



THE UTAH TAXPAYER

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Be Honest About Charter School Funding

School districts don't like competitors, especially ones who receive taxpayer money. Of late, the most common sign of this dislike has been their repeated attempt to pin responsibility for the districts' property taxes tax on charter schools. Representative Kraig Powell's HB 264 is the latest example. HB 264 would require the property tax notice to include a line item describing the amount of local property taxes that go to charter schools.

There are two problems with HB 264. First, charter schools have no authority to impose property taxes. Second, no property taxes go to charter schools. If anything, school districts should have to explain why they continue to receive funding tied to students who've left the district to attend a charter school.

Funding public education is complicated

Funding public education is amazingly complicated. The needs and wants of each district, school, teacher and student vary considerably, so the funding mechanisms are extraordinarily complex. All school districts impose the statewide Basic Levy, and have authority to impose several other kinds of property tax levies. Each of these levies has limits governing how school districts may spend the revenue from that levy.

Because no school district receives enough from property taxes to fund the minimum needs of the district, the state supplements those property taxes with income tax dollars. Districts who generate proportionately more property taxes receive less income tax, but every district keeps all the revenue from the property tax levies it imposes.

School districts retain money when students leave for charter schools

Charter schools complicate funding even further; they have no fixed boundary, and no property tax authority. Thus they are funded almost entirely from income tax dollars. Because each district's allocation of income tax dollars depends on the number of students in their classes, when students leave a district school to attend a charter school, district schools lose some of the income tax.

Frankly, that's a bit astounding. When a family moves from Eagle Mountain to Payson, the Alpine School District doesn't retain any portion of the money otherwise associated with their children. When a family withdraws their children from the Alpine School District to home school them, the Alpine School District does not retain the money associated with those students. But when a family living in the Alpine School District decides to send their children to a charter school, the Alpine School District retains a portion of the money otherwise spent on educating them.

As noted above, the money the school district loses when a student leaves to attend a charter school comes entirely from the income tax. Every school district retains every dollar of the property taxes collected from the property tax levies they impose. Charter schools receive no property tax dollars, because they have no authority to levy a property tax.

HB 264 gets its exactly backwards

Because public education funding is so complicated, school districts have convinced the Legislature that they should be compensated for charter school students who no longer attend their school. Now they want charter schools to assume the blame for the district's property taxes by placing a line on the property tax notice describing what portion of the overall property taxes are because of charter schools located within the boundaries of the school district.

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That is absurd. Charter schools have no authority to impose any property tax. More over, they only receive a portion of the money associated with a student who leaves a school district to attend a charter school. Given these two undeniable facts, HB 264 should require school districts to explain why they should continue receiving funding for what Senator Howard Stephenson rightly calls “phantom students.”

A better way

One way of accomplishing that would be to lower a school district’s certified tax rate by an amount exactly corresponding with the amount of money they have historically received for these phantom students. Under Utah’s “Truth in Taxation” law,

each district could continue receiving that money. However, they would have to go through Truth in Taxation, and explain why they need money for students who no longer attend any of the district schools.

This solution would allow school districts to continue receiving all the money they have historically received, provided they are willing to accept responsibility for raising property taxes. In our experience, making that case could be difficult. That is why we oppose HB 264, and hope the Legislature will instead require school districts to assume responsibility for the funding they want, especially when students leave for charter schools.

My Corner: The Limits on UTOPIA’s Next Steps



**Association VP
Royce Van Tassell**

Historically, the relationship between UTOPIA and the Taxpayers Association has been cool at best. We do not believe cities should compete with the private sector, and UTOPIA has been stung by our critiques of their repeated and continuing financial losses. Given the passions both sides have felt, sometimes our disagreements have boiled over.

Over the past several months, UTOPIA CEO Todd Marriott and I have tried to mend fences. At the

urging of Layton City Attorney Gary Crane and Utah League of Cities and Towns executive director Ken Bullock, Mr. Marriott and I have met several times to discuss our respective questions and concerns about UTOPIA’s next steps. While the Taxpayers Association remains steadfastly opposed to government competing with the private sector, especially in a dynamic and highly competitive industry like telecommunications, our conversations have helped both of our organizations better understand what we share in common, and what direction UTOPIA plans to proceed.

