

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING APRIL 12, 2017

In attendance: Commissioners Ken A. Roberts, Richard W. Jackson, Tom Katsilometes, and Elliot S. Werk, Doreen Warren, Steve Fiscus, Randy Tilley, John Bernasconi, Glenda Smith, Robin O'Neill, Kathy Osborn, Michael Chakarun, Mike Teller, Alan Dornfest, Chuck Pond, Phil Skinner, George Brown, Erick Shaner, David Young, Becky Ihli, and Kelly Martinez.

Guests: Kay Christensen and Miguel Legarreta

Public Session

Commissioner Elliot Werk convened the open meeting and welcomed all those in attendance. Chairman Roberts said from time to time we receive compliments about employees that have gone above and beyond the call of their work. We recently received a thank you letter from the Attorney General's Office. We have had quite a series of tobacco litigation settlements and a couple of our employees were called upon to be deposed. Chairman Roberts asked Tawnya Eldredge and Don Anderson to stand to be recognized. Chairman Roberts gave Ms. Eldredge and Mr. Anderson copies of the letter and thanked them for the great work they have done. Commissioner Werk said there were a few more employees mentioned in the letter and he extended his thanks to Kim Wind, Cheryl Shane, and Nichole Boehland. Commissioner Werk said it is a team effort and the Commissioners really appreciate the efforts everyone gave working on this.

Presentation of Certificates of Service

Kathy Osborn, Senior Human Resources Specialist, acknowledged the employees receiving a Certificate of Service. Ms. Osborn stated how much their combined total of 75 years of state service is appreciated. The Certificate of Service recipients in attendance were: Charmaine Caprai, Tax Auditor 2, Income Tax Audit – 5 years; Christina Tromburg, Technical Records Specialist 1, Income Tax Audit – 5 years; Candace Wright, Tax Compliance Technician, Field Collection Bureau – 5 years; Terri DeMond, Technical Records Specialist 1, Central Collection Bureau – 10 years; Leah Shaw, Technical Records Specialist 1, Central Collection Bureau – 10 years; and Nichole Boehland, Program Specialist, Management Automation Support – 15 years.

The Certificate of Service recipients not in attendance were: Richard Lawless Jr (Rick), Tax Auditor 3, Lewiston Field Office – 5 years; Tamara Wright, Financial Technician, Fuels Tax Audit – 5 years; and Luz Gonzalez (Elena), Tax Auditor 3, Fuels Tax Audit – 10 years. They will receive their certificates at a later time.

The Commissioners expressed their congratulations to all the recipients and fellow employees who came out to support them, and how much they appreciate all of their hard work.

Business Requiring Vote of the Commission

Minutes: Open Meeting – March 1, 2017

Chairman Roberts moved that the minutes of the open meeting held on March 1, 2017 be approved. Commissioner Jackson seconded the motion. There were no comments or amendments. All voted in the affirmative and the minutes of the open meeting held on March 1, 2017 were approved.

Resolution No. 17-01 Temporary Property Tax Rule 406T

Alan Dornfest, Property Tax Policy Bureau Chief, presented Resolution 17-01 to adopt Temporary Property Tax Rule 406T. Mr. Dornfest said Temporary Property Tax Rule 406T deals with the determination of the market value of operating property for rate regulated electric utility companies. This year, we sponsored House Bill 30 to amend the statute that guides this process to allow for a fixed rate of twenty hundredths of one percent (0.20%) to be added to the discount rate for the capitalization rate for flotation costs for electric utility companies. The previous rule did not incorporate that because it was based on previous language in the statute. The rule needs to be updated so it is in accordance with the current statutory language, which is effective immediately, January 1, 2017. Commissioner Jackson moved to approve Resolution No. 17-01 adopting Temporary Property Tax Rule 406T effective January 1, 2017. Chairman Roberts seconded the motion and it passed unanimously.

Resolution No. 17-02 Alternative Dispute Resolution Coordinator

Phil Skinner, Deputy Attorney General, presented Resolution No. 17-02 appointing an alternative dispute resolution coordinator and assistant coordinator. Mr. Skinner said there is a requirement in Idaho Code § 63-118 to appoint one member of the Tax Commission to serve as alternative dispute resolution coordinator and at least one member of the staff is to be appointed as the assistant coordinator. It was brought to Mr. Skinner's attention recently that though someone had probably been appointed in the past, that appointment has expired with the departure of past Commissioners. This resolution is just to appoint someone to that position, and the Commission has recommended Commissioner Richard W. Jackson as the alternative dispute resolution coordinator. Tax Appeals Manager Michael Chakarun is recommended as the assistant coordinator.

