



THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

Clearing the Hurdle of Sales Tax Inequity for Utah's Manufacturers

By now, you've probably heard about our legislative initiative, Utah 2.0. It's a three-pronged approach to ensure Utah's strong competitive nature and friendly business climate, as more and more states follow our lead.

If you'd like a quick refresher, head over to January's edition of The Utah Taxpayer.

One of Utah 2.0's focuses is to eliminate the sales tax inequity that exists for all manufacturing inputs. There's already a piece of legislation that's being moved through the Legislature, House Bill 180, sponsored by Rep. Brad Wilson.

This piece of legislation would apply to all inputs, not just those with a life of greater than 3 years. Let's take a look at how we got to this pivotal point.

Back in 1995, a bill strongly backed by your Taxpayers Association created a sales tax exemption for manufacturing inputs (the stuff used to create and build other stuff). However, due to some hesitancy over the effect on state coffers, it was only allowed for those inputs that have a life for more than three years.

Despite the limited implementation, there were still concerns about its effect on state revenue.

Legislative leaders decided it would be appropriate to phase-in the exemption over a three-year period. This would allow the expected growth in manufacturing to cover the revenue loss it was appropriately phased-in to feather the impact on state revenue, while allowing for additional growth in other revenue as manufacturers expanded.

This is precisely what happened.

In the years following that, Utah's manufacturing gross domestic product (GDP) grew faster and stronger than it had in previous years.

In fact, revenue on the general fund, into which sales tax is deposited, never dipped in the following 6 fiscal years after it passed. Granted, there were other factors that contributed to that growth in the general fund, but the dip that was originally predicted never materialized.

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My Corner: Will Utah Find an Answer for Remote Sales Tax?

If you purchased a product on the Internet, TV, or mail order, there is a good chance that you may have not paid your sales and use tax on the item.

As state law stands now, if the online retailer you purchased your product from has no physical presence in the state, such

as a store or a warehouse, the seller is not required to collect and remit a sales and use tax on the purchase.

However, that does not mean there is no tax required. It means that the purchaser is responsible to pay the tax on the item purchased. The reality is hardly anyone reports and pays this tax on their own.

Utah's lawmakers are examining a number of bills that deal with this issue. The attempt is not a maneuver to collect additional revenue for the state, as all of the proposals have included a requirement that a change in this area should be revenue neutral. Rather, this is an attempt to make certain there is an equal playing field among all of the businesses that choose to sell to Utahns.

While Utah's local retailers are required to collect and remit the sales taxes on purchases made by fellow Utahns, the total purchase price from an out-of-state online retailer is lower because it does not need to collect the sales and use tax. This puts the out-of-state online retailer at a competitive advantage over our homegrown Utah businesses.

This issue needs to be addressed. The local stores and the out of state retailers need to be on an equal playing field. This will allow for the market to drive to purchasing behaviors instead of out of date tax policies.



Rep. Mike McKell is sponsoring H.B. 235. His bill will state that a business creates a presence in the state if it has affiliates located within the state. An affiliate could be defined as someone who has their own personal website or blog and then advertises products for a business on their website. The bill is

revenue neutral as it calls for the tax rate to decline as the state collects from additional transactions. It is an example of broadening the tax base to lower the rate.

Sen. Wayne Harper is also drafting legislation, S.B. 65, related to this issue. Harper's legislation requires companies to report to the tax commission that they are selling online and not collecting the tax when they have done more than \$2,500 in sales in a calendar quarter. The Tax Commission would then ask those retailers to notify their customers and inform them that the sales and use tax has not been collected and that the customer should pay the tax to the state.

Harper is also running legislation that is similar to McKell's as it seeks to show that businesses selling online in Utah may have presence in the state. Harper's bill, S.B. 85, asserts that a business that has an economic presence in the state should collect and remit sales and use taxes. The bill makes a broader attempt than McKell's to settle the issue of how to collect taxes for online transactions.

Your Taxpayers Association in the past has supported efforts to collect sales and use taxes from online purchases as it levels the playing field among all retailers. It also allows for Utah's lawmakers to broaden the sales tax base and lower the rate.

One key provision that we expect to see in these bills is an exemption for small businesses. Asking small retailers to comply to a Utah law and potentially face an audit from the Utah Tax Commission causes too many compliance issues for a small business that may have only a limited amount of sales within the state.

Misconceptions about these pieces of legislation have been disseminated to Utahns. While some have argued that these bills are a tax on the Internet, they are not. In 1998, Congress passed the Internet Freedom Tax Act, which prohibits taxing the Internet. Other claims have been made that this is a new tax. This is also misleading, as the bills deal only with changing how a current tax is collected, not creating new taxes.

