



THE UTAH TAXPAYER

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April 11: Utah's Tax Freedom Day Later Than National Average

Tax Freedom Day will arrive in Utah on April 11th, according to the Tax Foundation of Washington DC. Tax Freedom Day is a broad economic measure that accounts for the amount of federal, state, and local taxes paid as a percent of the national income. It answers the basic question, "What price are taxpayers paying for government?" An official government figure for total tax collections is divided by the total national income. The answer for 2010 is that taxes will amount to 26.89% of our total national income (the 99 days from January 1 to April 9 is 26.89% of the year). The national Tax Freedom Day arrives on April 9th this year, which, with the exception of 2009 when it fell on April 8th, is the earliest it has fallen since 1965.

Due to the current recession, total tax collections have been reduced even faster than personal incomes. The addition of temporary income tax cuts enacted by President Obama and Congress, as well as a temporary repeal of the estate tax and particular income tax provisions have further reduced the tax burden on Americans. However, Utahns, as well as all Americans, will still pay more taxes in 2010 than they will spend on food, clothing and shelter combined.

Utah's federal income tax burden is higher than the national average, due to a host of tax burdens which are above the national average. According to your Taxpayers Association's findings in the most recent "[How Utah Compares](#)" report (2007), Utah's total taxes and fees rank 5th highest in the nation; excluding college tuition, Utah's taxes and fees rank 7th highest. Additionally, Utah's individual income burden ranks 10th highest, our motor fuel tax ranks 11th, our total revenue including the federal burden ranks 12th, our total state and local revenue burden ranks 13th, our general sales tax burden ranks 13th and our total tax burden ranks 19th highest in the nation. Only Utah's property tax burden, ranked 37th, ranks in the lower-half of all 50 states. All things considered, Utah ranks as the 14th highest-burdened state in the union.

32nd Annual "Utah Taxes Now" Conference

Your Taxpayers Association will be hosting its annual "Utah Taxes Now" Conference on Tuesday, May 11, 2009 at the Little America Hotel. Leaders from the Utah House of Representatives and Senate, the Governor's office, policy experts and community leaders will cover a broad range of tax issues, including the Salt Lake County Police Fee, Jordan School District's long-term funding chasm and the Taxpayers Association's latest cost of government report.

Teed Off On Taxes Golf Tournament

Join the Utah Taxpayers Association for their annual "Teed Off On Taxes" Golf Tournament on Thursday, June 10, 2010 at the Eaglewood Golf Course in North Salt Lake. Sponsorship opportunities are available.

Register for the "Utah Taxes Now" Conference and "Teed Off On Taxes" Golf Tournament by visiting www.utahtaxpayers.org or contacting Tyler Pace at tyler@utahtaxpayers.org or (801) 972-8814.

APRIL 2010 VOLUME 41



My Corner: Restoring the Constitutional Restraints on Federal Power Page 2



Association Successful in 2010 Legislative Session Page 3



Is Salt Lake County Police Fee Legal? Page 4



Balancing the Jordan School District Budget Without Another Tax Increase Page 5



Taxpayers Association Releases 2010 Legislative Scorecard Page 6

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Howard Stephenson	President
Royce Van Tassell	Vice President
Jacquelyn Evans	Research Analyst
Tyler Pace	Executive Secretary

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Perhaps the biggest reason for Utah's high tax ranking is high education spending demands produced by Utah's unique age demographics. The percent of population enrolled in public schools is 25% higher in Utah than the national average. Nearly 21% of Utah's total population is enrolled in public schools compared to 16.6% for the nation. In addition, the high percentage of Utahns enrolled in public universities and colleges attributes is responsible for the higher education charges.

Tax burdens vary considerably from state to state, not only because of different state and local taxes, but also because their federal tax payments can vary dramatically. Utah's average annual wage ranks 35th nationally, which is about 18% below the national average. Since the federal tax is steeply progressive, Utah's lower wages means that Utahns pay lower federal income taxes compared to the national average. With larger average families and lower average household incomes, Utahns receive more tax deductions and pay less federal

income tax on average.

