

# IDAHO STATE TAX COMMISSION

## COMMISSIONERS' OPEN MEETING MINUTES OF MEETING MAY 3, 2017

In attendance: Commissioners Ken A. Roberts, Richard W. Jackson, Tom Katsilometes, and Elliot S. Werk, Mark Poppler, Doreen Warren, Randy Tilley, John Bernasconi, Roxanne Lopez, Michael Chakarun, Mike Teller, Don Williams, Tim Hurst, Tom Shaner, Cynthia Adrian, Rick Anderson, Renee Eymann, Glenda Smith, Chuck Pond, Phil Skinner, George Brown, Erick Shaner, David Young, Nathan Nielson, Becky Ihli, and Kelly Martinez.

Guests: Brody Aston

### **Public Session**

Commissioner Ken Roberts convened the open meeting and welcomed all those in attendance.

### **Presentation of Certificates of Service**

Roxanne Lopez, Human Resources Officer, acknowledged the employees receiving a Certificate of Service. Ms. Lopez stated how much their combined total of 110 years of state service is appreciated. The Certificate of Service recipients in attendance were: Craig Allison, Financial Specialist, Senior, Management Services – 5 years; Jeanne Brown, Technical Records Specialist 1, Account Registration Maintenance – 5 years; Scot Byram, Tax Auditor 1, Tax Discovery Bureau – 5 years; Michael Chakarun, Tax Policy Manager, Tax Appeals – 5 years; Karen Eavenson, Office Specialist 2, Tax Discovery Bureau – 10 years; Leslie Jones, Project Coordinator, Communications – 20 years.

The Certificate of Service recipients not in attendance were: Glenn Dalton, IT Systems Analyst, Property Tax Technical Support – 10 years; Cecil Torres Jr, Technical Records Specialist 1, Account Registration Maintenance – 10 years; Roderick Howard (Rod), Tax Field Office Manager, Coeur d'Alene Field Office – 20 years; and Toni Nash-Jackson, Administrative Assistant 1, Audit Division – 20 years. They will receive their certificates at a later time.

The Commissioners expressed their congratulations and gratitude 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 – April 12, 2017

Commissioner Katsilometes moved to approve the minutes of the open meeting held on April 12, 2017. 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 April 12, 2017 were approved.

### Resolution No. 17-03 Temporary Property Tax Rule 803T

Rick Anderson said Resolution No. 17-03 presents Property Tax Temporary Rule 803T. This relates to House Bill 207 and deals with disclaiming a portion of a taxing districts forgone balance amount. The Temporary Rule states that the amount of the forgone balance that may be disclaimed is only the accumulation of the most recent year. This Temporary Rule is necessary because the law is effective July 1, 2017 and will affect this budget year. Mr. Anderson said they have posted the amounts of the maximum forgone that may be disclaimed this year. Commissioner Werk clarified that the amount of forgone balance that can be disclaimed is only whatever is newly forgone; it is only the annual increase that can be disclaimed. Mr. Anderson said that is correct, it is just for one year. Chairman Roberts asked if the disclaimed amounts will be reported on the L2 form or if the form must be modified. Mr. Anderson said the counties will need to pass a resolution and report it on the L2 form. The actual amount after the adjustment is made will be within the worksheets of the L2 form. Commissioner Katsilometes moved to approve Resolution No. 17-03 adopting Temporary Property Tax Rule 803T effective July 1, 2017. Commissioner Werk seconded the motion adding that he hopes the legislature will start recognizing that in property tax we should not have July 1 effective dates as it puts us and the counties in a bind. The motion passed.

### Resolution No. 17-04 Temporary Administrative and Enforcement Rules

Cynthia Adrian, Income Tax Rules Committee Chair, presented Resolution No. 17-04 Temporary Administrative and Enforcement Rules 326, 327, and 328. Ms. Adrian said these rules are a direct result of 2017 House Bill 24 regarding the taxpayer's appeal of a Notice of Deficiency Determination and the communication that is allowed between the appeals unit, the originating division, and others during that redetermination. Commissioner Jackson moved to approve Resolution No. 17-04 adopting Temporary Administrative and Enforcement Rules 326T, 327T, and 328T effective July 1, 2017. Commissioner Katsilometes seconded the motion and it passed on a voice vote.

## **Administrative Reports**

### Audit Division, Randy Tilley

Randy Tilley had no report at this time.

### Management Services, Mark Poppler

Mark Poppler reported that the refund fund ended in good shape for the month of April at about \$58 million, which is around \$16 million more than last year. Chairman Roberts said we did talk to the Board of Examiners about the ability to borrow for the refund fund, so far this year we have not needed to borrow that, however we do hit another potential low in that fund in the next 3-4 weeks where we may need to borrow.

