

In response to the request of the Revenue and Taxation Interim Committee, the Tax Commission suggests the committee consider the following issues in the long-term planning it conducts pursuant to HJR 10.

1. Federal Aviation Administration Regulation

On November 7, 2014, the Federal Aviation Administration (FAA) published its final regulations interpreting the federal requirements for use of revenue derived from taxes on aviation fuel. In short, federal law requires aviation fuel tax revenues be spent on “the capital and operating costs of: (1) the airport; (2) the local airport system; or (3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.”

After a thorough review of the disposition of aviation fuel taxes we believe, with the agreement of our assistant attorney general, that on its face, our statute directing the disposition of aviation fuel tax revenues to fund aerial search and rescue operations in Section 72-2-126(4)(f) is most likely not allowed under federal law. It is our understanding, after speaking with the Division of Aeronautics, that the search and rescue operations may continue to be funded through other sources allowed under current law without the use of the aviation fuel tax revenues.

The FAA has directed state officials to prepare an action plan to initiate the process to amend any non-compliant state laws necessary to conform to federal law. This plan must be submitted on or before December 8, 2015 and may include “a reasonable transition period, not to exceed three years, during which the FAA would agree, in an exercise of its prosecutorial discretion, not to enforce the revenue use requirement against a non-sponsor State or local government.”

In light of the concerns that our statute is not in compliance with federal law, we recommend that this issue be included in the 2015 interims as a study item so that we may meet the December 2015 deadline to inform the FAA of the state’s action plan.

2. Bank Data Match

The 2010 Revenue and Taxation Interim Committee recommended as a committee bill SB 17, State Tax Commission Levy Process Using Depository Institution Data Match System. This bill passed the Senate, but failed in the House Standing Committee. The bank data match legislation has significant benefits that will enable the Tax Commission to obtain funds from delinquent taxpayers who have been unwilling to enter into arrangements to resolve tax liabilities and against whom the Tax Commission has filed a tax lien or judgment in District Court. The Commission has always had the ability to attach funds in a bank account through a very difficult and cumbersome process for the Tax Commission and financial institutions. The proposed legislation would streamline the process and enhance the collection process on delinquent accounts.

Under this program, the Tax Commission will provide a list of delinquent taxpayers against whom a judgment lien has been filed. Financial institutions will access this information quarterly from a secured FTP site and compare that list against their records of account holder information. The financial institution would then provide the Tax Commission with those names and account information where a match exists. The Tax Commission can use this matched list to determine whether or not to issue a Notice of Levy to the bank.

The bank data match program will preserve and simplify all taxpayer due process rights. Taxpayers may appeal directly to the Tax Commission rather than appealing garnishment action through the courts. In addition, the Tax Commission is still required to follow writ of garnishment provisions regarding amounts available for seizure and may not take amounts that are owned by another party. Finally, the Tax Commission will exercise the same due diligence used in the garnishment process before acting on the levy. That is, taxpayers will be given ample opportunity to self-correct and resolve the delinquency through payment plans, waivers, and other acceptable resolution methods before levy action is used. A levy action must be determined by an agent and is not automatic in every case.

Utah is not the first to implement this type of legislation. Other states that have enacted similar legislation include New York, New Jersey, Kentucky, Minnesota, Indiana, California, North Carolina and Massachusetts.

Other benefits and impacts of the bank data match program include:

- a. The bank data match program will create a more level playing field with the IRS by allowing the Tax Commission the same levy process as the IRS. We currently lose access to the same funds because our process is too slow and too cumbersome.
- b. The bank data match program will increase collections and reduce delinquencies, with no increase in resources.
- c. Financial institutions are currently using a similar data match program for the Office of Recovery Services.
- d. The bank data match program will protect the privacy of bank account owners; the Tax Commission will never have access to all the bank account information, only bank account information of those persons against whom we have a judgment lien in District Court.
- e. The bank data match program will allow the Tax Commission to more quickly identify assets to offset liabilities owed the state in the form of delinquent taxes.
- f. The bank data match process is automated and will expedite a cumbersome, paper intensive garnishment process; a fifty page document is reduced to one page.
- g. Court resources will be reduced under the bank data match program.

h. Banks will be paid for participating in the bank data match program and will still receive the same \$10 fee per levy as is paid to them in the current garnishment process.

i. Fees paid to the courts and constables will be greatly reduced under the bank data match program.

j. There is also a potential cost savings for delinquent taxpayers under the bank data math program since the fees to garnish are higher than the fees to levy.