November 2018

Volume 43 Issue 11

THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

Revenue and Taxation Interim Committee Discusses Family Impact of Federal Tax Reform

Following the passage of the Tax Cuts and Jobs Act in December of 2017, the now in-effect law eliminated the federal personal exemption, but also other changes that would put more money in Utahns pockets.

However, this additional money as a result of federal tax reform would still be subject to Utah income taxes.

Combined with the elimination of the personal exemption and this new money being subject to the state income taxes, some Utahns, particularly those with larger families, may actually see an increase in Utah taxes.

In July, the Utah Legislature in a special session passed HB 2003, which alleviated some of that burden. Lawmakers appropriated $30 million to give these families, with multiple dependent deductions, some relief from the impact that the federal changes would cause on their state income taxes. That works out to roughly a $565 deduction per dependent.

During the October interim meeting of the Revenue and Taxation Committee, Utah Taxpayers Association Chairman Morris Jackson presented the committee with his findings on the potential effects of federal tax reform on Utah families.

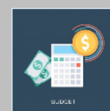
Mr. Morris, in his work as a CPA and tax preparer, found that Utah families may face a tax increase of more than $1,000 by the state, due to these changes.

As part of the Tax Cuts and Jobs Act, the standard deduction was nearly doubled, *(continued on page 4)*

Notice of Utah Taxpayers Association Annual Membership Business Meeting

All members of the Utah Taxpayers Association are invited to attend the Association's Annual Business Meeting, which will be held on Thursday, November 15, 2018 at 2:00 PM. The meeting will be at the offices of Holland & Hart, 222 South Main Street, Suite 2200, Salt Lake City, Utah. Due to building security, please RSVP and bring photo ID. Nominations for the Board of Directors will be accepted from the general membership until five days prior to the Annual Meeting. To RVSP, please contact Bren at (801) 972- 8814 or bren@utahtaxpayers.org.

NOVEMBER 2018
VOLUME 43



Revenue and Taxation Interim Discusses Family Impact of Federal Tax Reform — Page 1

My Corner: The Power to Tax Involves the Power to Destroy: Utah State Tax Commission — Page 2

Recent Report Proposes Improvements in Collection of Delinquent Income Taxes — Page 5

Taxpayers Association Hires New Vice President — Page 5

Utah Senate Confirms New Tax Commissioner Lawrence Walters — Page 6

Your Association Accomplishments in September — Page 6

My Corner: The Power to Tax Involves the Power to Destroy: Utah State Tax Commission

Association President
Howard Stephenson

I recently spoke at the annual convention of COST (Committee on State Taxation) in Phoenix, along with other western states taxpayers association representatives. Many state reports told of challenges in getting state legislators to enact appropriate economic-growth tax reform, of biased or unqualified tax commissioners, and flawed tax filing and tax appeal processes.

I was pleased to report on Utah's success at the most recent legislative session wherein we won victories on major tax reforms, including single sales factor income tax apportionment and elimination of all sales taxes on business inputs for manufacturing and mining operations.

I also reported our success over the years of increasingly stringent qualifications for Utah state tax commission nominees to the extent that now we have all experienced experts in taxation on the four member panel instead of the 'bad old days' of political appointees without expertise. The recent confirmation of Dr. Larry Walters, one of the world's leading authorities on ad valorem taxes is an example of this.

I reminded COST members of the fact that in Utah we have established a tax court with tax-trained judges at the district court level. This ensures that in the event of an appeal of the tax commission's decision, the taxpayer doesn't have to pay their attorneys to educate renaissance judges on technicalities of tax law. What's more, appeals to district court are trial de novo, not simply a review of the record of the tax commission hearing.

Utah State Tax Commission Shows Bias Against New Business

As much as we have to be proud of regarding Utah's tax structure and tax administration process, there is one area that still causes grave concern: the tendency of the commission and administrative law judges to favor sales tax auditors who are still too often motivated by revenue enhancement instead of fair application of the law.

After returning home from the COST meeting, I was disappointed to discover that in a recent taxpayer sales tax appeal, the commission was willing to give their auditors undue deference, supporting the auditors' requirement that the taxpayer's small business produce more than a quarter of a million dollars **before** he could appeal to the district court.

