



THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

Cutting Utah's Income Tax Rate - The Right Thing To Do

As Utah's Legislature ponders what to do in 2019 regarding Utah's tax structure and tax rates, one thing is clear - the right thing to do is to reduce Utah's income tax rate. There are a host of reasons to lower Utah's rate of 4.95% further.

First, Utah needs to maintain its competitive position in the national economy. For the last eleven years in a row, Utah has been ranked #1 in the nation in ALEC's "Rich States, Poor States" annual report for economic growth. No other state has come close to replacing Utah at the top of the list. Folks need to remember that the very reason we enjoy such a position is because of the tax policies that we have had in place. It has not happened by accident.

When seeking to grow an economy and providing a prosperous and safe environment for its citizens - low rates and a fair and inviting landscape for taxpayers is the solution. However, other states want to attract what we have and they are moving the needle year after year. The median income tax rate amongst the 50 states continues to creep down and is starting to catch up with Utah.

Harvesting the growth in tax revenues that the state is enjoying and returning it to the very taxpayers that are providing it will continue to position Utah at the top for many years to come. Returning it to taxpayers puts it back in the most capable hands - those of individuals and businesses that are the engine of the economy. Adding the revenue to state coffers and growing government only drains and weakens the long term health of the Utah economy.

Secondly, cutting the income tax rate in any economic environment is the correct action. As a possible economic slowdown appears to be on the horizon, there is even more reason to lower income tax rates. In fact, we have a very real and powerful example in how lowering tax rates affects an economy in what the State of Utah did in 2008.

After Governor Huntsman worked on comprehensive tax reform, Utah wisely cut the income tax rate from 7% down to a flat 5% in 2008, which was a \$220 million cut at the time. Although they could have

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My Corner: Should the Legislature end Double Taxation of Personal Property for all Taxpayers?



Association President
Howard Stephenson

In 1993, during my second session as a state senator, I sponsored legislation to entirely eliminate sales taxes on manufacturing equipment and replacement parts. Ten years earlier the legislature exempted sales taxes on first time purchase of machinery and parts for new or expanding enterprises. I didn't consult anyone prior to sponsoring the exemption

knew it was bad tax policy to tax business inputs, like taxing a farmer's seed-corn.

To my surprise I was immediately met with criticism by many who would benefit most from this exemption. In fact, the Utah Manufacturers Association officially opposed the bill! They and others, asked why was I, a freshman senator, thinking this was a good idea? "We have important legislation which must pass and you're creating confusion and making manufacturers look greedy," one of the most seasoned business lobbyists said.

Undeterred by the criticism, I successfully got the bill to pass the Senate. In the House, Association VP Howard Headlee and Research Analyst Greg Fredde lined up enough votes for passage. Even the Democratic leadership was supporting it as a jobs plan. By this time the Manufacturers Association had finally agreed to support the measure.

On the last night of the session the bill was ready to pass the House. The teacher's union, which had been pivotal in Governor Mike Leavitt's primary election victory, called in a favor and got the governor to convince house leadership to send the bill back to rules. This he did in the final four hours of the legislative session, effectively killing the bill.

What a Difference a Year Makes

In the following 1995 general session I re-filed the bill. Coincidentally, Micron was looking at locating a massive computer chip manufacturing facility in either Utah or Nebraska. Governor Leavitt immediately saw the value of

Utah having an exemption and actually helped to get the very bill passed which he had killed the year before. Utah was now as competitive as any state for manufacturing.

Unfortunately, before the exemption took effect, Tax Commission economists warned that they had grossly underestimated the fiscal impact of the measure. So, in a special session the legislature clawed back the exemption for machinery and replacement parts not depreciated because they had an economic life of less than three years.

Your Utah Taxpayers Association and other business organizations worked over the following 23 years to eliminate the three-year tax for selected industries looking to locate or expand in Utah and to extend the sales tax exemption to mining operations and to other non-manufacturers such as data centers.