The five states with the heaviest tax burdens and which therefore wait the longest for Tax Freedom Day are primarily in the northeast: Connecticut (April 27th), New Jersey (April 25th), New York (April 23rd), Maryland (April 19th) and Washington state (April 15th). Because overall salaries are higher in these states, taxpayers must work longer to pay their disproportionate share of progressive federal income taxes. The five states with the lightest total tax burdens are Alaska and Louisiana, which celebrate on March 26th, Mississippi (March 28th), South Dakota (March 29th) and West Virginia (March 30th).

For more information on Tax Freedom Day, you can visit the Special Report published by the Tax Foundation at <http://www.taxfoundation.org/files/sr177.pdf>.



**Association President
Howard Stephenson**

My Corner: Restoring Constitutional Restraints on Federal Power

Apathy among voters has increased steadily for several years. Until recently, there wasn't a lot of concern from the electorate about the growth of government because we seemed to have the resources to pay the bills.

But economic times have changed and so has the apathy. There is a definite groundswell of dissatisfaction about

overspending and overreaching on the part of the federal government. People intuitively know that somebody is ultimately going to have to pay for the current excesses.

Some of the most encouraging aspects of the current nationwide grassroots movements are that more people are focusing on principles, not rhetoric, action, not anger.

Today's activists cite the 9th and 10th Amendments to the Constitution in their arguments against what is happening in

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Washington. Their concerns about federal encroachment on personal liberties echo throughout American history, beginning with the debates over adopting the Constitution at all.

Many opponents of the proposed Constitution, or Anti-Federalists as they came to be known, worried that the proposed Constitution did not have a bill of rights, and so would not protect fundamental rights like the free exercise of religion, freedom of the press, the right to keep and bear arms, etc.

In addition, they worried that the federal government, being necessarily distant from the people, would trample the rights of the people. They preferred to rely on the legislatures of the several states, who were much closer to the people, and therefore less likely to overstep their bounds.

The Constitution's supporters initially opposed adding a bill of rights, worrying most famously in *Federalist 84* that any rights inadvertently omitted from the list would be presumed unprotected. In many states, it was evident that the Constitution would not pass without a bill of rights. Recognizing this political conundrum, the Federalists generally, and James Madison in particular, became champions of a bill of rights.

On June 8, 1789, Virginia Representative James Madison spoke on the floor of House, and outlined what eventually became the Bill of Rights. As one of the three authors of *The Federalist Papers*, Madison still harbored the concerns that his proposed bill of rights would omit fundamental principles. To prevent that interpretation, his June 8 speech included two "catch-all" clauses, clauses that eventually became the 9th and 10th Amendments.

Clearly the 9th and 10th Amendments' limits on the powers of the federal government have not been adhered to by Congress or the President. Citizens are reconsidering the breadth of Congress' authority, in particular how the 9th and 10th Amendments interact with the Commerce Clause.

Under the Commerce Clause, Congress is empowered to "regulate Commerce ... among the several States." Until the New Deal, the Supreme Court succeeded in limiting federal authority to interstate commerce only. For example, the Justices repeatedly rejected FDR's attempts to regulate activities that did not touch commerce between two or more states.

Frustrated by what he saw as old men out of touch with reality, President Roosevelt proposed a scheme to pack the Supreme Court with Justices who would support his expansive view of federal authority. As the Supreme Court and President Roosevelt squared off, the Justices blinked, and began allowing President Roosevelt's programs to stand.

The Court's 1942 decision in *Wickard v. Filburn* articulated just how far the federal government has strayed from the limits the Founding generation – Federalist and Anti-Federalist alike –

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intended. In Wickard, the Court ruled that Congress' authority under the Commerce Clause allowed them to regulate wheat production, even if the wheat was consumed on the same farm it was grown.