Mr. Poppler then discussed the Sales Tax Anticipation Revenue (STARS) program which allows a developer to complete a state highway improvement in conjunction with a commercial development and (with approval from the transportation department) can be reimbursed for the highway improvement through a portion of the sales tax that the retailers in the development collect and remit to the Idaho State Tax Commission. Mr. Poppler said he is reporting on this today because in the month of May The Village at Meridian retail mall will be completely paid off for the highway improvement they funded. That means that the amount of money that is distributed into STARS fund every month will go down by about two-thirds. Chairman Roberts asked Mr. Poppler to give a quick update on the other STARS program in the northern part of the state. Mr. Poppler said there is one other project that has been going on for about 10 years now in northern Idaho. That project has claims of almost \$28.5 million and they have received about \$23 million in

reimbursements so far. They are receiving about \$3 million per year, so it will pay off in about two years.

Mr. Poppler also reported that Celin Adams has put on a training course on how to gather requirements for projects, which is a very important part of project management. This is a very beneficial class for the entire agency and 60 people from the Boise office signed up for her classes.

Mr. Poppler said he has heard from the state's leasing manager, Linda Miller, that she has received an email from the current owners of this complex offering a one-year extension with the same rates and clauses that are in our current lease. This extension has not been signed yet, but is being negotiated.

Chairman Roberts presented Mr. Poppler with a letter from the State Controller's Office and certificates recognizing his staff for the work done on the annual financial report. Mr. Poppler will distribute the certificates to his staff.

There were no questions.

#### Revenue Operations, John Bernasconi

John Bernasconi said the filing season is not over yet and reported that over the last two weeks they have received, opened and imaged 20,000 paper returns that will still have to go through the review process. There are 16,000 paper returns on the floor waiting to be imaged. They received 79,000 electronic returns over the last two weeks, which is about 12% of what they anticipate over the entire year. Mr. Bernasconi noted that there will be pressure put on the refund fund as those returns make their way through the system. Electronic returns are up about 1.7% to date which is about 10,000 more electronic returns than received last year at this point. They have paid 489,000 refunds this year for a total of \$278 million. Last year, through the end of July 2016 we had paid 551,000 refunds for a total of \$300 million. The refund average through July 2016 was \$544, this year we are at \$568. All of the mail has been opened. Mr. Bernasconi reported Revenue Operations consumed 600 additional borrowed hours, (non- initial operations and non-temps) and that it was a tough year getting temps hired. Chairman Roberts said the issue hiring temporary workers is a big issue because we would not been able to properly get the checks deposited in the bank had we not moved those employees over from their regular jobs.

The last day to get checks opened was April 27 because there was an anomaly with the filing date being on April 18 instead of April 15 and May 1st fell on a Monday, so there was a very limited number of days for us to open the mail between the filing deadline and the time the post office gets us the mail. Chairman Roberts said on behalf of the Commission, a big thank you for all of the extra efforts and he asked Mr. Bernasconi to pass that along to his staff. Commissioner Werk said it is concerning that Mr. Bernasconi indicated they had issues in bringing in enough temporary workers which resulted in 600 hours of shifted work. He said the obvious question is what are our difficulties in getting temporary workers hired and are we looking for solutions for next year so it doesn't happen again? Mr. Bernasconi said yes, some of the barrier is pay and they are working with HR on a way to address that. He added that they may need to look at adding a couple of full time positions to grow their resource team to help throughout the year to get work done. Roxanne Lopez said there was a meeting last week to recap some of the recruitment and hiring activities. This last year they did outreach to local universities and colleges to try to broaden the recruitment efforts. She said the biggest challenge is finding the skillset that we need for the pay we are offering. Mr. Bernasconi said that in prior years they have had some success with students from Boise State University that can work a little bit of an alternative schedule, so they are exploring extending the workday to make the schedule more flexible.

There were no further questions.

#### Taxpayer Resources, Doreen Warren

Doreen Warren had no report at this time.

Tax Appeals, Michael Chakarun

Michael Chakarun had no report at this time.

There were no more administrative reports.

