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Utah Legislative Update: Summer 2018

Insight — August 7, 2018

Governor Gary Herbert called the Utah Legislature into a July Special Session. July is often a month when the Utah legislature takes a break from meetings due to the Independence Day and Pioneer Day holidays bookending the month. However, the Governor listed 11 items that needed immediate action by the Legislature. Most of the items easily could be categorized as technical clean-ups. For instance, a fix was needed for off-premises beer licenses after a large alcohol reform bill that passed two years ago failed to include off-premises licenses in the list of licenses that could be issued conditionally during construction. Retailers building new facilities need a conditional off-premise beer license that becomes active once final business licenses and occupancy permits are issued.

Other than minor items, the main reasons for the Special Session were issues related to the development of an inland port in the northwest quadrant of Salt Lake City, a few tax changes related to the *Wayfair vs. South Dakota* decision by the U.S. Supreme Court (SCOTUS), and continued fallout from federal tax reform at the state level.

Inland Port Bill Take 2: HB2001

The idea of an inland port has drawn a lot of interest from various levels of government, property owners, and economic development promoters. The idea is to take advantage of the intersection of several important interstates (I-15, I-215, and I-80), the Salt Lake International Airport, and various rail lines that all converge in this remote, undeveloped corner of the city. Add in interstates I-70 and I-84 as secondary connections deeper into the state, and goods could be moved almost anywhere. Ports on our East and West coasts are where we traditionally think of goods officially entering or exiting the United States. By designating an inland port, goods could leapfrog the coastal ports and make their official U.S. entrance in Utah for easier access to the Intermountain region. Even more important, those containers importing goods would then be refilled with products from Utah around the Intermountain region that would then ship back out to other countries.

During the General Session, legislation was passed that designated the NW quadrant area for an inland port, set up a board to oversee its implementation, and authorized tax increment financing. However, the legislation had some rough edges and Salt Lake City voiced concerns with several provisions. Several months of after-session discussions with various stakeholders led to some improvement of those rough spots dealing with land use authority, environmental protections for the Great Salt Lake wetlands, board membership qualifications and advisory groups.

These compromises were incorporated into Special Session bill (HB 2001). Although Salt Lake City Mayor Jackie Biskupski still objected to the inland port authority as currently constituted, the bill and the changes won the support of the Salt Lake City Council.

Tax Bills: Online Sales Tax SB2001

The landmark SCOTUS ruling, *South Dakota v. Wayfair*, clarifying how states collect sales tax when goods are purchased online rather than in a traditional brick and mortar store, means many states need to adopt new sales tax collection laws to statutorily authorize sales tax collection consistent with the ruling. Sales or use tax is always owed, it is just a matter of whether remote vendors have the responsibility to collect and remit the sales tax. The *Wayfair* decision provides a model states may use for online sales tax collections and places that collection and remittance burden on the seller/retailer, so it is consistent across purchasing outlets. SB2001 Online Sales Tax Amendments specifies that, under the *Wayfair* authority, Utah will require remote vendors making sales to Utah customers and meeting the South Dakota thresholds (200 transactions or \$100,000) to collect/remit Utah sales tax beginning January 1, 2019. It also removes the 18% vendor discount for remote vendors (which was to incentivize voluntary compliance) effective January 1, 2019 and provides all retailers the same vendor discount of 1.31%.

This bill contains another important tax change related to Utah's unique three-year "useful life" test for sales tax on the purchase of manufacturing or laboratory inputs. This test will finally expire effective January 1, 2019, and no sales tax will be owed on manufacturing/laboratory business inputs going forward. Hopefully, this will increase Utah's manufacturing and research competitiveness by ensuring unnecessary sales tax isn't layered into Utah products.

Tax Bills: Repatriation Tax HB2002

As part of Federal tax reform, Congress imposed a new 15% Repatriation Transition Tax (RTT), payable over eight years, to incentivize U.S. companies with money now held overseas to bring it home. The low tax applies only for tax years beginning prior to 1/1/18. SB 244, passed during the 2018 General Session specified that the RTT will be payable over eight-years in Utah also, but inadvertently was not effective until 1/1/18 (thus not applicable for tax years beginning before 1/1/18), meaning RTT must be paid 100% with the filing of the 2017 Utah returns. HB 2002 also clarifies that Utah is imposing Utah tax on RTT income (a necessary clarification since the IRS recently announced RTT is reported on a separate federal form).

Tax Bills: Income Tax Code Amendments HB2003

Prior to tax reform, at the federal level, net operating losses (NOLs) could be carried back two years and carried forward 20 years. In Utah, NOLs presently can be carried back three years and carried forward 15 years. As a result of recent Federal tax reform, there is no more Federal NOL carryback and the carry forward is unlimited (for up to 80% of taxable

income for the future year). HB 2003, effective 1/1/18, matches Utah to the new Federal NOL system, with no NOL carryback, and an unlimited carryforward (up to 80% of taxable income). An amendment to the bill also created a child tax credit to help large families whose Utah taxes were raised by Federal tax reform that removed the personal exemption. To offset this Federal action, the amendment added a \$30 million child tax credit for state income tax that families can use to offset this Federal change.

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