



# THE UTAH TAXPAYER

A PUBLICATION OF THE UTAH TAXPAYERS ASSOCIATION

## Legislative Committee Supports NOL Changes, Discusses Corporate Income Tax Reforms

Utah’s Revenue and Taxation Interim Committee has endorsed legislation that will align Utah’s Net Operating Loss (NOL) laws with the federal tax code and also began discussing how Utah should treat certain forms of foreign income that a corporation may choose to bring into the United States.

In its June committee meeting, the committee gave an initial endorsement of legislation that aligns Utah’s code for NOL’s with the federal code. The draft legislation, which likely wouldn’t be considered until the 2019 general session of the Utah Legislature, eliminates a corporation’s ability to have a 3-year-lookback for operating losses and allows a company the ability to carry forward losses indefinitely into the future as long as the loss does not exceed 80% of Utah taxable income.

Rep. Steve Eliason, R-Sandy, the chief driver of this legislation, has explained that the change will allow for Utah to align its tax code following the passage of the Tax Cuts and Jobs Act, the major tax bill that Congress passed in December of 2017.

The committee also began its examination into how Utah should treat certain forms of foreign income due to the Tax Cuts and Jobs Act. Analysts predict that if Utah were to do nothing to adjust, Utah taxpayers could see a significant tax increase.

The committee is determining if Utah should conform, or not, to new federal tax laws created by the major tax bill passed last year. Congress created certain incentives for companies to bring profits to the U.S. but that money may be taxed at the state level if Utah does not choose to “decouple” from the federal law for this type of income.

While some lawmakers are tempted to collect the possible windfall, your Taxpayers Association has been working with members of this legislative committee to look at alternatives to fully conforming to the tax. Other options may include having Utah still taxing the money that comes to the state from the foreign profits, but at a lower rate than is currently in place, or not taxing the money at all. These are foreign profits that were not earned in Utah. In addition, companies that may bring this earned income back are not likely to need any state government services related to the money,

*(continued on page 3)*

**JULY 2018**  
VOLUME 43



Legislative Committee Supports NOL Changes, Discusses Corporate Tax

Page 1



My Corner: Why So Many Elected Officials Oppose Transparency and Equity

Page 2



Court Dismisses Counties’ Case Against Centrally-Assessed Taxpayers

Page 4



Supreme Court Gives Local Retailers Victory, Benefitting Utah Businesses and Families

Page 5



Average Utah Residents Pays \$611 to City Government

Page 6



Property Tax Valuation Protected

Page 6



Your Association Accomplishments

Page 7

### ASSOCIATION STAFF

Howard Stephenson	President
Billy Hesterman	Vice President
Spencer Nitz	Research Analyst
Bren Robinson	Executive Assistant

### EXECUTIVE COMMITTEE

Morris Jackson	Chairman
Olga Siggins	Vice Chair
Bobby Rolston	Secretary
Nicole Lengel	Treasurer
Keith Pitchford	Legislative Chair

## My Corner: Why So Many Elected Officials Oppose Transparency and Refuse to Fight for Equity



Association President  
Howard Stephenson

The 2018 Utah Legislature closed a loophole in bonding law to prevent issuing bonds for millions more than voters approved. Unfortunately, because the law doesn't take effect until January 1, 2019, local school districts, cities and counties might use the loophole to bond for more than voters approve on the 2018 November ballot.

The support of State Treasurer David Damschen was

critical in the successful effort to win passage of SB 122, sponsored by myself and Rep. Dan McCay, which closed the huge loophole in Utah bond elections. In his presentation at our Utah Taxes Now Conference in May, Treasurer Damschen gave details of the abuses by some of Utah's local governments, supported in their subterfuge by a few 'enabler' bonding professionals.

Your Taxpayers Association discovered more than a year ago that this abuse of taxpayer trust had been going on for years and has obligated taxpayers to as much as 20% more general obligation bond debt than voters had approved. For example, if voters had approved issuing bonds of \$300 million, the taxing entity would obligate taxpayers for as much as \$360 million.