The incremental expansion of the sales tax exemption on business inputs ultimately set the stage for 2018, when I sponsored the final elimination of the \$55 million tax on inputs lasting less than three years, contingent on the Wayfair Supreme Court decision bringing \$200 million in escaped sales taxes from out-of-state remote sellers. The Supreme Court did decide the Wayfair case as expected and the \$55 million fiscal note was funded.

Economic Theory Also Calls for Tax Exemption for Small Business Personal Property

Free market economic theory exempts business inputs from taxes. Instead, it calls for taxing the outputs of business operations, such as the income of the employees, the profits of the investors, and the final sale of the product or service provided by the business. Economic theory also suggests that all businesses should receive similar tax treatment. Not only manufacturers and mines on the purchases of their personal property, but also other enterprises including small businesses should have that exemption or its equivalent on their personal property.

Small Businesses and Others Prefer Exemption from Personal Property Tax

Many business owners, including small businesses, would rather be exempt from personal property taxes than sales taxes on the purchases of their personal property. They feel the filing requirements and audits on their personal property is a higher cost of doing business than the sales taxes paid on the same personal property. Sales tax rates are around 7%, while the annual property tax on the same personal property is around 1.5%. Since personal property needs to be replaced every five years or so, the sales taxes and cumulative property taxes over the life of the product are roughly equivalent.

An administrative problem of extending the sales tax exemption on the purchases of small business and other non-manufacturers is that these purchases are often made at the same retail stores where consumers shop.

For example, the tables and chairs, desks and office machines are purchased at the same facilities that desks and computers are purchased by the general public. Administering a sales tax exemption for these products poses problems unlike administering the sales tax on manufacturing and mining for purchases.

Ending Double Taxation of Business Personal Property

Mining and manufacturing have been given an exemption from the sales taxes on the purchases of personal property, but they appropriately continue to pay personal property taxes.

In other words, mining and manufacturing have been relieved of double taxation on their personal property. Currently, small business personal property in Utah is doubly taxed; the full sales tax on the original purchase equal to about 7% statewide and the annual property tax on that personal property which is the equivalent of about 1 1/2 %.

Generally, this personal property has a life of around 5 years on average before it needs to be replaced. Especially in terms of electronics used in small business. So, in other words, small business pays 7% sales tax on the personal property and then over the course of the life of the personal property, they pay another roughly 7% tax through property taxes.

As a result of this double taxation, your Taxpayers Association has worked over the last Interim to convince

the Revenue and Taxation Committee to propose the total elimination of the personal property tax on enterprises which are not exempt from the sales taxes on the purchases such as small business. This would require a constitutional amendment which would exempt personal property taxes from businesses which are required by law to pay sales taxes on their personal property purchases.

Expanding Sales Tax Base Hits Those Already Paying Double Taxation on Personal Property

Most of the companies which could be affected by the expansion of the sales tax base to include services are currently paying double taxes on their personal property.

Ending the double taxation is especially important at a time when certain businesses are required to collect a new sales tax on their previously untaxed services.

Concerns About Eliminating Personal Property Taxes

Some have suggested that the complaints regarding onerous compliance requirements on personal property taxes are not as bad as they are purported to be. They say we should correct the compliance issues instead of eliminating the tax. But this argument still leaves small businesses and others with double taxation on their personal property.

There is also a concern that a small business personal property tax exemption would open the door for property classification like that which exists in states like Minnesota and Arizona. However, this has been addressed by narrowly crafting the Constitutional Amendment SJR 3 required for the exemption.

The Interim Revenue and Taxation Committee unanimously approved the draft of the Constitutional amendment and the implementing legislation in concept. Substitute Senate Bill 42 has not been drafted yet and until it is available it is not clear if the proposal is workable.

An issue this review has brought to light is that the current sales tax exemption on business inputs must eventually include power plants, pipelines, and oil and gas exploration and production.

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never predicted the timing, they completed their work in the face of what turned out to be a powerful recession. What unfolded after that is a fascinating study of the consequences of such a move in even very tough economic conditions.