If Mr. Filburn had not grown his own wheat, the Court reasoned, he would have had to purchase wheat on the market, and the wheat he purchased might have travelled across state lines. Thus, as the Court saw it, Mr. Filburn's home-grown and home-consumed wheat was properly subject to Congress' regulatory authority under the Commerce Clause. With so expansive an interpretation of the Commerce Clause, it is hard to imagine any element of American life Congress' Commerce Clause authority cannot include.

Important as the Wickard decision was, it is merely the clearest expression of a trend that had begun decades before. The passage of the 17th Amendment in 1913 changed the election of United States Senators by the State Legislatures to election by the people. With this new set of constituents, Senators no longer felt compelled to represent their state government.

As the text of the 10th Amendment and the original election method of Senators suggest, the Founders anticipated that the

Senate would guard the rights of the states, while the House of Representatives would protect the rights of the people. With the passage of the 17th Amendment, however, the link between Senators and the states was fundamentally altered. Instead of reporting to elected representatives who "refine and enlarge the public views," Senators could "by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people" (*Federalist 10*).

Without this overt state check on federal overreaching, Congress' ability to ignore the 9th and 10th Amendments expanded dramatically. They have now conspired to buy 50% of General Motors, 90% of AIG, and mandated that every American purchase health insurance.

This election year is sure to change the complexion of Congress as voters exercise their prerogative to support candidates who support the 9th and 10th Amendments. The need for the people to stand up has never been greater, and I encourage all Utahns to educate themselves on the limits the Constitution sets on federal power, and how the people and the states can most effectively check federal overreaching.

Taxpayers Association Successful in 2010 Legislative Session

The 2010 general legislative session has come to a close and your Taxpayers Association was successful in protecting economic development and business growth, ensuring responsible use of taxpayer dollars and improving education spending.

The accompanying table highlights some of your Taxpayers Association's priority legislation. Of the nine bills included in the accompanying table, your Taxpayers Association only reported three losses.

In the category of economic development and business growth, Senator Wayne Niederhauser proposed SB165 that took the first step toward implementing a single sales factor in apportioning business income for multi-state business. Senator Howard Stephenson proposed SB61 that expanded the sales and use tax exemption on business inputs to include web search portals. Your Taxpayers Association supported both of these bills in order to remove barriers to capital investment and to prevent dual taxation of both production inputs and the final product. Both bills passed and were signed into law by Governor Gary Herbert.

Your Taxpayers Association supported SB77 (Dayton), to prohibit school districts from paying the salaries of teacher union representatives while not working for the school district. Tax dollars should be used to represent the interests of school districts and taxpayers, not unions. SB77 passed the Senate, but the failed in the House.

In the area of public spending, your Taxpayers Association supported numerous proposals to decrease government expenses. The clearest

Bill # Sponsor	Description	Win/ Loss
HB196 Ray	HB196 increases Utah's tobacco tax by 144%. UTA Position: Legislative Action:	Loss
HB219 Froerer	HB219 increases the penalty on delinquent property taxes, but reduces the penalty if taxes are paid by a specific date. UTA Position: Legislative Action:	Win
SB43 Liljenquist	SB43 prohibits retired state employees who return to state employment from receiving both a salary and a retirement paycheck as a false retirement. UTA Position: Legislative Action:	Win
SB61 Stephenson	SB61 expands the sales and use tax exemptions for business inputs to include web search portals. UTA Position: Legislative Action:	Win
SB63 Liljenquist	SB63 caps employer contribution amounts and reduces retirement benefits for new public employees and new public safety and firefighter employees. UTA Position: Legislative Action:	Win
SB77 Dayton	SB77 would have prohibited school districts from paying the salaries of teacher union representatives while on leave for union duties. UTA Position: Legislative Action:	Loss
SB133 Adams	SB133 requires Tax Commissioners to have significant and relevant tax experience and requires that at least one member of the Tax Commission have substantial knowledge in sales, excise, income and corporation taxation. UTA Position: Legislative Action:	Win
SB165 Niederhauser	SB165 takes the first step toward implementing a single sales factor in apportioning business income for multi-state businesses. UTA Position: Legislative Action:	Win
SB272 Stevenson	SB272 allows the Utah Transit Authority to create and finance five transit oriented developments. UTA Position: Legislative Action:	Loss

