

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING JUNE 10, 2015

In attendance: Commissioners Richard W. Jackson, Tom Katsilometes, Ken A. Roberts, and Elliot S. Werk; Debbie Coulson, Valerie Dilley, Robin O'Neill, Mark Poppler, Chuck Pond, Liz Rodosovich, Bill von Tagen, Randy Tilley; Cynthia Adrian, James Pendergrass, McLean Russell, Don Williams; Mat Cundiff, George Brown, Chris Herzinger, Erick Shaner, Phil Skinner; Chris Barry, Redge Clapp, Suzie Weddle.

Guest: Benn Brocksome, Kay Christensen, Ben Davenport.

Public Session.

Commissioner Ken A. Roberts convened the open meeting and welcomed all those in attendance. Commissioner Roberts introduced Benn Brocksome, the new Special Assistant handling tax issues, from the Governor's Office.

Commissioner Roberts opened for a motion to accept the Proposed Second Amended Agenda adding the Administrative Policy No.15-05 – Telecommuting for a vote by the Commission. Chairman Richard W. Jackson moved that the Proposed Second Amended Agenda adding the Administrative Policy No.15-05 – Telecommuting be adopted for a vote by the Commission. Commissioner Tom Katsilometes seconded. There were no comments or amendments. All voted in the affirmative and the Proposed Second Amended Agenda was adopted.

Presentation of Certificates of Service.

James Pendergrass, in the absence of Roxanne Lopez, Human Resources Officer, acknowledged the employees receiving a Certificate of Service, and stated how much their combined total of 125 years of state service were appreciated.

The Certificate of Service recipients were:, William Schaefer, Revenue Process Clerk (Revenue Operations), for 15 years of state service; Suzie Weddle, Tax Automated System Specialist (Collection), for 20 years of state service and a thank-you letter from the Governor; Redge Clapp, Tax Bureau Chief (Audit), for 35 years of state service and a thank-you letter from the Governor.

The recipients not in attendance were: Nathan Williamson, Tax Auditor 2, Pocatello Field Office (Collection), for 5 years of state service; Danielle Barney, Tax Compliance Technician, Idaho Falls Field Office (Collection), for 15 years of state service; and Paul Chugg, Tax Auditor 3, Idaho Falls Field Office (Collection) for 35 years of state service and a thank-you letter from the Governor. Those absent will receive their certificates at a later time

The Commissioners expressed their congratulations to all the recipients and said how the recipients' combined total of 125 years of dedicated state service was commendable and how the everyday work they do is valued and appreciated.

Business Requiring Vote of the Commission.

Minutes: Open Meeting – June 10, 2015.

Commissioner Tom Katsilometes moved that the minutes of the open meeting held on June 10, 2015, be approved. Chairman Jackson seconded. There were no comments or

amendments. All voted in the affirmative and the minutes of the open meeting held on June 10, 2015, were approved.

Resolution 15-05 – Sales Tax Temporary Rule 027T - Computer Equipment, Software, and Data Services.

McLean Russell, Sales and Use Tax Rules Committee Chair, presented the Resolution 15-05 – Sales Tax Temporary Rule 027T - Computer Equipment, Software, and Data Services, to the Commission. McLean noted that Idaho Code Subsection 63-3616 was amended by House Bill 209 (2015) to clarify that sales and purchases of digital videos, digital books, digital games, and digital music are only taxable if the purchaser obtains a permanent right to use the digital product. Further, it is necessary to amend certain sales tax rules to comply with deadlines in accordance with the enacted changes to the governing laws. Resolution 15-05 directs that the sales tax temporary Rule 027T be adopted. McLean recommended the Commission adopt Resolution 15-05.

Chairman Jackson asked if the rules committee had reached out to the industry and if there was there any known opposition to this sales tax temporary rule. McLean responded that the rules committee had reached out to industry and there were only some concerns. The rules do leave room for more discussions. Commissioner Elliot S. Werk asked if Sales Tax Temporary Rule 027T would take anyone by surprise, and McLean responded that Lobby Idaho was informed of the temporary rule. Commissioner Roberts expressed appreciation for all the work the Sales and Use Tax Rules Committee did and is still doing.

