

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING JUNE 7, 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, Debbie Coulson, Steve Fiscus, Robin O'Neill, Don Williams, Tom Shaner, Cynthia Adrian, Rick Anderson, Scott Grothe, Chuck Pond, George Brown, Alan Dornfest, Sherry Briscoe, and Kelly Martinez.

Guests: Ada County Assessor Bob McQuade, Terry Accordino from Micron, and Associated Taxpayers of Idaho President Miguel Legarreta

Public Session

Commissioner Tom Katsilometes 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 85 years of state service is appreciated. The Certificate of Service recipients in attendance were: Joan Johnson, Technical Records Specialist 1, Initial Operations – 5 years; Valerie Ricketts, Financial Technician, Fuels Tax Audit – 5 years; Lori Millonzi, Technical Records Specialist 2, Property Tax – 10 years; Renata Shumway, Program Information Coordinator, Electronic Data Management – 20 years; and Jim Sereduk, Purchasing Agent, Management Services – 45 years.

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 – May 3, 2017

Commissioner Werk moved to approve the minutes of the open meeting held on May 3, 2017. Commissioner Roberts seconded the motion. There were no comments or amendments. All voted in the affirmative and the minutes of the open meeting held on May 3, 2017 were approved.

Resolution No. 17-05 Property Tax Temporary Rule 612T

Alan Dornfest presented Resolution No. 17-05 Property Tax Temporary Rule 612T. Mr. Dornfest said Temporary Rule 612T is an amendment in response to legislation that is effective July 1, 2017. House Bill 156 provided some definitions in Chapter 49 of Idaho Code that deals with motor vehicles and in this case in particular, park model recreational vehicles. The rule, which otherwise deals with an exemption provided for motor vehicles, previously defined park model recreational vehicles ineligible for licensing and therefore subject to property tax. The revised rule is expanded to align with the requirements now in the statute that allows a park model recreational vehicle to be registered as a motor vehicle when it meets certain conditions.

To be consistent with our general registration Rule 20, taxpayers have until August 31 to register their vehicles. This creates a bit of a conundrum for counties because they have to decide

whether to place these park model recreational vehicles on the tax rolls as real property prior to August 31. Assessors have the same issue with regard to any vehicle because they don't know if it will be licensed in time. We want to be consistent and not create a new set of dates for this one issue.

Mr. Dornfest said secondly, park model recreational vehicles cannot be licensed if they don't meet the criteria in the statute. If they are not licensed, they are subject to property tax and would be retained on the property tax rolls. This language was copied from Chapter 49 because that chapter is not a normal tax section so it is helpful to have that language in this section as well. Whether the property is going to be subject to licensing is a determination made by the county assessors.

Finally, Section 07 in this rule talks about attached real property or real property improvements attached to park model recreational vehicles that are left on the tax rolls. One of the questions was if the registered recreational vehicle is a person's primary residence, can other real property on the lot receive a homeowner's exemption. The temporary rule allows this, if the county would ordinarily give the homeowner's exemption to similar property.

Mr. Dornfest said they have had numerous discussions with the counties. The largest impact of this change is in Valley County. Their assessor has attended at least one meeting on this. Mr. Dornfest believes they have resolved all of the questions that can be resolved under the new statute, and he asks that the Commission approve this with the understanding that they will negotiate a permanent rule prior to the 2018 Legislative session.

Commissioner Roberts asked Mr. Dornfest to review the scenario under Section 06, Subsection C, where they would be registered before the fourth Monday in November and they would be exempt. Mr. Dornfest said this is consistent with what we have outlined in Rule 20, the law doesn't go into effect until July 1 so there is a question as to what the taxpayer will do. Obviously, the assessor has to make a decision regarding what is going to go on their roll prior to July 1. We have advised assessors that they should look at whether they feel the property meets the criteria in which case they should keep the property on the rolls and not permit it to be registered. However, if it is a gray area and they do not know or the person is eligible to pay the fee for the licensing and registration, then the assessor has been advised to not put the property on the roll. If the person doesn't come in by August 31 and pay the fee then they do put it on the subroll at that point and send an assessment notice. They would then have to cancel the tax as it would be built into the system at that point if the person showed up before the fourth Monday of November and paid the fee. Mr. Dornfest said that is the same as the system we have in place for all recreational vehicles and motor vehicles today. Mr. Dornfest said the assessed value would be as of January 1 of this year. Commissioner Roberts said if they do get it registered between that August 31 date and the fourth Monday in November then they would actually have to cancel the tax without any adjustment to the budgets. Mr. Dornfest said that is correct because it would be too late in most instances to recertify.