The most offensive part of this particular ruling is the requirement of the payment of years of uncollected sales taxes from a business which relied on a published tax commission rule stating the activity was *not* sales taxable. Since there had been no case law on sales taxability of this new type of business, and without any precedent such as audits or private letter rulings, a more reasonable ruling would be to require the collection of the tax going forward. However, this ruling requires the small business to not only pay years of back taxes, but also penalties and interest, potentially putting the business into bankruptcy.

Things a Reasonable Person Would Expect to Be Non-Taxable

"The power to tax involves the power to destroy" was made famous an 1819 US Supreme court case, McCullouch v. Maryland. It appears the Utah State Tax Commission has used this power to potentially destroy a first of its kind business in Utah in a cavalier fashion.

Let me explain why I say the tax commission and their sales tax auditors are cavalier in the requirement to remit sales taxes which a business never collected from customers, despite the business following to the letter a tax commission administrative rule. The sales tax typically constitutes a dollar value significantly higher than the net profits a retailer earns on the same transaction. In other words, the government, through sales taxes, makes more on each transaction than the business does. Consequently, when a retailer is required pay the 7% sales tax and their net profit on the same transaction is 3.5%, the business would have to give over to the tax collector twice as much as the business has made. Essentially giving up six years of business profits for three years of un-collected sales taxes. Property and income tax deficiencies are only a fraction of that impact: Income taxes are no more than 4.95% of a person's income or a business' profits and property taxes are less than 1.5% there is one area that still causes grave concern: the tendency of the commission and administrative law judges to favor sales tax auditors who are still too often motivated by revenue enhancement instead of fair application of the law of the property's value.

IFLY is the only wind tunnel skydiving instruction center open to the public in Utah. IFLY is a wind tunnel in which participants can take part in wind tunnel flying. This is very similar to skydiving, but more difficult and precise. It is a challenging and physically demanding activity that can be dangerous to participants if safety procedures are not followed. Gary Nielsen, owner of IFLY, said the entire IFLY activity from start to finish is a lesson and involves constant instruction on wind tunnel flying, geared to teach people how to progress in this activity.

> "As much as we have to be proud of regarding Utah's tax structure and tax administration process there is one area that still causes grave concern: the tendency of the commission and administrative law judges to favor sales tax auditors who are still too often motivated by revenue enhancement instead of fair application of the law."

Tax Commission auditors issued a deficiency plus penalties and interest of more than $250,000 for failure to collect sales taxes on lessons in the wind tunnel. IFLY had been collecting sales taxes on merchandise sales made at the business, but did not collect sales taxes on the lessons given by instructors.

Tax Commission Calls its Own Rule "Guidance", Not to be Followed in this Case

IFLY had been operating under Tax Commission Rule R865-19S-33, which states that lessons, public or private, are not subject to sales tax. The Tax Commission auditors called the receipts "admission fees" which are subject to sales taxes for amusements.

The liability to the IFLY's owners is immense if constant instruction is not provided. At all times, a certified wind tunnel instructor is inside the wind tunnel with the participant and a second instructor is outside the tunnel operating the wind flow. No participants, no matter how advanced, are allowed in the wind tunnel without a certified flight instructor. All instructors are required to be certified by the International Body Flight Association which requires many hours of training for certification.

Mr. Nielsen demonstrated that the entire IFLY activity is a "lesson" from beginning to end and therefore is not subject to tax based on the provisions of Utah Administrative Rule mentioned earlier. Unfortunately, in its ruling the tax commission stated that the rule should be considered "guidance" and is therefore not binding.

Additionally, the Tax Commission ruled that since 95% of customers are not "repeat" customers, they are consuming this more as a recreational activity, not a lesson. However, this fact actually proves that at least 95% of the customers were specifically paying for lessons and training as the activity cannot be engaged in without constant instruction from experts.

Since wind-tunnel skydiving training is relatively new and IFLY is the only provider in Utah and has never been subject to a sales tax audit, the tax commission should not have used its power to destroy in this manner. To require IFLY to pay a nearly 7% tax which was never collected from customers and which is more than the net profits on the business's IFLY income, the tax commission should have established the precedent going forward instead of potentially putting a legitimate business into bankruptcy.

Revenue and Taxation Interim Committee Discusses Family Impact of Federal Tax Reform (continued)

to $12,000 for single filers, and $24,000 for those filing as a married couple.

This applies to Utah income tax filers as well, since Utah is coupled to federal changes regarding the standard deduction.

However, the dependent deduction was eliminated as part of tax reform, both in Utah and federally. In 2017, filers could claim a combined $7,088 deduction per dependent.