Randy Tilley asked what is alternative dispute resolution and when is it used. Mr. Skinner said this statute was put in place in 1998 and it came up recently because John McGown was specifically writing an article about using alternative dispute resolution in tax cases. Mr. McGown had asked who the alternative dispute resolution coordinator was for the Tax Commission. Mr. Skinner did a little bit of background research and found that back in the late 1990's the MTC established their tax mediation alternative dispute resolution program. There was legislation passed by the Idaho Legislature in 1998 that is the section referred to in the resolution. It would just mean that if someone wanted to use that mediation process through the MTC or directly through the Tax Commission, there is someone designated to be the coordinator to help facilitate the process. It is also Mr. Skinner's understanding that since this statute has been in place since 1998, we have no record of anyone ever requesting to have the alternative dispute resolution process to resolve their tax case. Commissioner Katsilometes moved to approve Resolution No. 17-02 appointing Commissioner Richard W. Jackson as the alternative dispute resolution coordinator and Tax Appeals Manager Michael Chakarun as assistant coordinator. Chairman Roberts seconded the motion and it passed unanimously.

Administrative Reports

Audit Division, Randy Tilley

Randy Tilley gave an update on the efforts of fraud detection and resolution. As of last Friday, they have identified 170 returns this processing season that are either fraudulent or have identity theft issues and they have stopped \$287,366 in potentially fraudulent refunds. This is considerably down when compared to last year's numbers, which were 281 returns for a total of \$501,774 of fraudulent refunds. Mr. Tilley said they have sent out over 21,000 letters, which is up from last year. The average number of letters last year was about 3% of returns filed and this year it is closer to 4%. They have sent out 14,142 identity quiz letters, 5,638 identification verification letters, 72 PIN letters, and there was a new category added this year for those they sent letters to last year who did not respond but did file returns again this year. We have sent out 1,643 of those letters. They have received about 9,919 responses total. There are about 2,600 in the queue to be reviewed and on average they are receiving about 165 packets of documentation from taxpayers every day. Mr. Tilley said of the letters they sent out, 736 have been returned with bad addresses.

Chairman Roberts asked about the letters that went out this year to those who didn't respond last year and are potentially filing for another refund, at what point in time will we determine that it is potentially a fraudulent filing if they continue to not respond? Mr. Tilley said our process has been that we do not necessarily identify them as fraud because we do not have enough information. The Tax Commission will still allow them to submit information within the three-year statute of limitation to get their refund, however we will not pay the refund until we get clarification. Mr. Tilley said he went to a compliance conference in February and learned that it varies across the board in other states, but we are more taxpayer friendly in allowing individuals to submit information to get their refunds. Some states automatically mark them as fraud if they don't respond, but we want to give taxpayers the opportunity to prove their identity. Commissioner Werk said it does appear even nationwide that the prevalence of fraud has declined and he believes it is specifically because of the nationwide cooperation between tax agencies, tax software providers, and banks. It appears that we are having an effect out there, fraudsters go where the easy money is, and when you make the money harder to get they move on. Mr. Tilley recently registered three employees to participate in a nationwide effort of sharing fraudulent information with the IRS, the states and the industry, to be able to identify other fraud schemes to update our fraud manager as well. He said the other side of it is the data breaches and those other things are causing more suspicious activity, which requires the Audit Division to undertake further efforts to ensure that tax refunds are being paid to the correct individuals. Chairman Roberts asked if we have any way of tracking if we are sending identification verification letters to the same individuals as last year. John Bernasconi said some are the same because fraud is looked at year by year and if enough characteristics of fraud change on the return, taxpayers may get a letter again this year. Commissioner Werk noted that "where's my refund" calls are significantly down from last year. Commissioner Katsilometes asked with the number of fraudsters being less than last year, are the dollars going down proportionately. Mr. Tilley said yes, they are.