examples are Senator Dan Liljenquist's legislation to help Utah's retirement system to recover from the current \$6.5 billion unfunded liability. SB43 will prohibit retired state employees from returning to work with the state and receiving both a salary and retirement paycheck in a false retirement. SB63 caps employer contribution amounts and reduces

retirement benefits for new public employees. Both bills were signed into law.

Your Taxpayers Association has compiled a complete legislative watchlist, detailing Association positions and legislative results for all 2010 tax and spending bills. To view the complete watchlist, please visit www.utahtaxpayers.org.

Is Salt Lake County's Police Fee Legal?

Property owners in unincorporated Salt Lake County received their first bill for Salt Lake County's police fee in March. Understandably, they are shocked to find out that they are paying hundreds, thousands, even millions of dollars for police service that they've always received without this fee. Your Taxpayers Association protested the County's imposition of this fee. Upon further review, we have serious questions about the fee's legality.

The Taxpayers Association's legal questions revolve around two issues. First, does the Salt Lake Valley Law Enforcement Service Area (SLVESA) have authority to levy a police fee? Second, is Salt Lake County administering and imposing the fee equitably? Based on your

The real problem Salt Lake County faces is their unwillingness to make the hard, but necessary cuts in their budget that taxpayers have made in their own budgets.

Taxpayers Association analysis, the answer to both these questions is no.

In May 2009, the Salt Lake County Council decided to evaluate whether to create a local district that would be responsible for law enforcement services in unincorporated Salt Lake County. Their advertisement for the June 19, 2009 public hearing stated the Council's intent "to reduce the tax levy on property in the unincorporated area of [Salt Lake] County in the same amount as any tax levied" by the proposed SLVESA.

During the public hearing, the Council gave no indication that they planned to deviate from their stated intent of offsetting any property tax imposed by the SLVESA with a reduction in the County's property tax. Importantly, the County said nothing in advertising the public hearing or during the public hearing that the SLVESA would have authority to levy a fee.

Once the 60-day protest period for the formation of the SLVESA expired on August 17, 2009, the County Council finalized creation of the SLVESA. Like the resolution the

Your Taxpayers Association will be working with the Legislature during the 2010 Interim to identify the best way to eliminate this inappropriate and illegal fee.

County Council adopted in May 2009 to start the process, the August 18, 2009 resolution granted the SLVESA authority to levy a property tax, but did not grant authority

to impose a fee. Nevertheless, on December 15, 2009 the Police Service Area announced their intent to levy a fee, not a property tax, on various categories of properties in unincorporated Salt Lake County.

In January 2010 the Board of the SLVESA held a public hearing and adopted the proposed fee schedule. Under this schedule, owners of single-family homes paid \$174 per year,

owners of mobile homes would pay \$186 per year, and apartment owners \$186 per apartment per year. Businesses used several different fee schedules, including one that set the fee for "Super Centers" at \$81,912 per year and millions of dollars for "regionally significant employers."

During the public hearing, County Councilman Jim Bradley explained why Salt Lake County felt this fee was necessary. He said that counties do not have authority to levy the same six percent utility franchise tax that municipalities do. Interestingly, he did not explain under what authority they were imposing a fee, instead of a property tax increase.

When the SLVESA adopted the fee schedule and imposed the fee, they advertised the public hearing in local papers. However, they did not send each affected property owner an

estimate of how much the proposed fee schedule would cost them. The advertising did bring many angry residents to the public hearing. Once property owners started receiving their first bill in March, the full extent of people's anger over the police fee became apparent.

