

**IDAHO STATE TAX COMMISSION**  
**COMMISSIONERS' OPEN MEETING**  
**MINUTES OF MEETING HELD MARCH 6, 2013**

In attendance: Commissioners Rich Jackson, Tom Katsilometes, and David Langhorst; Valerie Dilley, Roxanne Lopez, Robin O'Neill, Mark Poppler, Liz Rodosovich, Mike Teller, Doreen Warren; Chelsea Kidney, Erick Shaner, and Phil Skinner; Cynthia Adrian, Rod Brevig, Alan Dornfest, Dwayne Hines, McLean Russell, Mark Stones, Don Williams; Steve Allen, Kathleen Auwen, Kevin Davis, Clint Howells, Dean Phelps, Steve Thimsen. Guest: Peter Crossett.

**Public Session.**

Chairman Rich Jackson convened the open meeting.

**Presentation of Certificates of Service.**

Roxanne Lopez, Human Resources Officer, acknowledged the employees that were receiving a Certificate of Service, and stated how much all of their work efforts were appreciated.

The Certificate of Service recipients were: Clint Howells, Tax Auditor 2 in Fuels Tax Audit (Audit & Collections), and Kevin Davis, Tax Auditor 3, in Fuels Tax Audit (Audit & Collections), for 5 years of service; Dean Phelps, IT Systems Integration Analyst (Information Technology) for 15 years of service; Kathleen Auwen, Tax Auditor 1, in Fuels Tax Audit (Audit & Collections) and Steve Thimsen, IT Systems Analyst (Information Technology) for 25 years of service with a thank-you letter from the Governor.

Saunya Prisock, Technical Records Specialist 1, in Resource Team (Revenue Operations), was absent and will have her certificate for 5 years of service presented at a later date. Dianne Hoffman, Business Analyst (Strategic Development Services) was also absent and her certificate of service for 15 years of service will be presented at a later date.

The Commissioners said how the recipients' years of service and efforts were commendable and appreciated. Commissioner Langhorst added how sincere the commissioners are when they say thanks and they realize how important the recipients' jobs are. Commissioner Katsilometes said it was great to see the recipients all at the meeting. Chairman Jackson noted the recipients are an important part of the Tax Commission, which is a wonderful group of people that makes a good workforce. The recipients were invited to attend the remainder of the open meeting if they desired.

**Business Requiring Vote of the Commission.**

Minutes: Open Meeting – February 6, 2013.

Commissioner Katsilometes moved that the minutes of the open meeting held on February 6, 2013, be approved, and Commissioner Langhorst seconded. There were no comments or amendments. All voted in the affirmative, and the minutes were approved.

Administrative Policies: No. 13-08, Respectful and Harassment Free Workplace Policy; No. 13-09, Family and Medical Leave Act (FMLA).

Roxanne Lopez, Human Resource Officer, presented each of the administrative policies to the Commission with a brief explanation of any revisions. Commissioner Langhorst explained the approval process on administrative policies to the staff that remained in the open meeting.

Commissioner Langhorst moved that the Administrative Policies: No. 13-08, Respectful and Harassment Free Workplace Policy; and No. 13-09, Family and Medical Leave Act (FMLA), be approved, and Commissioner Katsilometes seconded. There were no further comments or amendments. All voted in the affirmative, and the motion passed.

### **Administrative Reports.**

#### Management Services, Mark Poppler.

Mark Poppler, Financial Officer, noted that thanks to the diligent efforts and support of the whole management team, much of the agency's FY2014 Budget Request was approved at the Joint Finance Appropriations Committee (JFAC) budget setting session yesterday, March 5, 2013. Most significantly, the Committee approved our top priority – the \$5.2 million needed to begin the GenTax Version 9 upgrade project. Mark said that now the actual appropriation bill has to be written and approved by both houses and signed into law. The ISTC's request for supplemental personnel money for the current FY2013 budget is still pending House action after narrowly clearing the Senate by an 18-16 vote on February 22.