Commissioner Werk commented that vigilance is what makes us less of a target potentially. Constant vigilance is necessary for many years to come because if we let our guard down, the fraudsters will come back in force. As a Commission, we will make sure that we protect the taxpayer's money by being vigilant about fraud in the future even as fraud drops a bit. Doreen Warren said the current fraud scheme is for the fraudsters to attack employers to get W-2 information for the entire employer's workforce. That is something that has been happening nationally and the IRS has received more than 350 reports of that. Ms. Warren said they are trying to work on an employer educational campaign to let them know to be watching for this. Commissioner Werk added that we were made aware in December of a breach that took place of a local Idaho tax firm where the fraudsters got in and were submitting returns and we currently need to do a little patch for notification of that kind of thing. We certainly want to know if there is an accounting firm, CPA, or tax preparer that has had a breach; we need to be notified as well. There were no further questions.

Management Services, Glenda Smith

Glenda Smith, Principal Accountant, reported that they have posted the supplemental budget for the move per House Bill 329 and it should show in the system overnight tonight. There is a project code associated with it so all move related costs can be tracked in Navision. Ms. Smith reported that the refund fund is down to \$24 million today, so we could be in position to borrow this Friday or Monday. There were no questions.

Revenue Operations, John Bernasconi

John Bernasconi commented on the status of the refund fund saying it is highly likely we are going to borrow, with the incoming mail we have right now for Individual Income Tax. They currently have 28 large tubs full of mail and it is highly likely to be refund returns. They are down about 20,000 returns right now, and they are anticipating they will come late and at an accelerated pace. They have seen an acceleration over the last four weeks. He said we are definitely going to stretch that fund. Mr. Bernasconi said in regard to the question of why we are getting less "where's my refund" calls, as of today they have issued 24,000 *more* refunds than they did last year at this time but they have received

20,000 less returns. The reason for that is last year they were holding refunds due to the nature of the fraud manager, we had pushed more returns into it and it was taking longer to get through them. Mr. Bernasconi said that because they have streamlined that process, overall from a customer service standpoint they have definitely increased the speed with which they are getting refunds out the door. Chairman Roberts commented that he was interested to see when he did his taxes that one tax preparer company had instructions for refunds saying if the customer doesn't receive their refund within three weeks to give us a call, however we are saying seven weeks to process refunds. Doreen said she will follow up with that specific preparer because we have sent instructions out that say processing time is seven weeks. There were no questions.

Property Tax Division Administrator, County Support, Steve Fiscus

Steve Fiscus reported there was a Capitalization Rate Conference held on March 22 where the industries had the opportunity to come in and share with us what they believe the capitalization rate for their companies should be based upon their history over the last year. With that, they mailed out the capitalization rates yesterday and did allow them the .20% capitalization rate for the electric utility which is statutory this year. Mr. Fiscus said they expect some calls soon from the companies as letters are received. The ratio studies from all of the counties have been submitted and ten counties in twelve categories were out of compliance, which was the highest in years and indicates an ascending market. This means the assessed values are below the market at this point and the Assessors will have some work to do prior to sending out assessment notices the first part of June. There is one training coming up in April, which is a ratio study class that Alan Dornfest will be doing in Lewiston. Following that, in May is their training month and they are out in the field the whole month between budget and levy workshops and Board of Equalization training in multiple locations around the state. Mr. Fiscus reported that they are setting their class schedules for summer school and they are contracting with the instructors for those classes. They have submitted to the counties what the potential classes are, and usually submit 45-50 classes that have been requested and then narrow that down to around 20-24 classes.

Chairman Roberts asked if there was any commonality between the areas that are out of compliance. Mr. Dornfest said they are mostly residential but it is across the board really and we had a better sample in virtually every category and the better our sample, the more likely it is to see definite trends. Mr. Dornfest said they are working very closely with consulting appraisers around the state to try to remedy these things with the last resort being to bring it in front of the Board of Equalization in August. They haven't heard any feedback from the counties yet, so they are very optimistic at this point. Commissioner Werk said the amount of customer service that property tax is doing annually is amazing. For 36 employees, the amount of outreach that is done through property tax is pretty amazing and Commissioner Werk asked Mr. Fiscus to pass the Commissioners' compliments on to staff. Mr. Fiscus also said that last week they sent three employees to Bannock County to do a demonstration of the new software we are developing because Bannock County will soon be losing their software provider. That would be a large county for us to take on and support 100% so it is something that will have to be evaluated. There are three counties that are on the conversion list ahead of Bannock County so we would have to get those moved over first. There were no further questions.

