



THE UTAH TAXPAYER

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LEGISLATIVE AUDIT CRITICAL OF UTAH TRANSIT AUTHORITY

LEGISLATIVE AUDIT REVEALS PROBLEMS

The January performance audit of the Utah Transit Authority (UTA) is a wake-up call for Utah's taxpayers. The Office of the Utah Legislative Auditor General is quite critical of UTA's data and projections.

UTA operates buses, light rail (TRAX) and commuter rail (FrontRunner) providing transportation services available to almost 80 percent of Utah's population. These services are expensive. The UTA spends \$275 million a year, about four-fifths of which comes from sales tax revenue. The price of a ticket on TRAX covers only 18 percent of the total cost of the ride. Bus fares only cover 15 percent, and FrontRunner recovers just five percent of its total costs and ten percent of its operating costs from ticket prices.

The Audit Report signals a number of problems present in operations today, and some that will surface shortly. For example, as the Report notes, when UTA got into the light rail business, federal subsidies provided 78 percent of the capital costs. The FrontLines addition of 70 miles of rail lines by 2015, now ongoing, will receive a federal subsidy of only 24 percent.

Having provided federal money to get into light rail, the feds are going to leave us with a transit system that will continue to require subsidies. As the Report notes, "the public may not fully understand the ongoing operating subsidy transit systems require even after they have been built."

Nor can the gap be closed by raising ticket prices. "While it seems reasonable for users to pay more of UTA's operating costs, their willingness to do so is not yet clear." In other words, if prices rose to cover the full cost, UTA may not be able to maintain its ridership.

We may see some of these effects sooner rather than later. UTA plans to stop issuing unlimited mileage passes, and instead institute distance-based ticketing. UTA expects these changes to raise farebox revenues to 30 percent of costs by 2020. Since UTA's own consultant calls the planned system "significantly different" from other transit systems in the United States, even UTA doesn't know how this change in fare structure will affect their operating revenues.

The auditors can't even "determine the number of people who ride UTA services today compared to past years." In the words of the Report, "UTA's Revenue Projections Are Optimistic; Expense Projections May Be Understated." Over the next eight years, UTA expects a booming economy, providing a 60 percent increase in sales tax revenue. It also expects continued sympathy for transit projects out of Washington, forecasting a 141 percent increase in federal funding. Given the fiscal realities in Washington, and the potential political developments, those expectations may be optimistic. Finally, the UTA plans include a 125 percent increase in farebox revenue.

That's on the revenue side. Perhaps more realistic is the UTA projection of increases in operating and maintenance costs over the eight-year period of only 52 percent. If the economy continues on life-support, that might be realistic. But that would mean that the revenue numbers may be too optimistic.

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ASSOCIATION STAFF

Howard Stephenson	President
Royce Van Tassell	Vice President
Chase Everton	Research Analyst
Sophie Mickelsen	Executive Assistant

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My Corner: The Politics of Sound Tax Policy



**Association VP
Royce Van Tassell**

We focus our efforts on three broad categories: improving student outcomes in education, keeping taxes low, and keeping government out of the business of business. As a litany of reports from the American Legislative Exchange Council, Forbes and virtually anyone else evaluating economic outlook shows, a good education system, low taxes and limiting the scope of government are critical keys to a growing economy.

During the 2012 Legislative Session, Senator Ben McAdams is leading the push for more money in education with his "Back to Schools" proposal. In his view spending money on K-12 education will improve student achievement.

Sen. McAdams' "Back to Schools" proposal includes three prongs. First, he wants to exempt the statewide basic property tax levy from Truth in Taxation. Second, he wants to freeze the personal exemption to the income tax. Finally, he wants to earmark 30% of future growth in sales tax for public education.

Defending Truth in Taxation

The first prong of Senator McAdams bill is the most troubling. Utah's Truth in Taxation system is one of the reasons Utah's property taxes are so much lower than most other states. Because of Truth in Taxation, the property tax is Utah's most transparent and accountable tax. It requires those imposing the property tax hike to tell every property owner exactly how a given tax hike will affect that property owner, and to listen to all taxpayers' concerns about the tax hike.

Under Truth in Taxation, property tax rates decline when property values increase. That way taxing entities don't get an automatic property tax hike as property values go up. If Sen. McAdams succeeds in exempting the statewide Basic Levy from Truth in Taxation, Utah taxpayers would pay more property taxes to their school district every year, whether or not student achievement is increasing.