Your Taxpayers Association is now warning local entities seeking voter approval of bonds in the 2018 General Election that we will oppose any bonds for which the school board, city council, or county government refuses to commit that the bond issuance will not exceed the amount approved by voters. The Association has been successful in defeating bond elections in the past, so hopefully locally elected officials will voluntarily agree to honesty in their ballot initiatives.

### Past History of Obfuscating the Effects of Bond Proposals

In previous legislative sessions your Association was successful in obtaining passage of other "Truth-in-Bonding" measures. One success was a requirement for disclosure in ballot language of the impact on property

taxpayers, so they could more easily understand in the voting booth how the tax would affect them. Unfortunately, some taxing entities, with the advice and encouragement of bond professionals changed the order of the language to understate the actual impact on taxpayers. Consequently, the Association supported SB 150 by Sen. Deidre Henderson, R-Spanish Fork in 2017 which prevents the ability to understate the impacts of bond proposals.

During the debate on SB 122 some local school board officials testified in committee in what I can only describe as self-righteous indignation that the bill would cost taxpayers more, not less. Officials from the Utah School Boards and Superintendents Associations gave passionate, albeit inaccurate claims about the bill.

### School Officials Fought Proposals to Benefit their Students, Teachers and Taxpayers

Similarly, these same organizations fought against the proposal they had actually recommended a decade ago to use a portion of the growth in state income taxes to equalize funding for property tax poor districts. Yes, they fought vigorously against the proposal they earlier said was the only fair way to overcome the gross inequities in local property taxes per student. They now changed their minds and said the fair way to equalize funding is through property taxes hikes.

### Bizarre Behavior of Alpine School Officials

Perhaps the most grotesque opposition to the equalization proposal came from officials in Alpine School District which is one of the lowest funded per student in the entire state and had the most to gain from equalization. When I asked them what their teachers, students, parents and taxpayers would think of them if they knew they were fighting against the equalization proposal, they submitted formal complaints to Senate Wayne Niederhauser that I was bullying them. Hearing of this, a few Alpine District voters asked school board members why they wouldn't support the proposal to give the district tens of millions of dollars more over the years and thereby avoid property tax

increases.

Board member JoDee Sundberg's response was typical when she told the voter that it was too complicated for her to explain and suggested they talk with Alpine Business Administrator Rob Smith.

Ironically, Alpine School Board voted this year for a property tax hike, which could have been totally avoided if they had supported equalization.

### Why Do So Many Elected Officials at All Levels Oppose Transparency and Equitable Solutions?

The kind of irrational and illogical behavior described above is often unbelievable, and therefore begs for an explanation.

I haven't quoted many novelists or theologians in this column, but C.S. Lewis offers reasoning that may apply here. In his seminal 1944 Commemoration Oration at Kings College, Lewis introduced the concept of the "inner ring."

Lewis said, "I believe that in all men's lives at certain periods, and in many men's lives at all periods between infancy and extreme old age, one of the most dominant elements is the desire to be inside the local Ring and the terror of being left outside . . . of all passions the passion for the Inner Ring is most skillful in making a man who is not yet a very bad man do very bad things."

In his analysis of "The Righteous Mind and the Inner Ring", Alan Jacobs warns that the draw of the Inner Ring has such profound corrupting power because it never announces itself as evil – indeed, it

never announces itself at all.

On these grounds Lewis made a "prophecy" to his audience at King's College: "To nine out of ten of you the choice which could lead to scoundrelism will come, when it does come, in no very dramatic colours.... Over a drink or a cup of coffee, disguised as a triviality and sandwiched between two jokes . . . the hint will come." And when it does come, "you will be drawn in, if you are drawn in, not by desire for gain or ease, but simply because at that moment, when the cup was so near your lips, you cannot bear to be thrust back again into the cold outer world."

As some school board members, superintendents, and business administrators have told me in one-on-one conversations, the solidarity they are expected to maintain with their fellow association members is far more important than fighting for the students, teachers, taxpayers, and voters in their own districts. Supporting legislation to overcome what most of them admit are gross inequities, would require them to abandon membership in their association's brotherhood. When officials saw the way the group had shamed those few who dared to advocate for equitable solutions without increased taxes, pushing them outside the Inner Ring, they were clearly motivated to avoid that uncomfortable place for themselves.