Commissioner Katsilometes moved that Resolution 15-05 – Sales Tax Temporary Rule 027T - Computer Equipment, Software, and Data Services be adopted, and Commissioner Werk seconded. There were no comments or questions. All voted in the affirmative and Resolution 15-05 – Sales Tax Temporary Rule 027T - Computer Equipment, Software, and Data Services was adopted.

Administrative Policy #15-05 – Telecommuting.

Chuck Pond, Safety and Security Officer, presented the Administrative Policy No. 15-05 – Telecommuting to the Commission. Chuck noted that the purpose of this policy is to define the Idaho State Tax Commission (Tax Commission) telecommuting program and the rules under which it will operate. Telecommuting is a mutually agreed upon workplace option between the Tax Commission and the employee. This policy helps management and employees understand the agency's telecommuting program and the conditions by which telecommuting will be allowed. Chuck recommended the Commission adopt Administrative Policy No. 15-05 – Telecommuting.

Commissioner Werk moved that Administrative Policy No. 15-05 – Telecommuting be adopted and Commissioner Katsilometes seconded. There were no comments or questions. All voted in the affirmative and Administrative Policy No. 15-05 – Telecommuting was adopted.

There was no more business requiring a vote of the Commission.

Administrative Reports.

Management Services, Mark Poppler.

Mark Poppler, Financial Officer, presented the administrative report for Management Services (MS). Mark noted that we are in the last month of the fiscal year. The Executive Leadership Team (ELT) will review the remaining spending forecast and will make the final decision on this year's spending activities at the ELT meeting on Thursday, June 11, 2015. The new fiscal year is right around the corner. Last week the new budget went into the statewide accounting system, STARS. Mark will provide the ELT a more detailed spreadsheet in a few weeks

that shows how the budget is allocated to each program and department. The next budget cycle is ready to begin and must be completed over the next three months. Ideas for major changes or enhancements need to be discussed with peers and the Commissioners now, and brought forward to the ELT over the next several weeks.

Mark noted that May was another good month and \$9.5 million was added to the surplus, bringing it to over \$101 million year-to-date. The Legislature directed that about half the surplus go into the Budget Stabilization Fund, and the other half into roads and bridges. The Broadway Bridge is one of the already approved projects and is expected to be under construction perhaps as early as this December. The Idaho Transportation Department (ITD) is holding a community workshop later in the afternoon today from 3:30 p.m. to 6:00 p.m. (MDT), in the training room in Central Plaza for those who may be interested in learning more about the project.

There were no questions.

Audit Division, Randy Tilley.

Randy Tilley, Audit Division Administrator, reported that this year the Audit Division (Audit), up to June 9, 2015, handled 215 fraud returns with a savings of \$245,758 in refunds. As of June 6, 2014, in comparison, there were 440 fraud returns, with a savings of \$455,646 in refunds. In addition, Audit has handled 469 returns that were identity theft, saving the state \$910,594 in refunds as of June 9, 2015, compared to the 62 identity theft returns at this time last year, saving \$115,036 in refunds. The 2015 fraud and identity theft results as of June 2015 are 684 returns, saving \$1,156,352 in refunds, compared to the 502 returns with \$570,682 savings in refunds as of June 6, 2014.

Commissioner Roberts asked if the identity theft is up significantly this year. Randy noted that it has increased and the refund dollars per case increased as well. Commissioner Werk asked if this year's returns had tax data from previous years or from security breaches recently. Randy noted that a few recent breaches were found, but most cases were from available public information. Chairman Jackson noted that everyone's identity has already been stolen and other agencies, along with taxpayers, need to be vigilant.

Randy noted that Audit is trying to keep up with the caseload with at least four employees working full-time on identity theft, and the Tax Discovery Bureau (TDB) working on fraud.

There were no questions.

There were no more administrative reports.

Reports on Rules Committees.

