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Utah Legislative Update; January 2017

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The annual Utah legislative session begins at the end of this month (January 23) and the Holland & Hart political team is gearing up to tackle a number of issues for clients. My job, of course, is to be a continual presence at the State Capitol keeping track of bills and issues as they advance through the process, but there are several others members of the firm who also will be at the State Capitol periodically. Part of our brand for the government affairs team is that we combine legal expertise with political savvy to give the client a comprehensive package that really makes the most of their political budget. For example, on tax issues, Mark Buchi or Steve Young will likely be on the hill to testify as experts about business impacts. If the topic touches energy or environmental issues, Amanda Smith will likely use her expertise and connections to advance our client interests.

Last year, we recruited Bryan Benard to be our policy expert on behalf of clients concerned about non-compete agreements. We also have teams in place in Colorado, Idaho, Nevada, and Wyoming doing the same thing for clients operating in those states or operating across the Rocky Mountain footprint. If you have a political issue you want on my radar, please let me know. I will soon be moving my work station to the State Capitol, so reaching me via my mobile phone (801-599-9017) or email are best.

Amazon & Online Sales Tax

Amazon made a surprise announcement in December that the company would begin voluntarily collecting and remitting sales tax from Utah-based customers. If you've made an Amazon purchase in the New Year, you might have noticed a few extra cents attached to the transaction. This has been a long standing hot topic in Utah, as sales tax revenues have been flat in recent years due to the approximately \$200 plus million in sales tax that has gone uncollected from Utah consumers every year. Lest you think the internet is a "duty-free" shopping zone, let me point out that if you buy a product from a retailer without a physical presence in Utah the sales tax burden still exists, but the burden of remitting the tax shifts from the retailer to you. It becomes the responsibility of the consumer to remit the tax as use tax on their personal state income tax return each year. If this is news to you and you are thinking of calling Mark Buchi or Steve Young for legal representation, don't worry you aren't alone. Less than 1% of Utahns admit to properly remitting use tax each year for online purchases.

For the past several years, Utah retailers, cities, and counties have urged the Legislature and Congress to address this problem of uncollected online sales tax. In fact, a 2017 bill was in the works when the Amazon

announcement was made. Now that the 800-pound gorilla of the online sales world is collecting Utah sales tax, it will be interesting to see what impact this has on legislative efforts to compel collection from other online retailers. It might ease some legislative minds to see Amazon voluntarily complying, or it could provide the excuse some legislators need to resist new legislation. Either way, I predict that the years of “duty-free” internet purchasing are coming to an end, either via the various lawsuits making their way to the U.S. Supreme Court, patchwork state legislation, or maybe even Congressional action.

Do it For the Kids...

For the past year, a showdown has been brewing between legislative leaders and some high-profile business leaders about education funding. Now, with the Utah legislative session just under two weeks from beginning, it will be interesting to see who blinks first. The business leaders organized under the banner “Our Schools Now,” are proposing to use the citizen initiative process to raise the State personal income tax 7/8th of a percent and dedicate the funds (approximately \$750 million) to K-12 education needs.

Utah's citizens' initiative processes is fairly complex compared to other states'. The proposed tax increase wouldn't appear on the ballot until November of 2018, but by announcing it and name-dropping the business leaders now, they are giving legislators and the Governor the opportunity to intervene with additional funding. Legislative leaders and the Governor seem to be adamantly set against tax increases, even for education. So that brings us back to the question of who will blink first and “do it for the kids.” Allowing Our Schools Now to use the backdrop of the session and the PR messaging of Utah's deplorable place as dead-last in per-pupil spending and the ongoing qualified teacher shortages, will take political fortitude that might be hard to hold onto for the entire legislative session. Will an income tax increase of less than 7/8th be palatable, or will shifting funds from some other area win the day? We won't know until March 9th, but it will make for some interesting political theater.

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