Your Taxpayers Association has fielded dozens of calls from irate residents looking for ways to overturn this fee. In one case, the SLVESA was imposing multiple police fees on a single property, just because the property was the registered address for several businesses. At least one of those businesses is located outside Utah, and others are in incorporated Utah cities. Clearly, there is no rational basis for imposing multiple police fees on a single property, nor is there a rational basis for imposing these different fees on Salt Lake County taxpayers.

As the Taxpayers Association has looked closer at the SLVESA fee, it's clear that Salt Lake County's real goal is to prod the Legislature into granting counties the authority to impose a six percent utility franchise tax. For decades, your Taxpayers Association has resisted the counties' efforts to obtain that authority, and our opposition has not changed. Businesses that consume large amounts of power must have an affordable option to locate, and allowing counties to impose a utility franchise tax would simply eliminate that option.

In an effort to eliminate the police fee, HB 383 was proposed during the last legislative session. However, HB 383 would have also given counties the authority to impose a utility franchise tax. Your Taxpayers Association led the charge against that proposal, and HB 383 did not even receive a committee hearing.

The real problem Salt Lake County faces is their unwillingness



to make the hard, but necessary cuts in their budget that taxpayers have made in their own budgets. Given that SLVESA is already collecting this fee, only two options remain to help them make the necessary cuts. First, the Taxpayers Association is considering litigation that challenges SLVESA's authority to impose this fee, and whether the fee is imposed equitably.

Second, your Taxpayers Association will be working with the

Legislature during the 2010 Interim to identify the best way to eliminate this inappropriate and illegal fee. We plan during the 2011 Legislature to promote legislation that will eliminate this fee, and prevent other counties from enacting similar fees. In either case, we are determined to eliminate this fee, and to make sure counties do not receive authority to impose a utility franchise tax.

Balancing the Jordan School District Budget Without Another Tax Increase

Much of the 2010 Legislative Session revolved around the challenges the Jordan School District faces in balancing its budget. Last year the Jordan School Board ignored recommendations from legislative leaders and your Taxpayers Association, and instead emptied their rainy day fund. With the number of children in the district still climbing, and education funding even lower this year than last, many in the Legislature were looking for ways to help the Jordan School Board more easily balance their budget.

In November 2009, the School Board announced that they anticipated a **\$29.2 million shortfall** for their FY 2011 budget. The options the Legislature explored to help the District raise that additional revenue included a doubling of the District's voted leeway (HB 463-Hutchings), taking \$15.4 million from the Canyons School District (HB 292- Bird), and statewide equalization of a portion of the property tax (HB 129-Newbold). None of those passed.

The Legislature Passes SB 175 to "Help" the Jordan School District

On the final day of the session, the Legislature approved SB 175. SB 175 authorized the Jordan School District to supplement their maintenance and operations (M&O) budget with a portion of their capital funds. There are several problems with this "help." First, the growth of the Jordan School District means that within five years the Jordan School District will need another \$250 million in new buildings. In other words, the District's capital needs are at least as significant as their M&O problems.

Second, SB 175 simply delays the inevitable. SB 175 only allows the Jordan School District to use capital funds for operations and maintenance for two years, and then the District will be in the same financial position they are today. The District could be in an even worse financial position, since using these capital funds to prop up programs the District can't afford will only make cutting those programs more difficult.

The Jordan School District's Proposed Solutions

To highlight the challenges the Jordan School District faces in balancing its budget, in February their School Board announced its first proposal to find the \$30 million in cuts or tax increases they need to balance the budget. \$17.5 million would come from administrative cuts, program changes and elimination of classified and other non-classroom-teacher positions. The most jarring element of the Board's proposal was to save the final \$12.5 million by increasing class size throughout the district by an average of four.

No doubt the School Board hoped for the public furor the

increased class size proposal produced, since that furor fueled the Legislature's willingness to pass SB 175. On March 17 the Jordan School Board announced their intent to maintain class sizes the same by using capital funds for M&O. The other \$17.5 million in cuts would remain.