As was mentioned before, the Utah Legislature, in July, did provide a $565 dependent deduction, so Utah's is no longer at zero. It is a significant decrease from the more than $7,000 that income tax filers could claim in 2017.

The breakdowns for taxpayers that file jointly, and have multiple dependents are a stark increase. Mr. Morris calculated that families with an adjusted gross income (AGI) of $75,000 (the Utah median income is $66,000) and two dependents or more would see a tax increase of up to $600, if the filer took the standard deduction.

You can see the breakdown you and your family might experience in the first chart below, based on income levels of 25,000, and the number of dependents, if the filer opted for the standard deduction.

If a filer would to itemize deductions, the tax increase those families face could be upwards of $1,000. Those families with an AGI of $100,000, taking itemized deductions (approximated at 25% of the AGI), and with 6 dependents could see a state tax increase of $1,263. You can see Mr. Morris' breakdown in the second chart below.

Your Taxpayers Association encourages the Utah Legislature to address the unintentional impact of the federal tax cuts immediately, through an adjustment to the income tax that would lower the rate and decrease taxes for all Utahns.

You can listen to Mr. Jackson's testimony and presentation by clicking on the links.

Utah Income Tax
2018 vs 2017
Impact due to Federal & State Legislation Changes
Taxpayer Claims Standard Deduction

Filing Status	2018 Standard Deduction	Adjusted Gross Income $25,000	$50,000	$75,000	$100,000	$125,000	$150,000	$200,000	$250,000
MFJ 0 Dependents	$24,000	-$275	-$287	-$300	-$312	-$241	-$75	-$100	-$125
MFJ 1 Dependents	$24,000	-$125	-$137	-$150	-$162	-$234	-$75	-$100	-$125
MFJ 2 Dependents	$24,000	$0	$12	$0	-$13	-$25	-$75	-$100	-$125
MFJ 3 Dependents	$24,000	$0	$162	$149	$137	$124	$12	-$100	-$125
MFJ 4 Dependents	$24,000	$0	$311	$299	$286	$273	$194	-$100	-$125
MFJ 5 Dependents	$24,000	$0	$357	$448	$436	$424	$376	-$100	-$125
MFJ 6 Dependents	$24,000	$0	$610	$598	$585	$573	$559	-$100	-$125

	Adjusted Gross Income $25,000	$50,000	$75,000	$100,000	$125,000	$150,000	$200,000	$250,000
Item Ded 25% of AGI	$6,250	$12,500	$18,750	$25,000	$31,250	$37,500	$50,000	$62,500

Filing Status	Standard Ded 2018	Change in Utah Tax Liability 2018 vs 2017 Standard	Standard	Standard	Itemize	Itemize	Itemize	Itemize	Itemize
MFJ 0 Dependents	$24,000	-$123	-$287	-$300	$366	$302	$290	$265	$240
MFJ 1 Dependents	$24,000	$0	-$137	-$118	$549	$450	$438	$413	$388
MFJ 2 Dependents	$24,000	$0	$12	$65	$731	$599	$586	$561	$535
MFJ 3 Dependents	$24,000	$0	$162	$182	$848	$747	$735	$710	$684
MFJ 4 Dependents	$24,000	$0	$311	$299	$964	$896	$883	$857	$833
MFJ 5 Dependents	$24,000	$0	$461	$449	$1,114	$1,044	$1,031	$1,003	$877
MFJ 6 Dependents	$24,000	$0	$610	$598	$1,263	$1,192	$1,179	$1,173	$1,147

The top chart shows the net amount (+/-) of the standard deduction and dependents on income level, as a result of federal tax reform, provided by Mr. Morris Jackson on October 17, 2018.
The second chart shows the net amount (=/-) of the standard and itemized deductions on income level, as a result of federal tax reform, provided by Mr. Morris Jackson on October 17, 2018.

Recent Report Proposes Improvements to Tax Commission in Collection of Delinquent Income Taxes

The Legislative Auditor General issued a report on their recent in-depth budget review of the State Tax Commission to the Revenue and Taxation Interim Committee in October. It highlights several areas where improvements should be made.

The review called for improvements in the collection delinquent income taxes. For the fiscal years 2013 to 2017, the state is still owed approximately $552 million in unpaid taxes. A division of the State Tax Commission – Taxpayer Services (TPS) shoulders the task of collecting taxes that are owed. The report points out several areas where TPS could improve.