Public Information Director, Taxpayer Resources, Doreen Warren

Doreen Warren reported that as the legislative session is wrapping up, they are waiting for the final legislation to be approved or rejected by the Governor to determine the impact on their rules and processes. The rules committees for the income, sales and product taxes are ramping up and updates will be provided at the monthly open meetings beginning next month. There is a key vacancy open for a Sales Tax Policy Specialist that they are currently trying to fill. Even though the legislative session is wrapping up, tax season is still in progress. They have been hit by some illnesses and a high volume of calls in Taxpayer Services and they are adjusting some resources with help from Collection to try to provide the best customer service possible during the final crunch time leading to the due date on April 18. Ms. Warren said they continue to issue press releases and provide guidance to taxpayers. The Idaho

State Tax Commission will be offering curbside service again this year for state returns and there are still a few open time slots for managers to volunteer to work the curb and collect returns. There were no questions.

Tax Appeals, Michael Chakarun

Michael Chakarun gave an update on the cases in Appeals for the first nine months of Fiscal Year 2017. He noted that the case count only includes cases handled by the appeals group; it does not include cases managed by our Deputy Attorney Generals. We began the fiscal year on July 1, 2016 with 425 cases in inventory. The average age of those cases was 385 days. For the first nine months of the fiscal year they closed 298 cases with an average age of 371 days per case. They ended the nine-month period with 421 cases in inventory with an average age of 428 days per case. Of those 421 cases, 331 are active cases, meaning that no resolution of the case has been made. The average age of these cases was 396 days. The remaining 90 cases are those where the Commission has issued a decision but they are waiting for the 91-day period the taxpayer has available to appeal either to the Board of Tax Appeals or district court to expire before closing the case. The average age of these cases was 547 days. Those cases will probably drop off the books in mid-June. There were no questions.

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 Property Tax Rules Committee has been meeting monthly and the next meeting is scheduled for April 25. There are about 13 rules on the table right now under consideration, and in addition to the one approved today there are three additional temporary rules made necessary by some of the legislation that passed this year. Mr. Dornfest said they are making progress on the other rules but they do not have PARF's on every case. Commissioner Werk said with the change in the NN exemption, which represents a lowering of the threshold to be able to use it for counties, do we expect to see an increase in its use and do we have any plan for outreach to the people who may not fully understand the application of the exemption. Mr. Dornfest said first of all, it is a probable but not definite lowering of the threshold. The \$500,000 is lower than \$3 million which was the previous threshold, however it is not required that the counties follow that, they can set any threshold provided it isn't lower than the \$500,000. At least one county has suggested to Mr. Dornfest that they intend to keep the \$3 million threshold so we really don't know what will happen. Aside from that, a bigger concern is the elimination of the of the term "manufacturing" because there was a requirement for the property to be manufacturing and now the requirement has been changed to non-retail commercial which is much broader. Mr. Dornfest said regarding training, they have had some discussions about it and he has contacted the Association of Counties in hopes that the Tax Commission could piggyback with one of their upcoming sessions, however he was told there was not any room on the agenda. Mr. Dornfest will continue to pursue options for that training. Chairman Roberts recommended that Commissioner Katsilometes send a letter to the Association of Counties requesting time on their agendas for this year. Commissioner Werk said if we can't get on an agenda like this, we may want to look at something alternative that we can do at the conference, possibly an evening meeting or something. Commissioner Katsilometes agreed that a letter should go out from the Tax Commission to County Prosecutors and Commissioners letting them know how important it is for us to be able to communicate this information to them, and it would be to their advantage. There were no further questions.

There were no more rules committee reports.

Other Business

There were no items of other business.

Public Comments

Commissioner Werk asked if the guests in attendance had any comments. Miguel Legarreta said he appreciated working with the Tax Commission staff during this legislative session and said that staff was very helpful. Mr. Legarreta also mentioned that he appreciates the newsletters Renee Eymann sends out as that information is very helpful.

Executive Session

Commissioner Katsilometes moved to go into Executive Session with its legal counsel pursuant to Idaho Code § 74-206(1)(f) to discuss the current status of litigation to which the Commission is a party. Chairman Roberts seconded the motion. A roll call vote was taken by Kelly Martinez, Administrative Assistant and Commissioners Roberts, Katsilometes, Jackson, and Werk all voted in favor and the motion passed.

The Commission met in Executive Session with its legal counsel pursuant to Idaho Code § 74-206(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 Werk declared the Executive Session ended and returned to the public session. There being no further business, Chairman Roberts moved to adjourn the meeting and Commissioner Katsilometes seconded the motion. All voted in the affirmative and the meeting was adjourned.

Kelly Martinez

Elliot S. Werk