Our request for spending authority to provide administration and collection functions for the City of Ketchum was also approved by the JFAC committee yesterday. Mark notified the city and asked for an update on their city council meeting that was scheduled for the evening of March 4. He had not yet seen any response as of this morning.

Management Services (MS) does not expect the Refund Fund to run out of cash this year, but out of an abundance of caution is requesting permission to borrow up to \$20,000,000 just in case. The subcommittee of the Board of Examiners will consider the request at their meeting next Tuesday, March 12, to include on the consent agenda for the actual Board meeting on March 19 for official approval.

Chairman Jackson noted that only a few agencies received a capital expenditure like the GenTax Version 9 Upgrade. Commissioner Langhorst noted this was a three-year effort and the upgrade was originally for GenTax Version 8.

#### Revenue Operations, Doreen Warren.

Doreen Warren, Revenue Operations (RO) Division Administrator, reported on the returns received from January 1, 2013 through February 28, 2013. There were 259,509 individual income tax (IIT) returns received, of which 238,789 were e-filed, with the total count down 24,000 compared to this time last year. The percentage down is consistent with national averages. In addition, the IRS has released all forms for processing. RO received 14,287 of the Form 24. There were 8,124 business income tax returns, of which 5,012 were e-filed, with the total count down 1,000 compared to last year.

Doreen noted that the refunds issued from January 1, 2013, through February 28, 2013 were: 133,010 of IIT totaling \$71,774,000, which is up \$5,000,000 compared to this time last year; and 11,122 of Form 24, amounting to \$1,635,641, which is up \$350,000 from this time last year. RO will continue processing income tax refunds within seven weeks.

Last week, RO mailed 247 International Fuel Tax Agreement (IFTA) license cancellation notices to IFTA licensees who failed to renew their licenses for 2013.

#### Human Resources, Roxanne Lopez.

Roxanne Lopez, Human Resource Officer, clarified that in response to the Respectful and Harassment Free Workplace Policy, a respectful workplace is to be promoted and modeled by Human Resources (HR), the Commissioners, the Executive Leadership Team (ELT), and the

managers and supervisors. Roxanne noted that HR does provide training and investigates or takes action if appropriate. However, this is not a common problem.

There were no more administrative reports.

### **Reports on Rules Committees.**

#### Property Tax Rules – Committee Chair, Alan Dornfest.

Alan Dornfest, Property Tax Rules Committee Chair, reported that the committee is working on the present rules in this legislative session, and developing new ones. The last Property Tax rules Committee meeting was on February 19. A subcommittee on the hearing process for the operating property rule also met on February 19 in the afternoon with two stakeholders present. The operating property rule that the subcommittee is working on prohibits cross-examination.

The committee is considering new rules on disclosure regarding circuit breaker cases. The next committee meeting is on March 12 and there are many property tax issues on hold waiting on this legislative session. Alan noted he was watching the personal property issue with great interest.

Alan is working with the Idaho Transportation Department and the counties on one question regarding assessments on horse trailers being used as live-in trailers. A brief discussion followed.

#### Income Tax, Administration & Enforcement, Kilowatt, Mine License Rules – Committee Chair, Cynthia Adrian.

Cynthia Adrian, Income Tax, Administration & Enforcement, Kilowatt, Mine License Rules Committee Chair, noted that the committee met on February 20. There was one visitor in attendance and one participant joined over the phone. The six unofficial drafts of rules that were reviewed by the committee are as follows.

Rule 040 – Part-Year Resident, Idaho taxpayers could argue that renting out their Idaho residence while living in a foreign country may indicate that the taxpayer intends to be outside the U.S. for an extended period of time, but it does not necessarily mean that the taxpayer does not have a place of abode in the U.S. The taxpayer could qualify for a foreign income exclusion under Idaho law even though the taxpayer does not qualify under federal law. The draft will clarify that the term “place of abode” does not apply for purposes of the federal foreign income exclusion. A suggestion was made to change language to read “definition only applies for purposes of Idaho Code § 63-3013A”. Draft 2 is being prepared for next meeting.