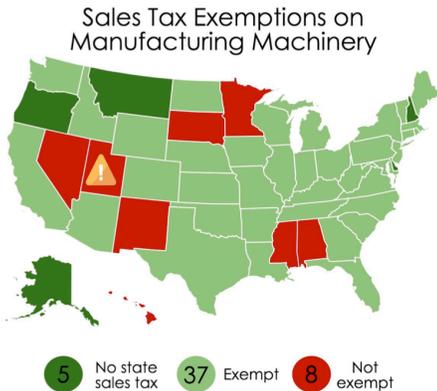


Sen. Wayne Harper

Clearing the Hurdle (continued from page 1)

After 1995, as our manufacturing GDP increased, other states began to take notice.

In fact, as of 2015, there are 8 states which don't allow for the full exemption for manufacturing



inputs. Utah is one of them. It's time for Utah to finish the job.

The 1995 legislation was a good start in making Utah more attractive to

manufacturing businesses, and it had a direct correlation in economic development in the state, as can be deduced from the growth in GDP.

Publications, and more often, Utah politicians laud rankings showing Utah as a top place to do business. But that's not always the case.

The Tax Foundation in 2015, in its annual Location Matters report, shows the disparity between what we hear on the news and the burdens on our manufacturers. When it comes to the tax burden on manufacturing, we are ranked 26th in the nation by the Tax Foundation.

Click here to [read the full report.](#)

Allowing an exemption for all inputs is also sound tax policy. As currently implemented, this is an entirely unfair advantage to some companies, by creating a sales tax penalty for some businesses, while excluding others.

Take the hypothetical example of two

companies (competitors) that produce an identical output, let's say drive shafts for vehicles.

Company A has a singular, 8-hour shift. Company B has two shifts, with the employees operating the necessary equipment twice as long.

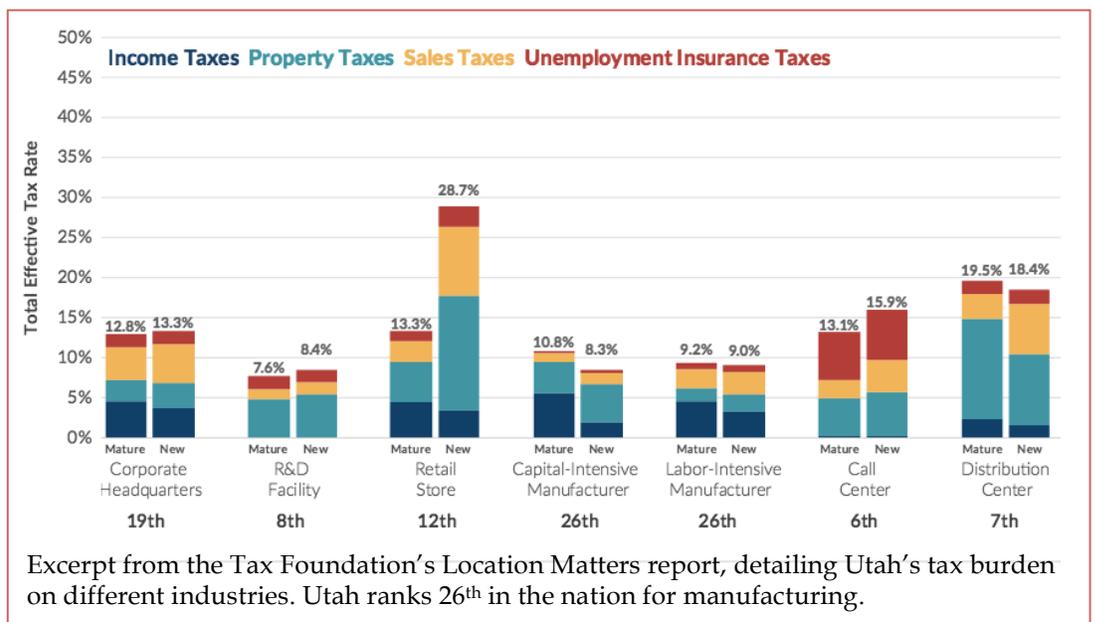
Company B, while making the exact same drive shaft as Company A, will go through its equipment and inputs two times faster, but are producing more.

The question is why do we have policies to punish businesses who are producing more, higher-valued outputs? We still haven't come up with an answer, other than passing House Bill 180!

Your Taxpayers Association is still in negotiations with legislative leaders and working with the sponsor of the bill to ensure that, similar to 1995, it is appropriately phased-in to allow for the growth expected in our manufacturing businesses to cover the possible loss in state revenue.

House Bill 180, thanks to the hard work of Rep. Brad Wilson, has passed the House Revenue and Taxation Committee, and is on the way to the full House of Representatives for its approval.

If you'd like to get involved and help us encourage and educate legislators on this important step towards sound tax policy, continued equity and economic development, email spencer@utahtaxpayers.org.