As time unfolded after the recession of 2008 hit, Utah's economy not only showed greater resilience than other states, but it also recovered more quickly and more powerfully. For example, according to the US Bureau of Economic Analysis, in 2009, Utah's GDP shrunk by almost 50% less than the surrounding Rocky Mountain region of states. Then, as 2010 and 2011 unfolded, Utah's economy snapped back at a much faster rate than other states. Utah's GDP grew by 30-35% more than the Rocky Mountain region and an even greater 100% more than our southern neighbor, Arizona, for example. In the subsequent years of 2012 to 2017, Utah continued to outgrow other

states in the region by a wide margin- outpacing them by anywhere from 17% to over 45% on the rate of annual GDP growth.

That historical data confirms what we have known for a very long time- that reducing and maintaining a low income tax rate attracts capital, grows jobs, and provides fertile ground for a prosperous economy. It also goes to show that whether economic times are good or bad, it works.

So, whether the subject of cutting taxes is discussed on its own, or as part of the larger discussion taking place on the broadening of the sales tax base by taxing more services, the historical evidence is clear- cutting the income tax is the right thing to do. Your Utah Taxpayers Association will be actively advocating for that as the session rolls along.

2019 Legislative Watchlist: What, How, and Where to Watch Tax-Related Bills

With more than 250 bills already published during the 2019 General Session, it may be hard to keep track of all the tax-related legislation. Thankfully, your Taxpayers Association tracks all these bills, and many more for you through our [2019 Legislative Watchlist](#).

Here are just a few of the major bills we're working on this year:

Tangible Personal Property

Over the years, the Legislature has made the decision to eliminate the double taxation on mining, manufacturing, and data centers. However, small business must pay the sales tax on the purchase of the personal property and then pay property taxes for years into the future. Residential personal property, such as home furnishings have been exempt from property taxes for decades. However, the personal property tax on small business has become an onerous compliance burden and has resulted in annoying audits.

Under current statute, Utah's business owners are required to pay property tax on items that they use or consume in the process of doing business. This can be something as small as a table in a restaurant to machines in a manufacturing facility. Under a bill being drafted, Utah business owners either pay the upfront sales tax when purchasing equipment for their business, or they pay the personal property tax, with few exceptions. Right now, many businesses are being double taxed for the same item.

SB 99 - Sales Tax Amendments (Harper)

During the summer, the U.S. Supreme Court weighed in on *Wayfair, Inc. vs. South Dakota*, which allows states to begin the collection of remote sales taxes. Utah's fiscal analysts expect that Utah would receive roughly \$200 million in new revenue.

In July, the state acted to collect these taxes, but also worked to cut taxes in order to prevent the growth of government. Utah would not use the estimated \$200 million to grow government but would instead reduce

taxes correspondingly. During the July special session, the Legislature cut taxes by \$85 million through family income tax reductions and elimination of the three-year life sales tax penalty on manufacturing and mining.

SB 99 lowers the statewide sales tax rate from 4.7% to 4.45%, which is a roughly \$130 million decrease in taxes. Your Taxpayers Association wholeheartedly supports this bill, and it is expected to be part of the overall discussion of tax modernization that the governor and the Legislature have been discussing for the past few months.

HB 11 - Property Tax Amendments (Hawkes)

Throughout the interim, we have been working on a bill to help property taxpayers during the appeals process. Many Association and soon-to-be members have contacted us questioning the significant valuation increases on their homes, and how the best way to appeal the valuation with the county. Your Taxpayers Association has come up with a solution, HB 11, thanks to help of Rep. Tim Hawkes (R - Centerville). Rep. Hawkes’ proposal protects property taxpayers and homeowners during the valuation and appeals process.

The Revenue and Taxation Interim Committee heard his proposal that involves shifting the burden of proof during the valuation appeals process from the homeowner to the county. Currently, the homeowner must prove why their property is overvalued. His proposal also creates an automatic review process if a property’s value increases by more than the median property value change plus 15%.

HB 34 - Campaign Finance Amendments (Perry)

In 2013, the Legislature passed a bill that would have required non-profit organizations that have political activities disclose their donors. While the Legislature may have been well intentioned in passing HB43, the fix turned out to be a situation of taking a sledgehammer to an issue where a scalpel was needed.