Your Taxpayers Association will not allow this assault on Truth in Taxation to succeed. We must keep property taxes low, or the economic gains Utah has made over the last decade will end.

Broaden the Base, Lower the Rate

The second prong of Sen. McAdams' "Back to Schools" proposal is more in line with long term sound tax policy. As your Taxpayers Association has long explained, one key to good tax policy is to broaden the base and lower the rate. Adhering to that principle keeps revenues predictable and transparent. The personal exemption currently provided in Utah's income tax narrows the base of the income tax, which necessarily means a higher rate.

As your Taxpayers Association saw between 2004 and 2007 when the Legislature last studied and revamped the income tax, some income tax credits or deductions (including the personal exemption) are so popular that lawmakers won't always broaden the base and lower the rate. Sometimes they prefer to concentrate specific benefits on the voting public or other sympathetic groups.

The personal exemption is one such example. By removing a portion of a person's income from the base of the income tax, the personal exemption narrows the base. Because the value of the personal exemption normally expands each year, Sen. McAdams' proposal would broaden the base (albeit over a VERY long time period).

Unfortunately, even this element of Sen. McAdams' proposal fails to adhere to the entire principle, because he wants to apply the same higher rate to the broader base. In other words, the second prong of Sen. McAdams' proposal also means higher taxes.

Several other bills this year play on similar feelings of sympathy to score political points, even though they violate this basic principle of tax policy. For example, your Taxpayers Association opposes HB 250 (Tax credit for a dependent with a disability - Dougall), HB 101 (Tax credits for employing a homeless person - King) and HB 312 (Veteran employment tax credit - Ipson). In each of these cases, the sponsors want to provide a tax credit to help a politically popular group (people with disabilities, veterans or homeless people).

By focusing the credit on easily identifiable, politically sympathetic groups, elected officials can take credit for "doing the right thing." However, every time they narrow the base to help one group, they increase the pressure to raise the rate on all taxpayers. Elected officials likely won't succumb to that pressure immediately, but that pressure must be relieved eventually, either through raising the rate, or by restoring the base.

Moreover, because the tax code is such a blunt instrument, it is difficult to actually target the assistance to just the intended recipients. As the news reels remind us frequently, it's not too difficult to claim a tax credit, even though you don't really qualify. The social services bureaucracies are imperfect, but they are still much more precise in allocating benefits than the tax code.

Earmarking Taxes

The last prong of Sen. McAdams' "Back to Schools" proposal would earmark 30% of growth in sales tax revenue for public education. This prong doesn't raise taxes, nor does it narrow the tax base. Nonetheless, it is still bad policy. A sound appropriations process requires every program to compete against all the other programs for scarce resources. By earmarking a portion of the growth in sales tax dollars for education, Sen. McAdams' proposal limits the state's ability to manage other parts of its budget (such as the ongoing growth in Medicaid, or the burgeoning prison population).

The highest funding priorities don't need earmarks. In weighing the ever-growing set of priorities governments pursue, the highest priorities get funded. No program gets everything its supporters want, but earmarks artificially prioritize programs who wouldn't otherwise be funded, or funded as generously.

Enacting sound tax principles is hard, but important

As you can see, tax policy is complex. The principles are fairly easy to state, but the political process inevitably makes their application difficult. Nevertheless, your Taxpayers Association continues to stand ready to make sure Utah's economy grows, which means (among other things) enacting sound principles of tax policy.

Tax Foundation Shows Where Utah Needs to Improve Its Tax Policy

The Tax Foundation recently released its annual State Business Tax Climate Index for 2012, which attempts to answer the question: Which States are Best for Business? To determine which states are the best for business, the Tax Foundation analyzed five areas of taxation; corporate income taxes, individual income taxes, sales taxes, property taxes and unemployment insurance. Not surprisingly, Utah's overall tax system ranked well, placing tenth.

Corporate Tax

Utah's corporate income tax rate of five percent is one of the lowest in the country and is far below the national high in Iowa, where the corporate income tax is twelve percent. However, Utah slipped one spot from 2011 to finish 5th on the corporate tax index. This places Utah behind Hawaii, Wyoming, Nevada and South Dakota. (WY, NV and SD have no corporate income tax.)