Steve Fiscus indicated that we suggested they put them on the subroll because there is no tax cancellation. If they leave them on the first roll and the taxpayer comes in and registers it, then there would be a tax cancellation. That was the Valley County Prosecutor's recommendation as well. Mr. Fiscus also said the fourth Monday in November coincides with county Board of Equalization convening on that day to hear appeals for exemptions and values so that is why it is the fourth Monday in November.

Commissioner Werk asked if there is a way for county officials to understand how the assessor has assessed that particular park model vehicle if a person tries to register the park model vehicle in another county? Mr. Dornfest said certainly. The assessment is public record so a county could call the county where the vehicle is located and find out what the assessment was, but there is not an established pipeline or methodology for that. George Brown said he talked to the Valley County Prosecutor about that last week as Valley County may have more than 50% of these for the whole state, and that is a potential problem. However, it was not addressed in the legislation. According to Valley County, when the vehicle is on their roll and someone goes to another county and registers it as a motor vehicle (knowing it is on the roll in Valley County) they are not going to remove it from

the roll and the owner will be required to go through the proper procedures and protest the assessment. Mr. Brown said there are some other things going on in Valley County which could drastically change this because FEMA has changed the flood plain in Valley County and a lot of these are inside the flood plain. Many could be moving pretty rapidly anyway. Mr. Brown reiterated that that is an issue with registration because they can do it in any county they would like. Obviously if they go to their local county it should get picked up because it is the same office that does both property taxes and vehicle registration. Ada County Assessor Bob McQuade commented that there are very few of these in Ada County so it hasn't really been an issue. Commissioner Werk moved to approve Resolution No. 17-05 adopting Property Tax Temporary Rule 612T effective July 1, 2017. Commissioner Jackson seconded the motion and all voted in favor of the motion.

Resolution No. 17-06 Property Tax Temporary Rule 631T

Alan Dornfest presented Resolution No. 17-06 Property Tax Temporary Rule 631T. Alan Dornfest said Resolution 17-06 relates to a major revision to Rule 631 dealing with a tax exemption for certain investments. In the past the law only allowed the exemption on new investments. The law change in House Bill 235, effective July 1, 2017, also allows the exemption on existing plants or buildings and personal property. There were several changes in the rule in keeping with statutory changes. The statute changed what had been a mandatory \$3 million investment amount to no less than \$500,000 but then there will be county ordinances stating the exact amount. This raises the problem that we are trying to address largely in the rule. The statute sets up a new concept called base value, which means whatever property was invested in, it presumably had a value on the tax rolls at that time and you can't exempt that value amount. If that value was \$10 million dollars and there was \$12 million invested, the exemption could only be granted to the extent that the new market value (taxable value) the following year exceeded that base value. George Brown said counties will do one ordinance per year with different parameters. Mr. Dornfest said most of the rule goes on to define base value and it is also reiterated that anything that is included in land value is not to be granted the exemption, and so we include that the land portion of the investment doesn't count towards the threshold. Occupancy tax is also reviewed in this rule because even though it is too late to apply this year, the exemption could be applied to occupancy tax this year if all of the other criteria are met and the occupancy occurred by July 1. Mr. Dornfest reviewed the examples included in the temporary rule. Mr. Dornfest said we do need the temporary rule in place to move forward and then we may have some additional corrections to make on the permanent rule.

Commissioner Roberts said there is the value that it is exempt but to qualify they have to *invest* at least \$500,000 which triggers them into the program. If you have a taxpayer who is going to invest in a plant and they read the language saying in order to qualify for the exemption the taxpayer must invest at least \$500,000, that tells them they qualify but yet the value that is exempted would only be based on the appraisal. Mr. Dornfest said only to the extent that the value based on the appraisal exceeded the base value of the property that existed the year prior. Commissioner Roberts said he wants to make sure the taxpayers understand and don't have some false expectation going into the program and he wants it to be very clear. Mr. Fiscus said that is why we recommend that they do their exemptions as a percentage not as a dollar amount.

Terry Accordino, who was representing Micron, said this is the question he and Alan Dornfest were just discussing. Mr. Accordino read the first three sentences of the rule: *"In order to qualify for this exemption a taxpayer must invest at least \$500,000 in new plant or building facilities. Any required minimum investment may be set higher by the county commissioners. The county commissioners must pass an ordinance to establish any new required investment."* The concern Mr. Accordino has with the temporary rule is the very first paragraph where it states if you invest \$500,000 you are in the program and that is not true. You have to make application to the county commissioners as well as meet their minimum required investment. Mr. Accordino suggested changing the language to state: *"In order to qualify for this exemption a taxpayer must invest at least the minimum*

required investment as established by county ordinance in new or existing plant or building facilities excluding the investment in land.” Commissioner Roberts asked what the statute actually says. Mr. Dornfest said the statute says the board of county commissioners shall by ordinance establish an investment amount not less than \$500,000. Mr. Brown said that still doesn’t speak to the fact that the county commission doesn’t have to accept anything, this isn’t a buy in where as long as the requirements are met the county commission has to do this. It is discretionary by the county. Mr. Dornfest said in Section 02, Subsection C it states that the taxpayer must make application with the county commissioners who have complete discretion to accept or deny the application.