Utah Taxpayers Association 2016 Legislative Watchlist

As we start the third week of the Utah Legislative Session, your Taxpayers Association has already been busy monitoring and lobbying on a variety of bills.

Let's dive in.

House Bill 180 - Sales and Use Tax Exemption Amendments - Rep. Brad Wilson

This bill is part of our legislative initiative, Utah 2.0. This bill would eliminate the sales tax inequity that exists for all manufacturing inputs. Under state law, only inputs that have a life of three years or greater are allowed to take the sales tax exemption.

This piece of legislation would apply to all inputs, not just those with a life of greater than 3 years. The bill passed the House Revenue and Taxation Committee, and heads to the full House of Representatives for approval.

House Bill 61 - Corporate Franchise and Income Tax Changes - Rep. John Knotwell

This is another of our Utah 2.0 initiative. HB 61 allows for all industries in the state to elect for taxation under a single sales factor. As it stands now in Utah code, some industries corporate income tax is calculated based on three factors: property, payroll (employees), and sales in Utah.

Right now, some industries are allowed the option to calculate their corporate income tax based only on the sales made within the state. However, this does not apply to everyone. HB 61 would change that to include everyone.

House Bill 25 - Property Tax Amendments - Rep. Dan McCay

HB 25 looks to change how centrally-assessed new growth is calculated in the certified tax rate by establishing benchmarks for new growth. If the benchmarks are not achieved, there is no new growth.

Essentially, this bill prevents automatic property tax increases on real property owners.

House Bill 153 - Certified Tax Rate Amendments - Rep. Ray Ward

This legislation would modify the calculation of the certified tax rate by including an adjustment for inflation.

This bill would directly threaten Utah's Truth-in-

Taxation law due to this re-calculation. It would cause automatic tax increases without any accountability. Your Taxpayers Association is adamantly opposed to this legislation.

House Bill 309 - Sales and Use Tax Earmarks Amendments - Rep. Dan McCay

HB 309 removes a number of earmarks from the sales and use tax. The earmarks deal mostly with funding water projects and programs within the Division of Natural Resources.

The bill is a product of the Tax Review Commission that met in 2015.

In general, earmarks tie the hands of lawmakers, and your Taxpayers Association opposes this type of funding. The practice restricts the legislature's ability to react to immediate budgetary needs of the state.

Senate Bill 17 - Revenue and Taxation Amendments - Sen. Kevin Van Tassell

Enforces valuation procedure for oil and gas to be taken at the well site.

In past years, there has been no standard for valuing commodities as they are extracted from the ground. This has led to some oil and gas being valued after refining and transportation processes, which increases the value, leading to taxable variations. SB 17 simply creates a standard for valuing oil and gas for taxing purposes.

Senate Bill 104 - Amendments to Income Tax - Sen. Jim Dabakis

Increases the income tax by 0-2%, depending on individual income. SB 104 would create a progressive income tax structure, with income earners of more than \$250,000 paying a 6% income tax, and those making more than \$1 million annually paying 7%.

Your Taxpayers Association is opposed to this legislation.

Senate Bill 120 - Property Tax Notice Amendments - Sen. Howard Stephenson

Better defines tax increases by removing bond payments from tax revenue, for the purpose of public notice.

There have been circumstances in which taxing entities would raise property taxes by the exact amount as an expiring bond payment, in order for the entity to keep collecting that money without

triggering a Truth in Taxation hearing. This bill removes bond payments from tax revenue, to more broadly define when a Truth in Taxation notice and hearing must be distributed and held, respectively.

You can view our entire Watchlist to keep updated on all the bills we are actively lobbying and monitoring on our website,



For more information, contact: Vice President Billy Hesterman (801-633-3663) or Research Analyst Spencer Nitz (385-202-5986)

Utah Taxpayers Association 2016 Legislative Watchlist - February 4, 2016

| Utah Taxpayers Association 2016 Legislative Watchlist - February 4, 2016 | | | | | Positions: S - Support O - Oppose M - Monitor. *Recommended positions indicated by () | | | | |
|--|--|-------------|---|--------------------|---|-------------|-------------|--------------|--------------|
| Number | Title | Sponsor | Description | Questions/Comments | Position* | House Comm. | House Floor | Senate Comm. | Senate Floor |
| PRIORITY BILLS | | | | | | | | | |
| HB 25 | Property Tax Changes | McCay | Changes how centrally assessed new growth is calculated in the certified tax rate by establishing benchmarks for new growth. States that if the benchmarks are not achieved, there is no new growth. Prevents automatic property tax increases on real property owners. | | S | | | | |
| HB 61 | Corporate Franchise and Income Tax Changes | Knotwell | Allows all businesses the option to use single sales factoring in calculating corporate income taxes. Brings equity to Utah's tax code. Decreases Utah's tax burden on businesses. | | S | | | | |
| HB 153 | Certified Tax Rate Amendments | Ward | Modifies the calculation of the certified tax rate by including an adjustment for inflation. Harms Utah's Truth-in-Taxation law. Causes automatic tax increases without accountability. | | O | | | | |
| HB 180 | Sales and Use Tax Exemption Amendments | Wilson | Eliminates the 3-year-life sales tax penalty for machinery and parts for manufacturing and mining businesses. Creates equity in the tax code. Removes taxation of business inputs. | | S | | | | |
| SB 17 | Revenue and Taxation Amendments | Van Tassell | Enforces valuation procedure for oil and gas to be taken at the well site, for tax reporting purposes. | | S | | | P | |
| SB 104 | Amendments to Income Tax | Dabakis | Increases the income tax by 0-2%, depending on individual income. | | O | | | | |