Individual Income Tax

Although seven states do not have an individual income tax, Utah's single tax rate of five percent puts it 14th. The report weighted the income tax more than any other because "a significant number of businesses, including sole proprietorships, partnerships and S-corporations, report their income through the individual income tax code." This is even more important because it can heavily affect whether entrepreneurs decide to take the risk of starting a business (and determine what kind of labor pool is available to companies looking to hire.) Utah is also helped because it does not impose a marriage penalty, which means that the state allows a married couple to receive twice the standard deduction when filing jointly.

Sales Tax

Sales taxes were the third area measured by the Tax Foundation's report. Utah finished 22nd, three spots behind its 2011 ranking. A major component of Utah's fair score on the

sales tax index is local option sales taxes. During the 2012 Session Senator Ben McAdams will propose a distribution formula for local option sales tax that will reward higher job growth. Currently, the local option sales tax is distributed on a 50/50 formula. Half is based on where the sale was made, and half is based on the population. Under Sen. McAdams' proposal, the local option sales tax would be distributed on a 33/33/33 formula, adding a third distribution based on payroll.

Property Tax

Utah ranked remarkably well on the property tax index, maintaining its 3rd place ranking from 2011. This is due, in large part, to Truth-In-Taxation hearings, which taxing entities must hold before hiking property taxes. The taxing entity must inform the public through written notice of the proposed tax increase and hold a public hearing.

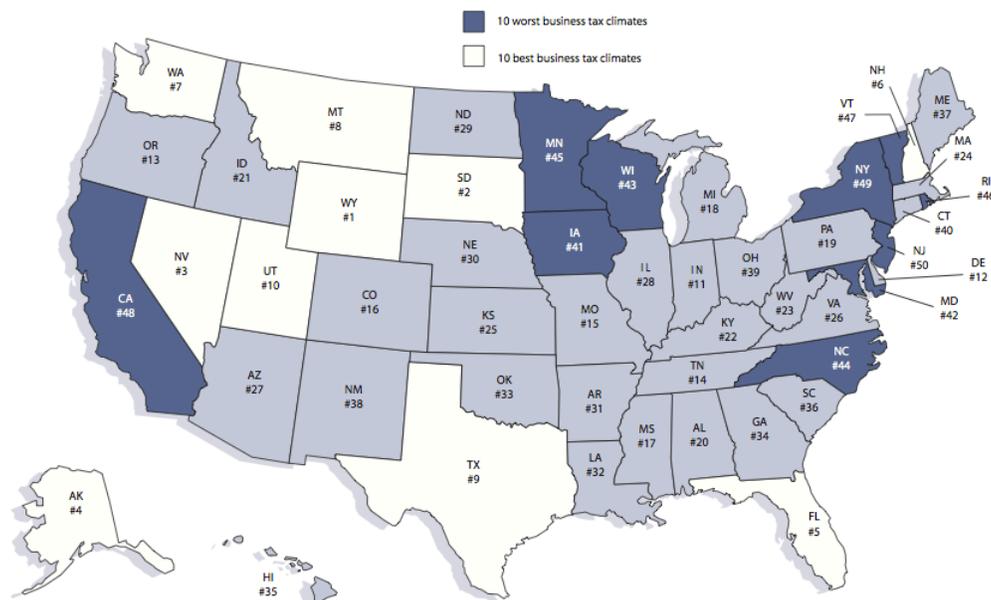
This process is significant because property taxes can be a determining factor for a business when selecting where to build.

Unemployment Insurance Tax

This category is the worst ranking for Utah. Placing 24th, Utah faces unique circumstances such as seasonal employment, which pulls the ranking lower. But because Utah excludes employers from being charged for benefit award reversals, reimbursements on combined wage claims, voluntary leaving, discharge for misconduct, refusal of suitable work and employees that continue to work part-time, it regains some ground in this criteria. Fortunately, the 2012 Legislature has already approved SB 129, which lowers the top unemployment insurance rate from 9% to 7%.

Overall, elected officials in Utah have created a good environment for business. The lower, more consistent tax rates that the state and municipalities can provide, the friendlier the business climate will be.

Figure 1
State Business Tax Climate Index, Fiscal Year 2012



Source: The Tax Foundation: 2012 State Business Tax Climate Index

The accompanying table shows some of the priority bills being monitored by your Taxpayers Association. This priority list will continue to grow throughout the legislation session. Be sure to visit www.utahtaxpayers.org in order to view the full Utah Taxpayers Association legislative watch list and stay updated on the legislature's progress. For additional information, join the Utah Taxpayers Association at its weekly legislative committee meetings on Thursdays at 7:00 am in the Olmsted Room in the East Annex building of the Capitol.