**Reports on Rules Committees**

Income Tax Rules – Committee Chair, Cynthia Adrian

Cynthia Adrian, Income Tax Rules Committee Chair, reported that all of the ARFs have been submitted to DFM. There are three new temporary rules addressing the new legislation on the appeals process which the Commissioners approved by resolution earlier in this meeting. Permanent rules will be negotiated this summer. The first scheduled meeting to deal with these rules is June 13 at 1:30 p.m. All of the other ARFs that have been sent to DFM are just for yearly updates for tax brackets, interest rates, grocery credit, etc. Chairman Roberts said the reason for the temporary rule on appeals is that the law is effective July 1, so any case appealed on or after July 1 will fall under the new rules and new statute.

There were no questions.

Property Tax Rules – Property Tax Policy Specialist, Rick Anderson

Rick Anderson, Property Tax Policy Specialist, reported that the rules committee is under way and is very busy. They have 13 proposed administrative rules all of which are approved (in concept) by DFM. Mr. Anderson said 11 of the 13 are negotiated rules. Two additional temporary rules (Rule 631T concerning House Bill 235 and Rule 612T concerning House Bill 156) will be presented at the June open meeting. Out of the 13 proposed rules, five have been approved for publication by the committee. The committee will be meeting again on May 30 to continue working on the other eight rules. Mr. Anderson mentioned Rule 631 as it has to do with 602NN exemption, which is effective July 1 of this year. Commissioner Katsilometes said the other area of interest that could be contentious is the legislation regarding park model homes. Commissioner Werk said the legislation was less than crystal clear about when changes could be made to the minimum amount of investment for the NN exemption. The legislation brought the minimum amount of investment down to \$500,000 although a county can choose any number down to that amount. Commissioner Werk went on to say that there was some concern that counties could cherry pick here or there and have monthly ordinances depending on what they wanted to do however, Commissioner Werk heard our interpretation is you get one shot at setting that amount per year. Mr. Anderson said that is correct, and Alan Dornfest has included in the proposed rule provisions of the resolution setting those amounts however he is not sure if that will be in the temporary rule in June. Chairman Roberts said the effective date, because it did not have an emergency clause in the bill, for it to become effective on July 1, it has missed the deadline for this year's application.

There were no further questions.

Sales and Use Tax Rules – Interim Committee Chair, Tom Shaner

Tom Shaner, Sales and Use Tax Rules Interim Committee Chair, reported that they have submitted 13 sales tax administrative rules request forms to DFM. There has been one rule that has been approved by DFM and it was published in the May bulletin. They will be accepting public input in writing and verbal comments at the May 16 Sales Tax Committee Meeting. Ten of the remaining rules will be negotiated, two of those are simply correcting some internal references to other paragraphs, at the next public meeting which is scheduled for May 16, 2017 at 1:30 p.m.

There were no further questions.

### Fuels Tax Rules – Committee Chair, Don Williams

Don Williams, Fuels Tax Rules Committee Chair, reported the Product Tax Rules Committee met yesterday and the next meeting will be June 6. The Product Tax covers cigarette and tobacco products, beer and wine tax, and motor fuels. Review of the cigarette and tobacco products and beer and wine tax rules revealed that there were some irregularities concerning the Office of Administrative Rule Coordinator's guidelines. They do not have an incorporation by reference rule in the beer and wine, or cigarette and tobacco products. There are incorporations by reference in beer and wine but they are in a different rule. They are going to create for those three tax types, Rule 6, an incorporation by reference rule. The administrative appeals rules for all three of those tax types only refer to the judiciary review rule. We anticipate adding the other administrative appeals procedures to beer and wine. When they reviewed the cigarette and tobacco products statute, it was missing one of the administrative appeals procedures. So before we can change the appeal rule we must change the appeals statute to include all of the administrative appeals procedure. Mr. Williams said they have approved all of the drafts for beer and wine for the administrative appeals. There were some problems with the first draft of the incorporation by reference rules so that will need to be corrected. The two rules in beer and wine that deal with redetermination, collection and enforcement have had administrative appeals procedures and incorporation by reference so they will delete those because they are putting everything in the proper rule. They have received the approval to move forward for two of the three motor fuels tax rules from DFM. Those three rules deal with refund claims. Two of the rules are written to sort the refund requirement, it is currently sorted by taxpayer and they want to sort it by the refund claim type because sorting it by taxpayer leaves redundancies.

There were no further questions.

There were no more rules committee reports.

### **Other Business**

There were no items of other business.

### **Public Comments**

Commissioner Roberts asked if the guests in attendance had any comments.

There were no public comments.

### **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. Commissioner Werk 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 Roberts declared the Executive Session ended and returned to the public session. There being no further business, Commissioner Jackson moved to adjourn the meeting and Commissioner Werk seconded the motion. All voted in the affirmative and the meeting was adjourned.

Kelly Martinez

Ken A. Roberts