Your Taxpayers Association filed a lawsuit against the state over this bill, and fortunately, the state agreed with our concerns and agreed to settle the case before any trial was needed, saving taxpayer money and restoring state law to ensure that non-profit organizations will still be able to have a voice in Utah’s political happenings.

Turning to 2019, HB 34 is trying to return to the HB 43 disclosure laws. We have spoken out against this bill, and are working with the sponsor to try and find a bright line that protects non-profit organizations like ours, while still requiring disclosures for those organizations that may have nefarious intent.

SB 56 - Community Reinvestment Agency Report Amendments (Henderson)

In 2018, Salt Lake County launched a great feature that shows a map of every community reinvestment area within the county, including details such as cost, property tax revenues, and length. You can access the tool here.

SB 56 would expand this to all counties in the state. We are encouraged by Henderson’s efforts for CRA transparency and are supportive of this legislation.

To check out all the legislation we’re tracking, click here to access our [Legislative Watchlist](#).

Utah Taxpayers Association 2019 Legislative Watchlist - February 1, 2019						Positions: S - Support O - Oppose M - Monitor *Recommended Positions Indicated by ()				
Number	Title	Sponsor	Description	Comments	Position*	House Comm.	House Floor	Senate Comm.	Senate Floor	
High Priority Legislation										
HB 11	Property Tax Amendments	Hawkes	Changes the burden of proof for property tax appeals; creates an automatic review when a property valuation increases by a certain percentage.	Revenue and Taxation Interim Committee approved this bill.	S		P			
HB 45	Higher Education Credits Amendments	Peterson	Requires higher education institutions to apply credits for skills or experience a student brings.	Utah 2.0	S		P			
SB 99	Sales Tax Amendments	Harper	Lowers the statewide sales tax rate to 4.45%, as part of the promise to lower the rate following the collection of remote sales taxes.		S					
SJR 3	Proposal to Amend Utah Constitution - Tangible Personal Property Tax Exemption	McCay	Enacts a required Constitutional change for eliminating the double taxation of tangible personal property.	Utah 2.0	(S)					
House of Representatives Sponsored Legislation										
HB 24	Property Tax Exemptions, Deferrals, and Abatements Amendments	Eliason	Clarifies property tax exemption status for military members, allowing for an exemption to be claimed if the military member property owner serves more than 200 days in a 365-day period.	Revenue and Taxation Interim Committee approved this bill.	S		P			
HB 25	Tax Commission Amendments	Eliason	Modifies the Tax Commission’s ability to speak with employees regarding interpretation and application of a law without the need for a public hearing.	Revenue and Taxation Interim Committee approved this bill.	S		P			
HB 32	Rulemaking Fiscal Accountability Amendments	Stratton	Requires legislative oversight when the Water Quality Board expends certain amounts of money under rulemaking authority.		(S)					
HB 34	Campaign Finance Amendments	Perry	Requires corporations disclose their donations to non-profit organizations that engage in political activities.	Government Operations Interim Committee approved this legislation.	(O)					
HB 41	Transportation Sales Tax Amendments	Christofferson	Eliminates old language, while combining language regarding transportation earmarks.	Transportation Interim Committee approved this legislation.	(M)		P			

Utah State Tax Commission Agrees to Work with Your Taxpayers Association to Re-examine Penalties for Failure to Collect Sales Taxes

On January 24 in its regularly scheduled meeting, the State Tax Commission heard a presentation from Utah Taxpayers Association President Howard Stephenson claiming that penalties for retailers that, based on guidelines from the Commission, did not collect sales taxes have sometimes been a death-warrant to the business.

Stephenson contrasted penalties related to deficiencies in payment of income and property taxes with those of sales taxes. He noted that a person with income of \$100,000 would pay state income taxes of 4.95% and that the disputed amount in an audit is typically a small fraction of the 4.95%. Similarly, a person with \$100,000 value in property would typically pay less than 1.5% and amounts in dispute would be a tiny fraction of that. The assessment of penalties and interest for income and property tax deficiencies do not threaten the financial viability of the taxpayer.