Bill	Title	Sponsor	Description	Position
HB 15	Statewide Adaptive Testing	Rep. Hughes	Turns UPASS into a computer adaptive testing model	
HB 81	City or Town Option Sales and Use Tax Amendments	Rep. Dee	Repeals the 2016 expiration of the .1% option sales tax increase associated with the hold harmless created nearly 30 years ago on the distribution of local option sales tax	
HB 210	Severance Tax Amendments	Rep. Nielson	Reverses the severance tax grab from the 2011 session	
HJR 6	Joint Resolution on Severance Tax	Rep. Nielson	Constitutional amendment to put all severance taxes in the severance tax trust fund	
SB 24	Research Tax Credit Amendments	Sen. Valentine	Repeals the expiration date for these tax credits	
SB 27	Amendments to Revenue and Taxation Title	Sen. Stephenson	Reverses Supreme Court decision disallowing refunds of erroneously paid sales taxes	
SB 46	Agriculture Sustainability Act	Sen. Jenkins	Requires rollback taxes in counties (1st, 2nd, 3rd) and optional (4th, 5th, 6th) be put into a conservation fund	
SB 137	Financial Transparency Website	Sen. Niederhauser	Requires interlocal entities to publish financial information on the state transparency website	
SB 138	Health Insurance Mandate Accountability Amendments	Sen. Weiler	Requires that health insurance mandates passed after Jan. 1, 2012 must also apply to charter, public or higher ed schools	

Federal and State Courts Reject County Auditors Lawsuit: Will the Legislature Fix the Problem?

As reported in the December 2011 edition of the *Utah Taxpayer*, Greg Hawkins, the Salt Lake County Auditor, filed suit against Salt Lake County, the County Mayor and eight members of the Salt Lake County Council who voted in favor of amending the County's optional form of government to make the Mayor the County's budget officer effective January 1, 2012. The County Council voted based in part upon a study conducted by the Government Finance Officers' Association and the Council's decision that having the Auditor serve as the budget officer duplicated the Mayor's efforts as the Chief Executive of the County.

The Auditor first sought a Temporary Restraining Order (TRO) in Utah's Third Judicial District Court to stop the change from taking place. The Auditor claimed that the Council did not have the authority to amend the optional form of government or make the Mayor the budget officer. The Auditor based his claim, in part, on the idea that moving the budget officer duties to the Mayor resulted in a "consolidation" of his office with the Mayor's. He also claimed that Salt Lake County's voters had voted him into office as the "budget officer" and the Council cannot amend the optional plan without the approval of Salt Lake County voters.

Judge Sandra Peuller denied the Auditor's emergency request for a TRO. She then held an evidentiary hearing to see if a Preliminary Injunction was appropriate. After hearing from several witnesses and considering the legal arguments presented by the Auditor's counsel and the District Attorney's Office, Judge Peuller refused to enjoin the County Ordinance from taking effect. Judge Peuller held that the change was not a "consolidation", Salt Lake County's voters did not vote for a "budget officer", but an Auditor and that is the position the Auditor still holds.

The Auditor immediately filed two petitions with the Utah Supreme Court seeking to have the County's ordinance stopped and for the right to immediately appeal Judge Peuller's ruling. The Utah Supreme Court, in an Order signed by Chief Justice Christine Durham, denied both petitions.

Not satisfied with Utah's state courts' decisions, the Auditor and one Salt Lake County voter sought relief from the United State District Court Judge Clark Waddoups. The Auditor and the voter claimed that the Council's action violated the United

States Constitution. After conducting a hearing, Judge Waddoups not only denied the Auditor's request for emergency relief, but also dismissed the entire lawsuit. According to his ruling, the proper forum for the Auditor to raise his issues was in Utah's state courts, and not Federal court.

The County defendants have moved for the dismissal of all claims still pending before Judge Peuller. The Auditor has opposed that motion and also filed his own motion seeking to have Judge Peuller decide the case as a matter of law in his favor. It is difficult to guess when the briefing and oral argument will be held on the pending motions or when Judge Peuller will issue a ruling.

Ultimately, the Utah Legislature and the County Council should decide all of the issues raised by the Auditor by statutory and ordinance changes which clarify the Auditor's role in County government. Fortunately, Senator Curt Bramble and Representative Greg Hughes are pursuing legislation (SB 124) to settle these issues.