.

Your Taxpayers Association has been acutely aware of the growing power of public employee unions and in 2001 led the charge in passing the Voluntary Contributions Act, prohibiting public employee unions from using government payroll to collect political contributions. Within one year of its passage, UEA donations dropped by 75 percent and UPEA donations plummeted to zero. Other states followed Utah's lead and public employee unions eventually filed suit in Utah, Idaho and Ohio. Your Taxpayers Association petitioned the United States Supreme Court to settle the issue by taking up the Idaho case and filed an amicus brief in support of the legislation. As a result of your Taxpayers Association's persistence, the Supreme Court upheld the legislation and ruled that government was not required to subsidize union political contributions.

The trends of increasing public employee union membership and political power are what the Heritage Foundation calls "the new face of organized labor." Your Taxpayers Association continues to actively oppose these trends. It is clear that unions no longer represent the private sector; instead the minority is controlling the majority.

Utah Supreme Court Adopts Rule Stopping Dual Appeals from Tax Commission Decisions

In 1998 the voters overwhelmingly voted to modify the Utah Constitution to establish a tax court where they could take appeals from Tax Commission decisions. Your Taxpayers Association strongly supported the development of an independent tribunal where a much more balanced review could take place. This panel was established in the Tax Court Act by the legislature and has served the taxpayers well since inception.

The Tax Court Act provided an appeal to tax court that could hear cases anew with no deference paid to the Tax Commission decision or, if the taxpayer chose, it could still go directly from the Tax Commission to the Supreme Court and have the case heard on the record made at the Tax Commission. Depending on the nature of the appeal, cases have been taken up on appeal to the Tax Court or Supreme Court. Recently, appeals from the same Tax Commission decision were appealed by different parties to the Tax Court and the Supreme Court, a result never contemplated by those that drafted and worked to create the Tax Court.

To avoid such expensive and confusing dual appeals, Rule 15 was proposed to the Utah Supreme Court to give the parties a chance to have all their arguments heard by the Supreme Court or, in some cases the court of appeals-either by the direct appeal route or after the tax court ruling was appealed there. Your Taxpayers Association supported the clarity and efficiency that Rule 15 would bring to the appeals process. After receiving public comment the Supreme Court adopted Appellate Rule 15.

The important solution offered by Rule 15 lies in its requirement that once a party files in tax court that becomes the live case to be litigated. If there is a separate appeal filed directly by another party to the appeal from the tax commission it will be automatically stayed pending a decision by the tax court. Once the tax court issues a final appealable order, the direct appeal will summarily be dismissed. In this manner, all issues can be raised in a single appeal and taxpayers will not have to pay for dual appeals from the same tax commission decision. Your Taxpayers Association is pleased with this outcome as it ensures that the people of Utah get what they overwhelmingly supported in 1998- a chance to have an independent tribunal hear their appeal and a chance to make a record in court for review by the appellate court and without having to fund a second appeal.

Flatter Tax Results in Tax Breaks for 97 Percent of Utahns

At their weekly "Bagels and Briefing" session, the Office of Legislative Research and General Counsel (OLRGC) released its most recent report regarding Utah's income tax changes. Beginning in 2005 Utah made significant changes to its individual income tax structure. Your Utah Taxpayers Association, along with Governor Huntsman strongly supported the use of a single statutory tax rate of 5 percent, eliminating various deductions and increasing tax credits to maintain some progressivity would be far more beneficial to taxpayers.

Under the new system in 2008 approximately 97% of taxpayers paid the same or less in taxes than they did under the graduated 2005 system.

In 2005 Utah's individual tax rate allowed a variety of deductions and a graduated tax rate structure. The graduated tax rate of 7 percent started at low taxable income levels, $4,313 for single individuals and $8,626 for married couples. From 2006 through 2007 the number of possible deductions was reduced and the top tax bracket rate was lowered to 6.98 percent with the top taxable income levels beginning at $5,500 for single and $11,000 for married.