However sales taxes are a completely different scenario. First of all, the sales tax is not a tax on the retailer, it is a tax on the purchaser of what the retailer is selling. Then on January 24 in its regularly scheduled meeting, the State Tax Commission heard a presentation from Utah Taxpayers Association President Howard Stephenson claiming that penalties for retailers that, based on guidelines from the Commission, did not collect sales taxes have sometimes been a death-warrant to the business.

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However sales taxes are a completely different scenario. First of all, the sales tax is not a tax on the retailer, it is a tax on the purchaser of what the retailer

is selling. The retailer, in order to operate in the state is required to be a sales tax collector on behalf of the state.

Frequently, sales tax auditors examine businesses whose owners reasonably believe they are not required to collect sales taxes from their customers and in many cases have received legal opinions to support their claim. But when auditors make a determination that the tax should have been collected, rather than simply requiring the collection prospectively, they require the retailer to pay for three years of taxes they had not collected from their customers.

Anyone who understands retail trade knows that the state and municipalities' approximate 7% sales tax is significantly more than the 2-4% net profit the retailer makes on the same purchase. The tax on most purchases is much higher than the profit. As a result, when the retailer is required to remit the equivalent of the 7% uncollected tax, the Tax Commission is demanding that the retailer pay all of their profits for the past several years, clearly putting the business into financial ruin. A three year deficiency would be the equivalent of 21% of the sales of one year. If the retailer's annual net profit is say, 4%, it would take more than five years of that company's entire profits to satisfy the tax auditor's demands.

This practice flies in the face of the legal concept of proportionality which is a criterion of fairness and justice in constitutional law arriving at the correct balance between the corrective action and the severity of the violation. Your Taxpayers Association will be working with the Tax Commission to seek changes in rule and/or statute to make the punishment fit the offense when sales taxes are not collected.

As the Legislature considers expanding the sales tax base, this issue becomes even more urgent. There is always gray area within statute, so companies may see more frequency in these types of audits as the sales tax base increases. If you or someone you know has received a ruling from the Tax Commission that they must pay for sales taxes that were not collected from the customers, please contact the Taxpayers Association.

We want to be clear that we do not support scofflaws who intentionally refuse to collect sales taxes to be more competitive or those who collect the sales tax and convert it to their own use.

Over 120 Attendees Help Make 2019 Legislative Outlook Conference A Success

On Monday, January 7, 2019, over 120 attendees heard from Utah government and business leaders at the annual Utah Taxpayers Association's Legislative Outlook Conference. The conference, held at the Little America Hotel in Salt Lake City, was successful in both attendance and content as legislators, business leaders and others gathered to hear about upcoming tax policy discussions at the 2019 General Legislative Session.

The conference agenda was packed with topics ranging from transportation and user fees to workforce alignment to the personal property tax burden on Utah's small businesses. Governor Gary Herbert spoke to attendees about his tax modernization plan while leaders from the House of Representatives and the Senate spoke about their legislative priorities for the session.

Thank you to everyone who attended and/or participated this year. If you missed any of the conference, you can find the recording in its entirety at www.utahtaxpayers.org.



Association Accomplishments During January:

- ❖ Held the 2019 Legislative Outlook Conference
- ❖ Held a Newly Elected Officials Tax Bootcamp
- ❖ Held a Board Meeting to Discuss Legislative Priorities for the 2019 General Session
- ❖ Met with the Governor, Salt Lake Chamber and House Leadership to Discuss Legislative Priorities
- ❖ Spoke at a Morgan County Council Meeting in Opposition to UTOPIA
- ❖ Met with Kaysville Officials to discuss UTOPIA

In the News

- ❖ New Tax Laws Include Collection of Online Sales Tax
 - [New Laws in 2019 Include Sales Tax on Out-of-State Purchases](#) KSL
- ❖ Governor Herbert's Budget Proposal
 - [Governor Pitches Plan to Tax More Services](#) KSL
 - [You Could See a Tax Cut This Year](#) Fox 13