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Utah Legislative Update - Part Three

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During the crush of the legislative session, the focus is typically on the bright, flashy bills that contain policies that tilt the scale on visceral issues. For instance, Rep. Karianne Lisbonee's HB 205 Down Syndrome Nondiscrimination Abortion Act, received significant media attention and debate about this new twist on the traditional abortion debate. Ultimately, the bill quietly died at the end of the session when it wasn't prioritized for a Senate floor vote. Likewise, Rep. Gage Froerer's HB 379 Death Penalty Amendments was also pulled from House floor debate after much media discussion and lobbying efforts when it became clear it lacked the 38 votes to pass the House. As a lobbyist, it is not these attention grabbing bills that worry me. It's the sleeper bills and the long, dense tax bills that keep me up at night wondering what surprise will be in store in the waning hours of the legislative session.

This year, one of the most significant packages of tax legislation in Utah's history was amended and moved through final votes very quickly on the last day of the legislative session. The three bills in the package were: HB293 Tax Rebalancing Revisions, HJR 20 Joint Resolution Submitting a Question to Voters, and SB233 Sales & Use Tax Amendments. These bills together contain tax reforms, tax cuts, tax increases, and a compromise with the Our Schools Now (OSN) ballot initiative group.

HB293

The largest bill in the package, HB293, contains provisions for an income tax rate reduction from 5% to 4.95%, which is a tax cut of \$56.3 million to Utahns. Next, the bill contains a change for the calculation of business income tax. Currently, the Utah business income tax code has a formula businesses use to calculate their income tax that includes payroll, property, and sales. The bill shifts Utah businesses to a "single factor" formula based on sales only. The idea is to get companies to locate their payroll and property in Utah to generate more jobs. This will mean a tax cut to business of about \$27.6 million when the "single factor" formula is fully phased-in.

HB 293 contained a property tax increase, the result of a compromise portion of this package is in relation to the OSN ballot initiative. The OSN ballot initiative would increase statewide sales and use tax by 0.45% and income taxes by 0.45% in order to generate \$700 million for Public Education. Many legislators felt a tax increase this large and sweeping would derail many of the efforts to make Utah business friendly and maintain a dynamic economy. A compromise was brokered to instead freeze the statewide basic property tax levy for 5 years so it won't drop below the current rate despite any property market price increases that

would otherwise float the rate downward. This compromise would generate about \$36.1 million in Year-1 for Public Education. The compromise also includes an indexing of the statewide basic levy to the Weighted Pupil Unit (WPU) that would generate an additional \$18.6 million in Year-1 and would continue that indexing in perpetuity.

HRJ 20

A ballot question, HJR 20, will be run in the 2018 General Election to ask voters about increasing the gas tax by 0.10 cents. The purpose behind asking this ballot question is to give legislators cover in the 2019 session if they vote for a gas tax increase. The rationale for a gas tax increase is to generate \$125 million in a cascade of budget shifts that would reduce transportation's draw from the General Fund so those funds could be shifted to cover Higher Education needs, and then shift Education Funds back to Public Education. Combined with other funds set aside in a restricted account dedicated to education, this total package would infuse about \$375 million net new dollars into Public Education while still preserving the gains made in our tax system on income tax competitiveness.

SB 233

SB 233 was added to the tax package by lobbying efforts to sweeten the pot and help the pain of a property tax increase fade away. It removes an oddity in the Utah tax code on sales and use tax. As a general rule, Utah's tax policy is to not apply sales tax to components to a final product, but rather applies sales tax only to the final product. Otherwise, layers of sales tax are added throughout the manufacturing process and making it more expensive to produce items in Utah.

When the sales tax was removed from business inputs in the 1990's, the tax cut was more than the State could afford so a "test" was implemented. If the input had a greater than 3-year useful life, the item was not charged sales tax. However, this meant items like drill bits or other machining pieces that wear out quickly in a manufacturing process would be charged sales tax. Also, operations that run 24/7 shifts might wear out these business inputs faster than a business only running one, 8-hour shift resulting in the same businesses inputs receiving different treatment depending on the type of operation.

This bill would correct that problem by eliminating the 3-year life test and providing a further \$25 million tax cut to business. This bill does include a funding trigger tied to the outcome of the *South Dakota v. Wayfair* U.S. Supreme Court Case on the collection of online sales tax. If the Supreme Court decides states can collect this lost sales tax, those online sales tax funds would be used to offset this bill.

In summary, these three bills address tax reforms and clarifications the broader business community has wanted for years in the single sales factor apportionment and 3-year useful life changes. To a certain extent, the political will to address these changes was only possible because of the pressure brought by OSN on their educational funding efforts. One thing is certain: it was a wild final ride for these tax bills this session and no one's crystal ball would have predicted this strange bedfellows of tax

stakeholders coming together at the beginning of the session.

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