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

Cynthia Adrian, Income Tax, Administration & Enforcement, Kilowatt, and Mine License Rules Committee Chair, reported that a public meeting scheduled for July 8 to discuss three negotiated rules. The rules are, Rule 016 – Idaho Gross Income, Rule 171 – Idaho Capital Gains Deduction—Qualified Property, and Rule 291 – Tax Paid by Pass-Through Entities for Owners or Beneficiaries—Computation of Idaho Taxable Income for Taxable Years Beginning On or After January 1, 2014. The Notice of Intent for these three negotiated rules should be published in the July 1, 2015, Bulletin.

Chairman Jackson asked if the PARFs were already submitted to the Division of Financial Management (DFM) and approved. Cynthia confirmed that the PARFs on all three rules had been approved.

There were no questions.

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

Don Williams, the Motor and Special Fuels Tax Rules Committee Chair, reported that the last Motor and Special Fuels Tax Rules Committee meeting was on June 5, 2015. The rules committee received approval on the PARFs for nine non-negotiated rules and DFM requested a few changes with new PARFs be resubmitted on three negotiated rules. The rules with PARFs that were resubmitted were Rule 004 – Incorporation by Reference, which updates incorporated reference and incorporate portions of Motor Fuels Rules 410 and 510; Rule 410 – Adoption of International Fuel Tax Agreement, and Rule 510 – Application and Reporting of the Petroleum Transfer Fee.

Don noted that there were 22 states that responded to the recent survey on dyed diesel, including six of the surrounding states.

Commissioner Katsilometes commended Don and the Motor and Special Fuels Tax Rules Committee for a truly negotiated rulemaking process.

There were no questions.

Sales & Use Tax Administrative Rules – Committee Chair, McLean Russell.

McLean Russell, Sales & Use Tax Administrative Rules Committee Chair, reported that the Sales & Use Tax Administrative Rules Committee's last meeting was on May 21, 2015. Most of the rules discussed at that meeting are new to report. The next rules committee meeting will be on July 23, 2015.

McLean noted receiving feedback that the committee should be promulgating temporary rules more when the legislation creates conflict with the Tax Commission's rules.

McLean highlighted the rules. Rule 027 – Computer Equipment, Software, & Data Services, needs change in response to House Bill 209 which excluded digital movies, books, music, and games from tax if the purchaser does not have a permanent right to use the digital product. The Commissioners approved this temporary rule earlier in the meeting. Rule 041 – Food, Meals, or Drinks, needs to be revised to address the new exemption from House Bill 237 on prepared food and beverages given away to employees. Also the terms “prepared food” and “prepared beverage” need to be defined. Rule 050 – Veterinarians and Veterinary Supplies, needs to be updated to reflect the change from House Bill 39, which removed the hand tool exclusion from the production exemption. Rule 056 – Photographers and Photofinishers, needs updating since the legislative changes related to software and digital products the past few years have impacted digital photographs. The committee is waiting for feedback from the industry on the proposed changes to the rule.

Rule 067 – Real Property, may need a rule change due to a requirement in the National Electrical Code (NEC) that certain cabling in a building must be removed. The current rule identifies cabling as tangible personal property even after installation. Discussion if this rule needs changing will occur at the June 24, 2015, rules committee meeting. Rule 072 – Application and Payment of Use Tax, discusses giveaways by a retailer which, in general, are taxable. A caveat needs to be added to note the new exemption. Rule 079 – Production Exemption, is one of several rules that needs to be updated to reflect the change from House Bill 39, which removed the hand tool exclusion from the production exemption. In addition, House Bill 221 added hunting and fishing operations to the list of businesses that can qualify for the production exemption. There will be discussion at the rules committee meeting on June 24, 2015, to see if a rule change is necessary.

