RSCC TAXATION SUBCOMMITTEE
Minutes of the Conference Call
September 20, 2006
9:00am

Council Members on the Call: Bill Fogarty, Carla Allen, Dan Bucks and Rep. Tom McGillvray

Contract Staff: Terry Whiteside, Gloria O'Rourke

Guests: David Uphaus and Mary Whittinghill

Terry Whiteside requested feedback on the 2006 Harvest Survey draft. To maintain confidentiality of the survey participants, Terry will provide summary data back to the RSCC.

Terry Whiteside outlined the purpose of this RSCC Taxation Subcommittee as per HB769: to review and study taxation as a means of impacting affected shippers.

Dan Bucks motioned for Rep. Tom McGillvray to serve as Chair for this subcommittee. All voted in favor of the motion.

Discussion summary:

- Encourage transportation infrastructure with taxation policies, i.e., provide incentive for impacted shippers and learn what tax policies would help in the value-added industries of Montana.
- Understand legality of what this subcommittee can and can't do according to Federal guidelines such as the 4 R Act.
- Bring in port authorities and economic development units and understand what taxation impediments exist and explore incentives for the future.

Based on the discussion and HB769 language, Terry Whiteside talked about possible SubCommitte focus:

1. Focus on what kind of incentives or disincentives to explore that will increase choices and flexibility in the transportation system.
2. Reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden:
    a. reevaluation of property taxes
    b. taxes that minimize highway damage
    c. special fuel taxes and
    d. corporate tax rates
3. Identify what tools already exist and what options are available for assisting the impact of shippers.

Comments from Dan Bucks:
When dealing with taxation of railroads, the Sub-committee needs to be cognizant of the limitations and applications of the federal 4-R Act. What the 4 R Act in essence does is state that a state cannot tax railroads any differently than it taxes other industrial property in the state. This is a major constraint on policy making at the state level that is otherwise possible under the federal and state constitutions. Another major dimension in Montana is there is an agreed upon formula for the calculation of value for railroad property taxation that was enacted in the late 1990's. That formula has resulted in some stability in the railroad property taxation arena. The formula diverges somewhat from federal tax guidelines outlined in the 4R Act because it has characteristics that do not follow the general assessment practices on centrally assessed property. This is curious because the railroad industry had supported it and in general the 4 R Act does not approve differences between how the state taxes the railroads and how it taxes other commercial and industrial property. Nonetheless it appears to be satisfactory to the railroad industry because they have not challenged it. The predominant thought is that this unique situation in Montana may result in more favorable treatment of railroads than the valuation methods the state uses for centrally assessed property in general and that may account for why the railroads have not challenged the formula and tax assessment.

It was noted Dan's report on the rail tax situation in Montana is on the RSCC website under Reports at http://rscc.mt.gov. Dan will place some comments and thoughts in writing for the September 27th RSCC meeting to assist the Tax SubCommittee in the development of its task to analyze, study and possibly develop ways of assisting impacted shippers.

Terry asked a question on whether tax policy could single out individual lines for development – such as a new plant. Dan commented that the Sub-committee needs to realize the difference between addressing competition issues and subsidizing a branch line. These are two different purposes with different approaches and outcomes. If a tax policy is developed upon the premise that discrimination exists and the federal government is not addressing it – then the State may have some limited ability to address this issue. If however, the State desires to address a tax issue on a 'to be built' rail line for enhancement or economic development purposes, the State would probably be on thin ice.

Suggestions in moving forward to foster greater competition:

a. Counteract in some manner what is perceived to be discriminatory rates through disincentives (must take into account the 4 R Act).
b. Adopt incentives for developing alternatives
c. Use a combination of both a and b.
d. Review the impediments for taxation of rail (4 R Act)
e. Consider the unique situation of non profit rail lines, non-profit Trade Ports and non-profit shippers.
   Note: CMR is a non-profit and so are the major shippers on the line.
   Additionally most Montana Port Authorities are non-profit entities but most shippers are not non-profit

f. **Identify what particular problems should be the subject of a potential tax solution and identify the outcome wanted.**
g. Focus on legislative action for captive shipper issues and how taxation might impact captive shipper issues in genera.
h. Involve an individual from Montana Department of Transportation for the highway cost impact.
i. Address the problem of past investment that was contingent on rail service; when rail service was pulled, the investment was impacted or lost.

The RSCC Taxation Subcommittee would like to know:

1. From the railroad perspective are there any incentives for development of rail or how railroads charge rates? Are railroads being impacted in a negative way by tax policies the state should address?
2. Impediments for tax policy and an understanding of what the committee can and cannot do; do not want to transfer tax burden to shippers.

The subcommittee agreed to meet at 9:00am, Wednesday, September 27th in Butte, and suggested the Transportation Subcommittee meet at 10:00am with the entire RSCC meeting at 11:00am.

The meeting concluded at 10:15am.