Members

Rep. John Day, Chairperson
Rep. Carolene Mays
Rep. Dan Stevenson
Rep. Randy Borror
Rep. Jeff Espich
Rep. Eric Gutwein
Sen. Thomas Weatherwax, Vice-Chairperson
Sen. David Ford
Sen. Thomas Wyss
Sen. John Broden
Sen. Nancy Dembowski
Sen. Vi Simpson

LSA Staff:

Diane Powers, Fiscal Analyst for the Committee
Jim Landers, Fiscal Analyst for the Committee
George Angelone, Attorney for the Committee

Authority: *P.L. 81-2004*

INTERIM STUDY COMMITTEE ON CORPORATE TAXATION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

MEETING MINUTES[1]

Meeting Date: September 29, 2004
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., 404
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. John Day, Chairperson; Rep. Carolene Mays; Rep. Dan Stevenson; Rep. Jeff Espich; Rep. Eric Gutwein; Sen. Thomas Weatherwax, Vice-Chairperson; Sen. David Ford; Sen. John Broden; Sen. Nancy Dembowski; Sen. Vi Simpson.

Members Absent: Rep. Randy Borror; Sen. Thomas Wyss.

1. List of Exhibits

The following exhibits were discussed or referred to during the meeting:

- Exhibit 1: Preliminary Draft 3325 (2005)
- Exhibit 2: Preliminary Draft 3334 (2005)
- Exhibit 3: Preliminary Draft 3412 (2005)
- Exhibit 4: LSA Memorandum Comparing Preliminary Drafts 3325, 3334, and 3412

[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.ai.org/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

- Exhibit 5: LSA Chart Comparing Preliminary Drafts 3325, 3334, and 3412
- Exhibit 6: Selected Statutes from Other States Targeted at Passive Investment Companies
- Exhibit 7: Proposed Final Report of the Committee

2. Opening remarks

Representative John Day, Chairperson, called the meeting to order at 10:28 a.m.

Representative Day briefly surveyed some of the features of the Proposed Final Report (Exhibit 7) before turning to the discussion of the three Preliminary Drafts before the Committee.

3. Discussion and Adoption of a Bill Draft Recommendation

Representative Day asked **George Angelone**, attorney for the Committee, to review Preliminary Draft 3412 (Exhibit 3), which had not previously been distributed to the Committee members.

Mr. Angelone explained the main features of the draft, comparing and contrasting various points with the other two drafts (Preliminary Draft 3325 (Exhibit 1) and Preliminary Draft 3334 (Exhibit 2)), provided several examples for clarification, and responded to questions from Committee members. Preliminary Draft 3412 translates, in terms compatible with the Indiana Code, Missouri House Bill 969, which was passed by the Missouri House of Representatives in 2004 but subsequently failed in the Missouri Senate.

Senator Thomas Weatherwax, Vice-Chairperson, explained that the feature of Preliminary Draft 3412 that appealed to him is the set of bright line rules for determining whether a business has a legitimate reason for making the intangible or interest payments to an out-of-state corporation.

Preliminary Draft 3412 also included a provision, brought forward from the Missouri version, that would place the burden of proof on the Department of State Revenue for determining whether a deduction for an intangible or interest expense is not allowed. This provision would reverse the burden of proof as it prevails elsewhere in the tax code that places the burden on the taxpayer to demonstrate the legitimacy of a deduction.

Representative Day expressed his belief that this provision would make the rules difficult to enforce. Senator Weatherwax, however, doubted that shifting the burden of proof to the Department would make all that much difference in practice. **Representative Jeff Espich** was also skeptical on this point, explaining that frequently the biggest cost of an audit is not the tax bill but the cost of retaining tax professionals to defend against a challenge by the Department.

Representative Day brought the preliminary discussion to a close by narrowing the choice for a draft recommendation down to Preliminary Draft 3334, which substantially implements Ohio's approach to interest and intangible expenses paid to passive investment companies, and Preliminary Draft 3412, discussed above. Preliminary Draft 3325 repackaged provisions from HB 1365 (2004) that passed the House but failed to make it into the final version of the bill that became law. Representative Day indicated that informal discussions with Committee members led him to the conclusion that Draft 3325 lacked sufficient support for recommendation by the Committee. In the interest of time, he therefore removed Preliminary Draft 3325 from further consideration.

Senator Vi Simpson moved that the Committee recommend Preliminary Draft 3412 (2005) to the General Assembly in the Committee's final report. Her motion was seconded and discussion ensued.

In addition to discussion among the members of the Committee, Representative Day solicited comment from members of the public in attendance at the meeting. Representative Day recognized in turn **Mark Cahoon**, representing the Indiana Manufacturers Association, **Mike Ralston**, Administrator of the Legal Division of the Indiana Department of State Revenue, **Kevin Brinegar**, President of the Indiana Chamber of Commerce, and **Larry Stroble**, lawyer with Barnes & Thornburg LLP.

Senator Weatherwax moved that Preliminary Draft 3412 (2005) be amended to remove the language shifting the burden of proof to the Department, specifically:

(1) Page 8, delete lines 19 through 46.
(2) Delete page 9.
(3) Page 10, delete lines 1 through 2.
(4) Page 10, line 5, delete "and IC 6-8.1-5-1, both" and insert ",".
(5) Renumber all SECTIONS consecutively.

Senator Weatherwax's motion was seconded. Representative Day called for a voice vote. The result was unanimous in favor of Sen. Weatherwax's motion.

The motion before the Committee was then Senator Simpson's motion to recommend Preliminary Draft 3412, as amended. A roll call was taken with the result of 10 to 0 in favor of Senator Simpson's motion to recommend Preliminary Draft 3412, as amended, to the General Assembly in the Committee's final report.

4. Discussion and Adoption of a Committee Report

Representative Carolene Mays moved that the Committee adopt the Proposed Final Report (Exhibit 7) as the Committee's Final Report. The motion was seconded. Discussion followed.

Representative Espich moved that the Proposed Final Report be amended to delete from section V of the Report (Committee Findings and Recommendations) paragraph (4), paragraph (7), and all references to the Multistate Tax Commission. Paragraph (4) makes a finding that the use of passive investment companies (PICs) as a tax planning device is likely to be viewed as unfair by individuals or businesses who are not able to make use of this device. Paragraph (7) expresses the finding that the Council on State Taxation (COST) indicated that Indiana has the lowest total tax burden of any state in the Midwest and that the impact of restricting or eliminating the use of PICs is unlikely to affect that ranking. Representative Espich's motion to delete the portions described was seconded. After discussion, Representative Day called for a voice vote. The votes against the amendment prevailed.

The motion before the Committee was then Representive Mays' motion to adopt the Proposed Final Report as the Committee's Final Report, without amendment. A roll call vote was taken with the result of 7 to 2 in favor Representive Mays' motion to adopt the Proposed Final Report as the Committee's Final Report.

5. Conclusion

The meeting adjourned at 12:25 p.m.