Following the Legislative Auditor’s audit released last August, Senator John Valentine and the rest of the Legislature have emphasized that Utah public entities cannot use debt to pay for ongoing operations. Senator Valentine is sponsoring SB 172 to prohibit Utah public entities from using bond proceeds to cover operating expenses or debt service. Based on my conversations with Mr. Marriott and Layton’s Gary Crane, and to their credit, UTOPIA acknowledges the wisdom in Senator Valentine’s bill, and is developing plans to wean their operations from debt.

About a month ago, Mr. Marriott shared with the Taxpayers Association an executive brief outlining several alternatives UTOPIA could use in weaning its operations off debt. That brief describes legal, operational and financial impacts of shutting down UTOPIA’s network, continuing to nurse the network along without further investment, selling the network to a private provider, extending the network with wireless technology, finishing the network with fiber throughout all the cities, and every other variation they could conceive of.

Importantly, UTOPIA is open to a private company buying the network. UTOPIA could not receive anything close to par value for the costs UTOPIA has incurred in building and operating the network thus far; other municipal networks have

been sold for typically \$0.10 to \$0.20 on the dollar. While the executive brief expresses concern that its member cities would lose control of the network, Mr. Marriott and his board are willing to seriously consider a sale, even at such a steeply discounted price.

Because a potential buyer has not come forward, UTOPIA must consider other options. By their analysis, UTOPIA needs to eliminate a \$3 million annual operating loss. They plan to make several operational cuts, but the bulk of the savings they need would come from member cities providing HR, legal and other services to UTOPIA.

For example, Mr. Marriott recently told me that a UTOPIA truck had to drive from West Valley City (where UTOPIA’s headquarters are) to Brigham City to clear snow-covered branches obstructing UTOPIA lines. The travel time to and from Brigham City meant that UTOPIA spent some three hours solving the problem. If UTOPIA had merely called Brigham City, Brigham City staff could have been solved in less than an hour.

While that solution looks appealing, it appears to violate current state code. UCA 10-18-303(3) prohibits municipal telecom systems from cross subsidizing their services with:

- (a) tax dollars;
- (b) income from other municipal or utility services;
- (c) below-market rate loans from the municipality; or
- (d) any other means.

In other words, it may be illegal for UTOPIA’s member cities to use city resources to pay for UTOPIA’s operations and maintenance without market-value compensation.

UTOPIA’s leaders have suggested they can avoid the cross subsidy problem by “running a tab” for UTOPIA. The cities would keep track of the services they provide to UTOPIA, and UTOPIA would repay them.

That arrangement also appears to be illegal. UCA 10-18-303(4) prohibits UTOPIA’s member cities from granting “any undue or unreasonable preference or advantage” to UTOPIA. That is, unless UTOPIA’s member cities would provide similar services, and run a similar tab for others in the telecommunications industry, it can’t provide them to UTOPIA.

UTOPIA has argued that these sections of code were never meant to restrict its member cities from keeping UTOPIA’s lights on. However, the language of the statute seems pretty clear. Cross subsidies appear to be illegal, as do undue or unreasonable preferences, like those contemplated by UTOPIA.

Utah Not Alone in Transportation Funding Struggles

A challenge that every state faces is deciding how to properly and adequately fund transportation projects. And despite the fiscally prudent Legislature, Utah continues to be faced with challenges when maintaining and building new roads.

The Tax Foundation recently released numbers showing that gas taxes and tolls (which Utah has very little of) generate only about one third of state and local spending on roads. Utah falls right on that number, generating 32.4% of it's federal, state and local spending from user taxes and fees. This means that Utah roads are subsidized by two thirds by other sources, such as general funds, competing with other programs and services. You can see in the nearby chart that compared to neighboring states, Utah subsidized road spending more than other states except for Wyoming.

One attempt to provide revenue for transportation projects in Utah was the passage of SB 229 in 2011 by Senator Stuart Adams. This legislation, passed in a special session, earmarked 30% of the growth in sales tax revenues to be used for transportation projects. While this legislation tried to address the problem, sales tax revenues are volatile and more reliable funding is needed.