Rule 083 – Farming & Ranching, is another of the rules that will need to be updated due to the exemption in House Bill 39 and House Bill 221. Rule 100 – Prescriptions, addresses the change with prescription eyeglass and contact lenses being exempted over the next couple of years. A brief discussion followed. Rule 103 – Hand Tool, Component, and Unit Price, is one of several rules that needs to be updated to reflect the change when House Bill 39 removed the hand tool exclusion from

the production exemption. Rule 107 – Vehicles and Vessels, needs to be updated to address these changes in the Tax Commission-sponsored House Bill 12, which added UTVs and SOHVs to the list of vehicles that nonresidents can purchase in Idaho exempt from tax. No one attended the rules committee meeting on May 21, 2015, with a specific interest in the rule, resulting in a lack of discussion. McLean will reach out to those who should be interested and solicit feedback from them. Rule 128 – Certificates for Resale and Other Exemption Claims, is one of several rules that needs updating to reflect the removal of the hand tool exclusion from the production exemption in House Bill 39.

McLean noted that all the PARFs were not approved yet, but the committee is moving on discussing the rules. Chairman Jackson encouraged him to resolve that with DFM. Commissioner Roberts encouraged the rules committee to involve industry with negotiations and to work on getting the PARFs approved.

There were no more questions.

[Property Tax Rules – Committee Chair, Alan Dornfest.](#)

Alan Dornfest, Property Tax Rules Committee Chair, was absent and there was no Property Tax Rules Committee report.

There were no more rules committee reports.

Other Business.

Bill von Tagen, Deputy Attorney General, presented This Day in History.

This Day in History, June 10:

- 1610 – 1st Dutch settlers arrive (from NJ), to colonize Manhattan Island
- 1752 – Ben Franklin's kite is struck by lightning
- 1801 – Tripoli declares war on US for refusing tribute
- 1905 – First forest fire lookout tower placed in operation, Greenville, ME
- 1916 – Great Arab Revolt begin
- 1924 – First political convention broadcast on radio-Republicans at Cleveland
- 1935 – Alcoholics Anonymous founded
- 1940 – Italy declares war on France & Britain during WW II
- 1985 – Coca Cola announces they'd bring back their 99-year-old formula

#1 Song:

1959 – “The Battle of New Orleans” sung by Johnny Horton

This Month in History – June

- June 6, 1944 – D-Day: 150,000 Allied Expeditionary Force lands in Normandy, France
- June 18, 1858 – Abraham Lincoln says "A house divided against itself cannot stand"
- June 25, 1876 – Custer & the 7th Cavalry are wiped out by Sioux & Cheyenne at the Little Big Horn

Thought for the day: “If you want the last word with a woman, apologize.”

Commissioner Roberts acknowledged Bill's retirement on July 2, 2015, and, on behalf of the Commissioners, expressed appreciation for Bill's many years of service for the state, for his friendship, and for all he's done for the Idaho State Tax Commission. Commissioner Katsilometes thanked Bill and said how much he appreciated working with him and was sorry to see him go. Chairman Jackson recalled how he first met Bill in one of the appeals cases, where they were on opposite sides, and how he enjoyed Bill's legal services. The Chairman noted how Bill and his wife have a special place in his heart and the commissioners are excited for him. Bill replied how much he enjoyed the Tax Commission.

There was no other business.

Public Comments.

Commissioner Roberts asked if the guests in attendance had any comments. Ben Davenport, Associated Taxpayers of Idaho, said the Tax Commission was doing a wonderful job.

The commissioners expressed their appreciation for the guests' interest and participation.

There were no more public comments.

Recess.

Commissioner Roberts recessed the Public Session for five minutes to reconvene for the commissioners to meet with the Commission's legal counsel.

Reconvene Meeting.

Commissioner Roberts reconvened the open meeting.

Executive Session.

Chairman Jackson moved to go into the 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, in addition to discuss matters which are exempt pursuant to Idaho Code § 67-2345(1)(b). Commissioner Elliot S. Werk seconded. A roll call vote was taken by Valerie Dilley, Executive Administrative Assistant. Commissioners Jackson, Katsilometes, Roberts, and Werk all voted in favor 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, in addition to discuss matters which are exempt pursuant to Idaho Code § 67-2345(1)(b). No matters requiring a vote of the Commission resulted from the executive session.

Public Session.

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

There being no further business, the meeting adjourned.

Valerie J. Dilley
Secretary

Ken A. Roberts
Commissioner