First, TPS has made many improvements in recent years, however they could also look at standardizing procedures among the various offices around the State to close the gaps in productivity and improve the overall collection process. Variations in individual agent performances should also be addressed. The report noted that delinquent taxes that go uncollected for 90 days are less likely to be recovered by the state. So, efficient processes are a key factor.

Second, TPS could look at hiring more collection agents. The report found that for every .02 cents invested in personnel, there was a collection of approximately $1. That is a substantial return on investment and is significantly less than the commission paid to outside vendor, who handle the more difficult cases.

According to the report, TPS could also look at off-loading the more difficult to collect cases to the outside vendors since they are often more successful on those cases.

Finally, the report said TPS could look at using more than one vendor as an outside collection agency. Other departments in state government use multiple vendors which can encourage competition, collaboration, and drive down costs over time.

The report shines a lot of light on the Tax Commission's collections efforts and provides some suggestions on how Utah can more efficiently collect more delinquent taxes.

To read the audit, click here.

Utah Taxpayers Association Announces Selection of New Vice President

The Utah Taxpayers Association has named Rusty Cannon as its new Vice President, replacing Billy Hesterman who has joined the government relations team at Holland and Hart. Cannon comes to the association from Melaleuca in Idaho Falls, ID where he was working as the Director of Government Relations. Rusty has been a lifelong resident of Utah except for the last few years spent in Idaho and is looking forward to returning home to Utah with his family.

Mr. Cannon has served as the Davis County Republican Party chair in 2011 and 2012, where he established strong relationships with many Utah local elected officials and legislators.

"We are pleased to have Rusty on board to serve as our new vice president," said Howard Stephenson, president of the Utah Taxpayers Association. "Rusty's experience and maturity makes him an ideal representative for the Association. He has a passion for tax policy and has earned the respect of legislators and policymakers that he worked with in recent years in Idaho. We are excited to have him get started."

"For almost 100 years, the Taxpayers Association has been Utah's leading organization promoting sound tax policy and a top notch education system," said Cannon. "Utah is a shining example of good tax policy across the nation and I'm looking forward to continuing the momentum that has been generated. I hope to contribute to improving Utah's tax, business and education systems as future challenges and opportunities unfold."

Cannon had been working for Melaleuca since 2014. Prior to that he has spent his career in Financial Services and Real Estate and is a graduate of the University of Utah with a BA in Finance.

The Utah Senate Confirms New Tax Commissioner Lawrence Walters, Started His Term November 1, 2018

The Utah Senate has confirmed the governor's appointment to replace Robert Pero on the Utah State Tax Commission. Commissioner Pero submitted his resignation effective October 31, 2018.

Dr. Lawrence (Larry) C. Walters is not new to Utah tax policy and legislative committees. As a professor of public management and policy at Romney Institute of Public Management at BYU, Dr. Walters has contributed for many years to technical research required by the Tax Review Commission and the Legislature's Revenue and Taxation Committee.

Walters is an international expert on ad valorem taxes, and has been in demand in such countries as the Netherlands, China, and Columbia, as well as the International Monetary Fund and many states throughout the U.S.

Dr. Walters received his PhD in public policy analysis and management at the University of Pennsylvania's Wharton School.

The Utah State Tax Commission reflects the statutory requirements of possessing a variety of experiences and professional licenses. It is a requirement of the Commission, and its commissioners to have a broad range of tax experience.

Utah State Tax Commissioner Lawrence C. Walters

"We are excited that someone of Dr. Walters' caliber would be willing to participate in public service as a commissioner," Utah State Tax Commission Chair John Valentine said. "We look forward to well reasoned and articulate views of the issues facing taxpayers."

Dr. Walters began his term on November 1, 2018.

Association Accomplishments During October:

- ❖ Met with Provo City officials to review their upcoming bond election
- ❖ Participated in the Revenue and Tax Committee Interim meeting
- ❖ Hired a new Association vice president
- ❖ Met with Association committees to discuss agenda items for the annual members' meeting

In the News

- ❖ Salt Lake County Property Tax Delinquencies
  - Some Homeowners Pay More to Compensate for Companies Who Don't Pay 2 News
- ❖ School District Bonds
  - Voters Prepare to Decide on School District Bonds Throughout the State Deseret News
- ❖ Other Election News
  - Ballot Propositions Could Cost Taxpayers $100 a year 2 News