Rule 125 - Adjustments to Taxable Income—Bonus Depreciation on Property Acquired After September 10, 2001, And Before December 31, 2007, or After December 31, 2009. The committee discussed and approved a technical correction, changing the last sentence of subsection 01 from “or” to “and.” Rule 173 – Idaho Capital Gains Deduction—Pass-Through Entities, will make the rule consistent with a recent decision that gain from the sale of property by an upper tier partnership is not gain from the sale of the same property to a lower tier partnership. The draft adds a subsection clarifying that capital gain income must be directly realized by a pass-through entity in order to qualify, and gains indirectly realized do not qualify. The current status is deferred for further research.

Rule 252 – Nonresident and Part-Year Resident Individuals—Adjustments Allowed in Computing Idaho Adjusted Gross Income, deals with a current formula which can provide a distortive percentage. The draft changes to subsection 04 with the total income computed without the federal NOL deduction. The draft was reviewed and approved by the committee.

Rule 710 – Idaho Investment Tax Credit is in General, 2010 HB 296. There is a change to subsection 06 to clarify that for the years we conformed to bonus depreciation, the taxpayer does not get ITC on that amount. The years not conformed to bonus depreciation do get ITC on that amount. The draft was reviewed and approved by the committee. Rule 805 – Joint Returns amends the rule consistent with Idaho Code § 63-3031(c) and amends the subsections 01 & 02. The draft was reviewed at the February 20 meeting. The committee is addressing a question about having a code reference in the heading. Rule 855 – Permanent Building Fund clarifies (PBF) when PBF applies when backup withholding is paid for the individual by the entity. This will amend subsection 06 to add language for a scenario when the entity pays backup withholding for an individual and when the entity pays the tax on a composite return.

Cynthia noted that the next committee meeting would be on April 3, 2013. Commissioner Langhorst thanked Cynthia for all her efforts and time in making this process transparent.

#### Sales Tax Administrative Rules – Committee Chair, McLean Russell.

McLean Russell, Sales Tax Administrative Rules Committee Chair, noted that the last committee meeting was on February 7.

The Sales & Use Tax Rules are as follows: Rule 027 – Computer Equipment, Software, & Data Services, with a Notice of Intent published in January Bulletin. This draft clarifies the taxation of sales of digital goods and certain software accessed remotely (i.e. over the Internet or other network). The draft is on hold since the committee is waiting for the end of the legislative session. Rule 100 – Prescriptions, a Notice of Intent will be published in the April Bulletin. The draft removes language referring to eyeglass and contact dispensing charges. The second draft will be discussed in the March 20 committee meeting. Rule 114 – Records Required, Food Stamps, Electronic Benefits Transfers, and WIC Checks, would not likely be submitted to negotiated rulemaking since it deals with a simple change. It addresses a statutory update of exemption (H0012) for food purchased under the federal Supplemental Nutrition Assistance Program (SNAP). The first draft will be discussed in the March 20 committee meeting. Rule 130 – Promoter Sponsored Events, a Notice of Intent will be published in the April Bulletin. It clarifies a promoter's responsibility in regards to documentation that must be obtained from participants at the event. The draft will update the procedure regarding Form ST-124 that all participants at the event are required to complete. The second draft will be discussed in the March 20 meeting.

Although there is no draft yet, the committee will discuss addressing a new statutory definition (H0015) of “primary” and “primarily” in regards to the use of tangible personal property, in the March 20, 2013, committee meeting.

In Hotel & Motel Rules, Rule 010 – Definitions, is not published and there is no draft yet, but will likely go through negotiated rulemaking. It would address if sales of lodging at sites with a structure on them such as a yurt, lookout tower, or a cabin fall under the definition of a campground or a hotel/motel. The committee still needs to contact the Department of Parks & Recreation and this may be discussed in the March 20 meeting.

#### Motor and Special Fuels Tax Rules – Committee Chair, Don Williams.

Don Williams, the Motor and Special Fuels Tax Committee Chair, reported that the first committee meeting would be held that afternoon. The following rules will be discussed in the March 6, 2013, committee meeting.