By 2008 Utah applied the single tax rate of 5 percent to a larger tax bracket and eliminated a significant number of deductions. However, in order to compensate for fewer deductions many of the largest deductions were replaced with tax credits. While this was not an entirely "flat tax" system, it was far flatter than 2005, resulting in a lower overall tax rate for a broader base and increased tax credits to maintain some progressivity.

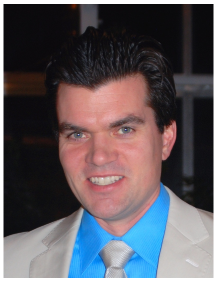
In 2008 about 97% of taxpayers paid the same or less in taxes than they did in 2005 under the old system. In fact, for those who earned in the 50th percentile of income, approximately $36,000 per year, almost 80% paid less in taxes. For those in the 70th to 80th percentile, making between $59,000 and $77,000 per year, over 90% received a tax decrease. The average decrease for most income levels ranged from $0 to $300, but extended to upwards of $1,000 for higher income brackets. Those earning the least income were least likely to receive a tax break since under both the 2005 and 2008 system they were unlikely to owe taxes.

Your Taxpayers Association has consistently supported the fiscally responsible tax policy of a lower rate across a broader base. With a decreased tax burden on 97% of taxpayers, there is no doubt that the flatter tax works. The OLRGC report has offered further evidence that when this principle is applied more dollars stay in taxpayers' pockets.

Federal Government Rejects UTOPIA

The federal government's National Telecommunications and Information Administration (NTIA) has rejected UTOPIA's multiple applications for federal broadband funding. Despite having already spent hundreds of millions of dollars in bonds backed by sales tax pledges from UTOPIA member cities, UTOPIA applied for another $56.5 million in federal broadband grants. After assuring city councils and community leaders that federal funding was imminent, all of UTOPIA's federal grant applications were rejected.

Your Taxpayers Association has opposed UTOPIA from the beginning. UTOPIA has acknowledged that they will be unable to make their bond payments from subscriber revenues and their own budget's projection of an operating loss of $2 million per month. As a result, there are serious questions about how long UTOPIA can survive.



Executive Assistant Tyler Pace

Taxpayers Association Hires New Executive Assistant

After four and a half years as an Executive Assistant with the Utah Taxpayers Association Fallon Rudisill has moved onto better things: married life in Virginia. Fallon was a valuable member of the Taxpayers Association, working proactively to maintain a high level of administrative organization. Her contributions are greatly appreciated and everyone at the Taxpayers Association will miss her.

Tyler Pace is the new Executive Assistant for the Utah Taxpayers Association. He served as a policy analyst for the National Taxpayers Union Foundation and as an entrepreneurial consultant for the Marriott Business School at Brigham Young University.

Tyler is an entrepreneur at heart. As a senior at Brigham Young University, Tyler placed 3rd in the Marriott Business School 2003 Small Business Competition with his direct-to-the-consumer bicycle company, Anex Bicycles, which he has run since 1997.

With his background in business and government, Tyler is passionate about encouraging entrepreneurialism through tax incentives and the preservation of Utah's friendly business climate. Noting Utah's spot as one of the top states in the nation for business development, Tyler hopes to work toward increased economic growth by reducing the corporate tax, encouraging new business development and thereby increasing tax revenue to the state.

"Utah is home to an infinite supply of innovation; the key is to create opportunities for it to flourish and benefit Utah businesses and taxpayers" Tyler said. "The Utah Taxpayers Association is consistently at the forefront of the fight to protect the best interests of Utah taxpayers through sound tax policy and government efficiency, and it's something that I'm proud to be a part of."

2010 Legislative Watchlist

The Utah Taxpayers Association has updated its 2010 legislative watchlist. The watchlist outlines the Association's position on bills of interest and continues to be updated throughout the legislative session. The complete watchlist is available for viewing by visiting www.utahtaxpayers.org.

Legislative Committee Meetings

The Utah Taxpayers Association will be holding legislative committee meetings during the legislative session every Thursday at 7:00 am, in the Seagull Room at the south end of the Capitol cafeteria located in the East Annex building. These meetings are open to all members and will continue through March 4th. We will discuss the progress of bills of interest, provide updated legislative watchlists and answer questions about the legislative session.