The power of the Inner Ring will continue to hold sway until voters become informed and hold their elected officials as accountable as do their colleagues in their elite statewide associations.

## Legislative Committee Supports NOL Changes, Discussing Corporate Income Tax Reforms (continued from page 1)

so Utah should consider not taxing this income.

Committee members were not ready to take action on this issue during their June meetings but do want to determine how to move forward in the coming weeks as the State Tax Commission needs direction by the end of the summer to be fully prepared for the tax filings that will be made in 2019. The committee has scheduled an additional meeting to discuss how Utah should tax corporations who bring profits to the U.S. on July 12.

The committee will also discuss how Utah should handle taxation on Global Intangible Low-Taxed Income (GILTI), interest deductibility, and FDIC fees which were also altered by the Tax Cuts and Jobs Act and require state action to determine if Utah will follow what the federal code calls for or if it should handle

these issues in a different manner as well.

Your Taxpayers Association believes Utah should decouple from the following items:

- Global Intangible Low-Taxed Income (GILTI). To maintain Utah's economic competitive edge, lawmakers should decouple from GILTI. Decoupling maintains Utah's standard practice to focus its taxation on business to U.S. based income. To tax foreign income would broaden Utah's corporate income tax base without lowering any tax rate.
- Federal code in order to allow banks the

ability to deduct FDIC fees. Your Utah Taxpayers Association believes similar, competitive businesses should be treated equally. If the premiums paid for FDIC are not deductible, Utah banks can expect to see an increase in the cost of doing business. That increase will further the disparity between banks and credit unions as it increase the amount of taxes banks pay that credit unions do not.

- Repatriation Transition Tax (RTT). The RTT imposes a tax on foreign income that is brought back to the United States by a taxpayer. Traditionally Utah has not taxed foreign income. Decoupling from this will prevent the “windfall” of additional revenue to the state on foreign income that it has not previously collected.
- Interest Deductibility. By not decoupling to this provision, Utah will limit the interest deductions

that a business can take on Utah taxes. Before passage of H.R. 1, all interest was deductible. After passage of H.R. 1, deductions on interest are now limited at 30% of adjusted gross income. By decoupling, Utah would allow businesses to continue the practice of deducting all interest.

Policymakers would be wise to not follow the federal government on these issues. By following the federal code this would result in large tax increases on Utah businesses. Instead, the legislature should pass legislation that “decouples” Utah from the federal tax code and maintain a revenue neutral position for the state at this time.

## Utah’s Third District Court Dismisses Counties’ Case Against Centrally-Assessed Taxpayers

Centrally-assessed taxpayers were granted a victory in June as the Third District Court dismissed a case filed by a several Utah counties in 2017.

Along with the lawsuit, the counties also published an op-ed attacking centrally assessed taxpayers (taxpayers that are assessed at the state level, such as airlines, utilities and railroads, as opposed to the county level) for appealing the state issued valuations of their property.

Senator Curt Bramble (R-Provo) and Representative Dan McCay (R-Riverton), responded with their own op-ed defending centrally assessed taxpayers and insisting that Utah’s property tax system is a fair system for both the taxpayers and the government.

[Click here](#) to read the legislators’ op-ed, published in the Salt Lake Tribune on August 6, 2017.

Judge Kara Pettit dismissed the case, filed by Salt Lake, Duchesne, Uintah, Washington and Weber counties, which sought to overturn a Utah law that states counties cannot appeal a valuation of a centrally assessed property unless a county believes the value of the centrally assessed property is more than 50% from what the state has said is the correct value of the property. The dismissed case also sought to overturn the legislature’s adopted practice for how aircraft for airlines should be valued for property taxes.

While the case is a victory for centrally assessed taxpayers in that the case was dismissed, it is merely a win of a battle, not the war. Judge Pettit’s ruling dealt only with court procedural arguments and not with the policies being challenged by the counties. Pettit disagreed with one argument that the case was not yet ripe for the courts to consider, but did agree that the counties had not exhausted all of the administrative remedies available to them related to the valuation of aircrafts and the 50% threshold for appeals of property values. The counties may appeal the dismissal or file a new case in the future.