Pre-Legislative Conference a Success, Featuring State and Legislative Leaders

On Monday, January 11 at the Little America hotel in Salt Lake City, your Taxpayers Association held its annual Pre-Legislative Conference.

The agenda was jam-packed with the state's leading legislators and policy makers discussing the top tax issues that will be discussed in the 2016 Session. Topics that were covered during the Conference include changes to the corporate income tax, removing the taxation of business inputs, how to create equity in the sales tax between online out of state retailers and our local retailers, and removing earmarks from the state's general fund.

Speakers included President Wayne Niederhauser, Revenue and Taxation Interim Committee chairs Sen. Deidre Henderson and Rep. Dan McCay, and Sen. Curt Bramble, who also is the chair of the National Conference of State

Legislatures, spoke on efforts to create a sales tax equity, both within the state and nationwide.



Room full of interested attendees for the annual Utah Taxpayers Association Pre-Legislative Conference

The conference was also the official unveiling of our Utah 2.0 initiative, which seeks to create a much healthier climate for businesses, industries, and organizations of all shapes and sizes.

Those who presented at the conference included:

- Perspective from the Senate – **Senate President Wayne Niederhauser**
- What has the Tax Commission accomplished in 2015? What are the commission’s priorities for the new year? – **Commissioner John Valentine**, chair of the Utah Tax Commission
- Sales tax equity: Leveling the playing field among all retailers – **Senator Curt Bramble**



Sen. Lyle Hillyard explains the upcoming opportunities and challenges for setting Utah’s state budget

- Stimulating Utah’s economy through competitive corporate income taxes – **Senator Deidre Henderson**
- What to expect for the FY2017 budget – **Senator Lyle Hillyard**
- Stopping automatic property tax hikes – **Representative Dan McCay**
- Keeping Utah competitive by expanding the sales tax exemption on business inputs – **Senator Stuart Adams**
- Should the property tax notice be sent via email? – **Representative Jeremy Peterson**
- Aligning Utah’s workforce to the needs of its businesses – **Senator Ann Millner**
- How should Utah handle sales tax earmarks? – **Curtis Trader**, Chair of the Utah Tax Review Commission
- Utah State School Board Approach to Education Reform and Funding – **Dave Crandall**, State School Board Chair
- Transparency for charter school funding – **Howard Headlee**
- Funding Utah’s roads in the future – **Linda Hull**, Director, Policy and Legislative Services, UDOT

Many great presenters unveiled legislation they’d be working on throughout the 2016 Session, including our legislative initiative, Utah 2.0, as well as an excellent brief on the upcoming budget.

Thanks for everyone that participated!

If you missed it, it’s not too late to get caught up. We’ve uploaded all the displayed presentations onto our website, www.utahtaxpayers.org!

2016 Legislative Committee Meetings

Every Thursday morning during the 2016 Legislative Session from 7:00 AM to 8:00 AM in the East Senate Building, Beehive Room.

These weekly meetings, held by the Utah Taxpayers Association during the legislative session, are an opportunity to be updated on the progress of key bills moving through the legislature. Each week Association staff will present an updated legislative “watch list” and will take questions and advice from Association members on the progress of key legislation. All Association members are welcome to participate at any time. For more information, or to indicate your intention to attend, contact Spencer at 801-972-8814 or spencer@utahtaxpayers.org.

Association Accomplishments During January:

- ❖ Held the Annual Utah Taxpayers 2016 Pre-Legislative Conference
- ❖ Utah 2.0 unveiling
- ❖ Begin lobbying during the 2016 Legislative Session
- ❖ Developing an info-graphic for the Utah 2.0 Initiative
- ❖ Working with Legislators on major tax initiatives

In the News:

- ❖ Comment on online sales tax
 - [The Digital Universe](#)
 - [The Salt Lake Tribune](#)
- ❖ Interview about what to expect from the session
 - [UPR](#)
- ❖ Op-Ed: Congress needs to pass Employee Rights Act
 - [Deseret News](#)
- ❖ Education in the Legislative Session
 - [Deseret News](#)