The Modified Year-Round Solution

As explained earlier, relying on SB 175 for the last \$12.5 million will exacerbate the Jordan School Board's problems. Your Taxpayers Association has championed a program that utilizes school buildings year round, and provides for a 50% increase in pay for teachers who opt in.

Instead of allowing school buildings to lie fallow for 1/3 of the year, the Taxpayers Association recommends that districts implement a third semester plan. Each family could choose which two semesters their child(ren) would go to school. In every case, the school would be used by 2/3 of the students. That would immediately increase the district's ability to serve students by half, without having any increase in costs.

Moreover, this proposal would allow teachers to opt into teaching three rather than two semesters. In so doing, they would automatically receive a 50% increase in pay. Again, this increase in pay would be possible because the district wouldn't need to hire as many new teachers each year. Fewer teachers serving more students means teachers who opt-in earn more.

The Third Semester Benefits for Teachers

The benefits to teachers are even more impressive. Under current contracts, school districts pay for 12 months of health care benefits, even though teachers are only in the classroom for 8 months. For each teacher who opts into the third semester, the savings created by not having to purchase additional health insurance amount to approximately 40 teaching days.

The school district and teachers can use those teaching days in a variety of beneficial ways. For example, teachers could receive three weeks of paid vacation and ten paid holidays. Neither of those options is currently available.

The district could also afford to hire administrative help that would do the grunt work of data entry, making copies, etc. for each three-semester teacher. Finally, the district could offer paid teacher improvement days for these teachers. Importantly, no teacher would have to teach three semesters; it would merely be an option each teacher could take advantage of.

How the Third Semester Plan Helps Balance the Jordan School District's Budget

This solution would go a long way towards solving the Jordan

District's budget problems. By using the district's infrastructure more efficiently, they would not need to build new buildings so soon. In addition, they could absorb a significant portion of the ongoing costs by not having to hire the approximately 200 new teachers the Jordan District hires each year.

Using your Taxpayers Association's latest school spending

report, being able to avoid hiring 200 new teachers this fall would translate into a savings of approximately \$12 million. That the district could avoid having to hire 200 teachers just this year may be unrealistic in the first year of implementing a modified year round program. However, it is clear that a third semester program can also provide significant M&O savings for the Jordan School District, even in the first year.

Taxpayers Association Releases 2010 Legislative Scorecard

Your Taxpayers Association has released its 2010 legislative scorecard. Compiling the votes of each of the 104 legislators on thirteen key tax and spending bills, your Taxpayers Association has graded each member of the legislature.

In the Utah House of Representatives, five representatives received a perfect, 100% score: Brad Daw, Craig Frank, Keith Grover, Rebecca Lockhart and Ken Sumsion. All five of these Representatives are Republicans. The highest scoring Democrats are Janice Fisher (67%) and Laura Black (62%). The average score for the House of Representatives is 66%.

Nineteen Representatives scored less than 50%. Those Representatives are Tim Cosgrove (46%), Susan Duckworth (46%), Christine Johnson (46%), Marie Poulson (46%), Evan Vickers (46%), Mark Wheatley (46%), Larry Wiley (46%), Neal Hendrickson (45%), Rhonda Menlove (45%), Sheryl Allen (42%),

Jackie Biskupski (42%), David Litvack (42%), Phil Riesen (42%), Melvin Brown (40%), Jim Bird (38%), Neil Hansen (38%), Lynn Hemingway (38%), Carol Spackman Moss (33%), and Jennifer Seelig (33%).

The lowest scoring Republicans are Jim Bird (38%), Melvin Brown (40%) and Sheryl Allen (42%).

In the Utah Senate, Margaret Dayton, Mark Madsen and Howard Stephenson all received perfect, 100% scores. All three of these Senators are Republicans. The highest scoring Democrats are Brent Goodfellow (69%) and Gene Davis (67%).

Only two Senators scored below 50%, Ross Romero (46%) and Luz Robles (44%). No Republicans scored below 67%.

To view the complete scorecard and final legislative watchlist, please visit <http://www.utahtaxpayers.org>.