Your Taxpayers Association has been involved on this issue working with the Utah Association of Counties to create a better tax climate for centrally assessed taxpayers. One result of those discussions was legislation, HB 21, that passed this year and extended the timeline for centrally assessed taxpayers and counties to file property tax valuation appeals. The goal was to cut down on the number of appeals filed by giving both parties more time to determine if an appeal is necessary and additional time for the two sides to work together.

We will continue to monitor this particular issue and relay new information as it becomes available through our tax alerts and monthly newsletter.

---

## Supreme Court Gives Local Retailers Big Victory in Online Sales Tax Decision, Benefitting Utah Businesses and Individuals

In June, the Supreme Court, in its *South Dakota v. Wayfair, Inc.* ruling, led the way for states to enforce the collection of sales tax from retailers that do not have physical presence in the state of Utah.

The ruling declared that states may require out-of-state retailers to collect and remit sales tax. The court's ruling did point out that South Dakota's law goes to great length to assist the retailers in complying with collection of the tax. Those include not forcing any retroactive compliance to the tax, the state's compliance with the streamlined sales tax agreement, uniform definitions of products and services, tax administration software and immunity from audits if the retailer uses the software among other things. It is expected if other states, like Utah, wish to collect this sales tax they will need to enact these same practices to assist the out-of-state retailers in compliance.

Utah has not implemented all of these items and will likely need to adopt some of these in a special session of the Legislature or in the 2019 legislative general session before the any sales tax can be collected from out-of-state online retailers.

It is not clear how much new revenue Utah will see if it begins to collect the tax. Some estimates have reached as high as \$200 million annually but with the State Tax Commission signing contracts with companies like Amazon for voluntary sales tax compliance recently, that \$200 million figure may be lower.

Utah has already made the policy that some of the incoming sales tax revenue, should the Legislature choose to accommodate the Supreme Court's decision, be used to reduce the sales tax burden for both individuals and businesses.

This year the Association led the charge to pass [S.B. 233](#) at the State Capitol. The bill calls for the money being collected from out-of-state online retailers be used to cut taxes for Utah's manufacturers and mines. Once that tax cut is paid for, the remaining money collected will be placed in a state restricted account for the legislature to use to lower the overall sales tax rate within Utah.

Your Taxpayers Association has long fought for this sales tax cut for business. Currently, Utah's tax code

creates an unfair playing field among manufacturers and mines because of a law that provides a sales tax exemption on manufacturer business inputs, such as tools of production, but only if the tool lasts longer than three years. That means if a company is more productive and wears out its parts quicker than three years, it has to pay a sales tax while a less productive competitor may enjoy a tax break.

In 1994, your Taxpayers Association had nearly accomplished exempting business inputs for manufacturers. However, then-Governor Mike Leavitt was contacted by Utah Education Association union lobbyists who convinced him to request that House leadership remove that legislation from consideration on the last night of the Session.

Throughout the following year, the Association worked to rally business behind the partial exemption, and in 1995, it was passed. Thanks to its passage, Micron was persuaded to move a major manufacturing facility to Utah, creating significant growth in economic development, and a headliner in the Silicon Slopes brand.

This quirk in Utah's law will be fixed by the collection of these taxes from out-of-state online retailers.

This victory at the court has been a long time coming. In 2000, Your Taxpayers Association began its efforts to bring equity in the marketplace between local retailers and online retailers by supporting the streamlined sales tax project. This project was designed to ensure states administer a simple and fair sales tax. As each state adopted this more uniform system created by the streamlined sales tax agreement, which lessened the compliance burden on retailers across multiple states as they had similar tax codes in each state to comply with. We have been on the frontlines pushing for this change to bring equity and ease of compliance among all retailers who sell to Utahns.

Your Taxpayers Association will continue to advocate for fairness among all retailers as the state takes steps towards following the Supreme Court's ruling and ensure the new revenue is used to cut taxes for Utah's families and businesses.

## Average Utah Resident Pays \$611 to City Government

According to calculation done by your Taxpayers Association, Utah citizens are paying roughly \$611 of their income to city government, which is roughly \$24.72 of each \$1,000 earned by residents in the city. This represents 2.4% of taxpayer income. The average cost of city government per \$1,000 of income earned by city residents increased \$0.39 over the previous year.