Rule 105 – Licensed Gaseous Fuels Distributor Reports, addresses a change to the statute Idaho Code § 63-2424 allowing the Tax Commission to sell gaseous fuel decals. There is no draft yet, but sales at manned and unmanned stations, will also be discussed in the meeting. Rule 110 – Calculation of Tax on Gaseous Fuels, addresses the conversion factors to convert the gaseous fuels

to the energy equivalent of a gallon of gasoline. The IFTA conversion ballot, if available, will be reviewed for inclusion. There is no draft yet. Doreen and Don discussed participating in the national discussion on using a uniform conversion standard to ensure consistency.

Rule 115 – When the Gasoline Tax Rate Increases, Use Conversion Factor to Adjust Annual Gaseous Fuels Permit Fees may not go through negotiated rulemaking. If the conversion factors in Rule 110 are adjusted, it may have an effect on the conversion factor to adjust the decal fees based on changes in the tax rate. The rule will be reviewed to see if any changes are required. There is no draft yet. Rule 270 – Refund Claims – Documentation, the standard percentages and readability of the rule’s first draft will be reviewed by the committee.

There were no further questions.

**Other Business.**

Presentation: Forest Land Values for Assessment Year 2013, Rod Brevig.

Rod Brevig, Forest Tax Administrator, reported on the Forest Land Values for Assessment Year 2013. Rod noted that on February 20, 2013, the Commission approved the following values to be used for assessment purposes under the Forest Land-Productivity Option (Cat. 6), and Yield Option (Cat. 7):

Forest Land Value Zone	Land Grade		
	Good	Medium	Poor
<b>ZONE 1:</b> Boundary, Bonner, Kootenai Counties.	\$149 518	\$104 284	\$61 BL&Y 128 Productivity
<b>ZONE 2:</b> Benewah, Latah, Shoshone, Clearwater, Nez Perce, Lewis, Idaho.	\$144 451	\$91 245	\$46 BL&Y 110 Productivity
<b>ZONE 3:</b> Adams, Valley, Gem, Washington, Payette, Ada, Boise, Elmore, Gooding, Camas, Blaine, Lincoln, Canyon.	\$102 197	\$65 104	\$34 BL&Y 43 Productivity
<b>ZONE 4:</b> All Forest Value Zone 4 Counties.	\$74 187	\$47 103	\$25 BL&Y 50 Productivity

Rod added that this is the third year for the flat value and he anticipates three more years.

**Public Comments.**

There were no more public comments.

**Recess.**

Chairman Jackson recessed the Public Session for five minutes to reconvene for the commissioners to meet with the Commission’s legal counsel.

**Reconvene Meeting.**

Chairman Jackson reconvened the open meeting.

**Executive Session.**

Commissioner Katsilometes moved to amend the agenda and move into the Executive Session. Commissioner Langhorst seconded. Commissioners Jackson, Katsilometes, and Langhorst all voted in favor by roll call and the motion passed.

The Commission met in executive session with its legal counsel pursuant to Idaho Code § 67-2345(1)(f) to discuss the current status of litigation to which the Commission is a party. No matters requiring a vote of the Commission resulted from the executive session.

**Public Session.**

Commissioner Langhorst declared the Executive Session was ended and returned to the public session.

Chelsea Kidney, Deputy Attorney General, presented This Day in History.

This Day in History, March 6:

- 1475 – Michelangelo’s birthday
- 1836 – Davy Crockett died at the Alamo
- 1932 – Composer John Phillip Souza died at age 77 years
- 1899 – Aspirin patented
- 1902 – Soccer team Real Madrid founded – originally Madrid football club
- 1981 – Walter Cronkite signs off for the last time as CBS anchorman.
- 1998 – First time Union Jack flown over Buckingham Palace

#1 Song

- 1966 – Ballad of Green Berets by Barry Sadler
- 1971 – Osmond’s “One Bad Apple”
- 1975 – Olivia Newton John “Have You Never Been Mellow”
- 1961 – Chubby Checker “Pony Time”

There being no further business, the meeting adjourned.

Valerie Dilley  
Secretary

Richard W. Jackson  
Chairman