As we have advocated for years, users should pay for what they use. Heavily subsidizing roads leads to overuse and congestion. New tools, such as the HOV lane, have helped to reduce that congestion by allowing users to pay a toll to use the left lane on Interstate 15. But these attempts are not enough. Other methods, such as charging road users for vehicle miles traveled may be a more reliable and fair method.

Virginia and Maryland have proposed sales tax increases, Wyoming has proposed raising its gas tax and others have explored implementing a vehicle mileage tax. One thing is sure, Utah needs to explore these options and implement funding tools that will be sufficient to maintaining current infrastructure while being fair and equitable to all taxpayers.

	Share of Road Spending Covered by Fuel Taxes, Tolls, and Other User Taxes and Fees	Rank	Share of All Transportation Spending Covered by User Taxes and Fees	Rank
Colorado	30.6%	24	41.9%	11
Idaho	26.0%	32	27.1%	39
Nevada	26.4%	31	41.7%	12
Utah	20.2%	43	20.2%	46
Wyoming	5.3%	49	6.6%	50
U.S. Average	32.0%		35.8%	

Source: The Tax Foundation. <http://taxfoundation.org/article/gasoline-taxes-and-tolls-pay-only-third-state-local-road-spending>

Taxpayers Association part of solution to streamline sales tax refund procedures in Utah

In November, we reported on Tax Commission Rule R865-1A-46, which was proposed by the Tax Commission to address refund procedures to be followed when purchasers seek refunds of erroneously paid sales taxes. Based on comments submitted by the Taxpayers Association and others, the Tax Commission formed a working group to address some taxpayer concerns with the rule, and the group crafted a revised rule which is scheduled to go into effect on February 7, 2013. The Rule should provide predictable, consistent and workable procedures for purchasers to follow when obtaining sales tax refunds in Utah. Highlights are as follows:

Sampling: Prior to the rule, some at the Tax Commission were requiring taxpayers to submit invoices, cancelled checks and other documentation for every transaction in a refund request, contrary to prior Commission practice. The rule now allows the taxpayer to request a reasonable sampling method (similar to that used in audits), to decrease the documentation required to be submitted by taxpayers.

Flexibility: The Commission specified that the taxpayer shall be granted reasonable requests for extensions of time to gather refund documentation, and may submit reasonable documentation if the typical documentation is unavailable.

Use Tax: Refunds of use taxes, including those paid through direct pay permits, are not addressed by Rule 46. Such refunds will continue to be handled as they have historically been handled.

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 Seagull Room in the East Annex building of the Capitol.

Bill	Title	Sponsor	Description	Position
HB 67	Personal Property Taxation Revisions	Rep. Froerer	Increases the exemption of an individual's tangible personal property from \$3,500 to \$10,000	
HB 75	Occupational and Professional Licensing Amendments	Rep. Greene	Establishes that licensing is only appropriate where state has a compelling health/safety interest, and licensing is the least restrictive means of accomplishing that interest	
HB 94	Free Market Protection and Privatization Board Act Amendments	Rep. Stratton	Remakes the PPB; moves the board to the Auditor's office; allows board to hire outside staff by contract	
SB 34	Special Election Date for Ballot Propositions		Prohibits local entities from holding a bond election on the primary election date	
SB 35	Property Taxation of Business Personal Property	Sen. Harper	Increases exemption from personal property to \$10,000	
SB 124	Sales and Use Tax Exemption for Database Access	Sen. Harper	Enacts a sales and use tax exemption for amounts paid or charged to access a database if the primary purpose for accessing the database is to view or retrieve information	
SCR 5	Concurrent Resolution Endorsing the Utah Education Excellence Commission	Sen. Stevenson	Expresses strong support for achieving the goal that 66% of Utah's adults hold a postsecondary degree or certificate by 2020	

-You're Invited-

Legislative Committee Meetings for the 2013 General Session

The Utah Taxpayers Association will hold Legislative Committee meetings during the Legislative Session every Thursday at 7:00 am, in the Seagull Room in the East Annex building (Senate building) near the Capitol cafeteria. These meetings are open to all members of the Association and will begin on January 31st and will continue through March 7th. We will discuss the progress of bills of interest, provide updated legislative watchlists and answer questions about the legislative session. Please join us on Thursdays at 7:00am.