Commissioner Katsilometes asked if the language Mr. Accordino suggested covers everything and Mr. Dornfest said he doesn’t think it is necessary because the temporary rule says at least \$500,000 which is a true statement based on the statute, and it also says any required minimum investment may be set to a higher amount by the county commissioners. Mr. Dornfest believes we can get by with this language for the temporary rule although he is not opposed to the language Mr. Accordino suggested but would like to hear that language again. Mr. Accordino is suggesting that Section 01 be changed to this sentence as read into the record: ***“In order to qualify for this exemption a taxpayer must invest at least the minimum required investment as established by county ordinance in new or existing plant or building facilities excluding the investment in land.”*** Mr. Accordino also said under Section 01, Subsection A he is suggesting the following language replace the current paragraph: ***“Ordinance to establish minimum required investment. The county commissioners must pass an ordinance to establish any minimum required investment amount of not less than five hundred thousand dollars (\$500,000). Once passed, any minimum investment so established shall remain in place until superseded by another ordinance.”***

Mr. Dornfest said he is not opposed to those changes. Commissioner Roberts agrees that this suggested language is more clear and it doesn’t set up a false expectation. Commissioner Roberts moved to adopt Resolution 17-06 with the addition of the language provided by Mr. Accordino in Section 01 and Subsection A as stated on the record. Commissioner Werk seconded the motion. Commissioner Jackson asked Mr. Brown if this is proper procedure or if they should amend and then pass the resolution. Mr. Brown said if you can identify the exact language and read it into the record it will be fine to accept it with that language. Commissioner Roberts suggested that we take a brief recess so that Mr. Accordino and Ms. Martinez can review the language so it is accurate in the minutes before we move forward.

After a brief recess, Ms. Martinez read the following amendments to the temporary rule into the record: Section 01 ***“In order to qualify for this exemption a taxpayer must invest at least the minimum required investment as established by county ordinance in new or existing plant or building facilities excluding the investment in land.”*** Subsection A ***“Ordinance to establish minimum required investment. The county commissioners must pass an ordinance to establish any minimum required investment amount of not less than five hundred thousand dollars (\$500,000). Once passed, any minimum investment so established shall remain in place until superseded by another ordinance.”***

Commissioner Werk is comfortable with the amendment and everyone voted in favor of the motion. Resolution No. 17-06 adopting Property Tax Temporary Rule 631T effective July 1, 2017 was approved with the amendments read into the record.

Administrative Reports

Audit Division, Randy Tilley

Randy Tilley reported that as of June 2, they have identified 222 instances of fraudulent returns and stopped \$395,856 in refunds that were fraudulent. That breaks down into 56 confirmed fraud cases and 166 identity theft cases. That number is significantly lower than what it was at this same time last year, which was 170 fraudulent returns, 278 identity theft cases for a total of 448

fraudulent returns for a total amount of \$724,094. As far as what they are continuing to do, they have sent out a total of 28,823 letters so far to verify identity and have received 12,665 packets of identification verification documents. They have nearly 1,600 bad addresses they are working to identify a good address for identification verification. Commissioner Roberts asked if we have the adequate number of resources to actually process the letters and packets that come back in with the expectation of what may be coming yet and to be timely. Mr. Tilley said he has moved resources around considerably within the fraud group to cover the demand. Commissioner Jackson said there are about 3,200 letters that are still not verified from last year.

John Bernasconi said they are working hard reduce that false positive rate and that he and Mr. Tilley are coordinating to try to reduce that. Mr. Tilley said it is a challenge in that the instances that create the need to verify identity seem to be on the rise rather than on the decrease, such as data breaches and W-2 schemes. Those types of things create more instances where individuals' identities may be compromised and therefore require us to verify the identity in order to pay a valid refund. Mr. Tilley said they have valid returns for almost 12,000 of the letters they have sent out, but they are still waiting for a lot of documentation to be reviewed. A good number of those letters may not be answered by taxpayers and we won't know whether they are legitimate or fraudulent returns.