The Utah Taxpayers Association's 2018 Cost of City Governments report, based on FY 2017 data, shows the relationship between city government revenue and citizen income in Utah's 50 largest cities. This data provides a snapshot of on average how much of each thousand dollars earned by a citizen is consumed by the city government in Utah.

Utah cities also collect an average of \$611 in revenue from taxes and fees per city resident, up from \$578 the year before.

The city in Utah with the highest cost of government is South Salt Lake, which takes \$55.34 of each \$1,000 earned in the city (or 5.5%). South Salt Lake collects the second highest amount of revenue per capita at \$1,031.78. Salt Lake City receives \$1,323.79 in revenue per person, ranking highest in the state.

The lowest cost city out of Utah's 50 largest cities is Millcreek, which takes \$9.88 of each \$1,000 earned in the city. However, since Millcreek was incorporated in 2017, its tax revenues are somewhat skewed. For better reference, Cottonwood Heights ranked 49<sup>th</sup>, collecting \$11.70 per \$1,000 of citizen revenue.

The cost of city governments also doesn't account for taxes and fees across other levels of government, but only shows the cost of the city government to residents. The only exception to this is member cities of public safety special districts, such as the Unified Fire Authority or the Salt Lake Valley Law Enforcement Service Area.

These member cities may not have a public safety services which come from the general fund, but its citizens are still paying for these services. We have included the levy and revenue from these special districts in the total cost of city government.

This report uses two different metrics in determining the burden of city government on taxpayers.

The first metric, revenue from taxes and fees per capita, shows how much revenue the city collects in taxes and fees per resident in the city. This figure is useful in comparing different cities and indicates the level of fiscal restraint exercised by elected officials in various cities.

The second metric, revenue from taxes and fees per \$1,000 of citizen income, shows the individualized burden on taxpayers by controlling for income. This figure indicates how much a taxpayer's consumption ability is impacted by the city government and illustrates the personal impact of government spending on individuals. Controlling for income does not justify higher government spending in cities with higher-income residents.

To view the report, [click here](#).

## Association Persuades Salt Lake County to Continue Transparency in Property Tax Valuations

By state law the County Assessor is required to establish the values of all property within the county by May 22nd of each year. It has been a regular routine of the Salt Lake County Assessor to post those values online not long after the date in May for the public to view. This allows time for a taxpayer to "self-audit" their property valuation against other properties. That practice was changed this year as County Assessor Kevin Jacobs determined the valuations shouldn't be made available until July 1st.

Jacobs made the change after hearing from residents within the county who were concerned

about that data being made available before the property valuation notice is sent in late July. To accommodate their concerns he changed the date of posting the values online from late May to July. Giving proactive taxpayers and professional appeal

agents less time to determine if they need to start the process of appealing their property tax



Salt Lake County Assessor Kevin Jacobs

value.

Your Taxpayers Association was concerned about this change, as it limited the window for valuations to be examined by taxpayers, and contacted Jacobs. While we understood his concern about having data released before the valuation notices are sent, we successfully negotiated a compromise with Jacobs that should be a win-win for all interested parties.

Following our discussion, Assessor Jacobs determined that the values will be posted online each year on June 1st. He has also promised to utilize the mayor's social media platforms to promote that the

values are available online and has promised to more prominently place the valuation search function on the Assessor's website. This will help taxpayers know that they don't need to wait for their July value notice to arrive in the mail but they can get a jump on the process earlier if they want to seek a property valuation appeal.

We applaud Jacobs for his willingness to change his policy and appreciate the efforts he is making to make certain taxpayers can gain as much information possible about the valuation of their property in a timely manner.

#### Association Accomplishments During June:

- ❖ Attended the Legislative Rev and Tax Interim Committee Meeting
- ❖ Held the Annual "Teed Off On Taxes" Golf Tournament
- ❖ Continued meeting with UDOT regarding road usage fees
- ❖ Compiled budget information from cities and school districts

#### In the News

- ❖ Online Sales Tax
  - [Supreme Court Sales Tax Ruling](#) KUER Radio
  - [Supreme Court Clears the Way for Utah to Collect Sales Tax](#): Salt Lake Tribune