Commissioner Werk said he received some feedback from the CPA's that there are people out there that don't respond because they don't think it is worth it, so it may build up over the three year time period and that may be enough to have them respond. Mr. Bernasconi said although that is the assumption, we have people who are in the thousands that never responded and got the second letter this year as well. Commissioner Jackson said he wonders how we as a Tax Commission can overcome the fear in the public and taxpayers that our letter may not be valid. Somehow we have to give that reassurance to the taxpayer that they should respond to us. Doreen Warren said that is the feedback they received from the practitioners as well and some good ideas too. Chuck Pond said in some regards it is a healthy skepticism on the taxpayers' part that they are looking at them as potential scams because we don't want them to fall prey to other scams, so it is a balancing act. Commissioner Werk said it would be nice to have a letter verification tool to validate that the letter actually came from the Tax Commission. Mr. Pond said the problem we are seeing is you can spoof web addresses and have a very similar site. Commissioner Werk clarified that people are purchasing web addresses that would spoof ours, so does that teach us in the future that we should try and obtain any variation on our address that we could lock down so people could not spoof that? Commissioner Werk asked that we put that on our list to look into. Mr. Tilley said the Fiscal Year is coming to an end so he will be giving a report at next month's meeting about the activities and results of activities.

Management Services, Mark Poppler

Mark Poppler reported that the refund fund is in very good shape this year. We started this week with about \$34.5 million in the fund versus less than \$3.5 million in the fund last year. We were very close to having the fund go negative last year and this is the time of the year where all remaining refunds have to be issued so that interest doesn't come into play.

Mr. Poppler said we found out from Linda Miller from the Department of Administration yesterday that the state now has signed an access agreement with Hewlett Packard with more details to come tomorrow as there are several restrictions in the agreement. The state is also finishing the process on obtaining the architect for the project. LCA Architects, who is very familiar with the HP Campus, is the top choice and now the Permanent Building Fund Advisory Committee has given the Department of Administration the go ahead to negotiate a contract with that firm. A request for qualifications has also been issued by the Department of Administration for an actual builder for the project and those responses are due June 26.

Revenue Operations, John Bernasconi

John Bernasconi had no report at this time.

Property Tax Division Administrator, County Support, Steve Fiscus

Steve Fiscus had no report at this time.

Collection, Debbie Coulson

Debbie Coulson had no report at this time.

Public Information Director, Taxpayer Resources, Doreen Warren

Doreen Warren reported that the 2017 Spring CPA and Field Office tour concluded last Thursday, June 1. The travelers included all four Commissioners, Randy Tilley, Mike Chakarun, John Bernasconi and Doreen Warren. They visited with more than 200 CPAs across the state and visited each field office and received great feedback on outreach and communication opportunities and insight into taxpayer reactions to some of our activities. They are compiling the notes and will provide the feedback to the management team to take appropriate steps on actionable items. As usual, the field office personnel provided great feedback and interaction. The travelers have one more scheduled visit with the Idaho Association of Public Accountants on June 22. This will be the first spring visit with this group, and we welcome the opportunity to increase our outreach with them.

Ms. Warren also reported that the Taxpayer Resources Unit is actively working through the Rules development process and Legislative Package development for the next legislative session. They are also looking at outreach and process improvement opportunities and will be including some of these items in our business plan for next fiscal year.

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 the notices for the three temporary and proposed rules on the appeals process were published in the June Bulletin today. The negotiated rulemaking meeting on those proposed rules is scheduled for June 13, 2017, at 1:30 p.m.

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

Tom Shaner, Sales and Use Tax Rules Interim Committee Chair, reported that a very experienced sales tax policy person is going to start tomorrow on a part time basis and will fill in until the full time position is filled. Mr. Shaner said they have submitted 17 sales tax administrative rules requests to DFM, 11 have been approved and the rest are fairly recent so they are expecting those to be approved. They have reached out to as many potential stakeholders as they can think of and sent out 150 emails and they had about 25 guests show up for the rules meeting. They received a lot of good feedback, it was predominantly one sided and the draft rule reflects that position so he thinks they will see approval from the public. They are having an internal committee meeting tomorrow afternoon at 2:30 p.m. to try to finalize the language of all of the drafts and they will need to publish the balance of the notices of intent to publish and at least is one is ready to be published in the July bulletin. The next public meeting is scheduled for June 20, 2017 at 2 p.m. Commissioner Werk expressed the Commissioners' appreciation for taking on two jobs, he knows it has been stressful and there has been a lot of time commitment at times.

Property Tax Rules – Property Tax Policy Specialist, Rick Anderson

Rick Anderson, Property Tax Policy Specialist, reported that the last meeting was held on May 30 and they are working on 15 property tax rules, five of which have been approved by the committee. Mr. Anderson said they are working on the partial ownership relationship or explanation within the homeowners exemption and circuit breaker as it relates to community property interests and those rules involved. There may be a change in the way community property interests are

attributed to taxpayers but that is still being discussed by the committee. The next meeting is scheduled for July 11, 2017.

Product Tax Rules – Committee Chair, Don Williams

Don Williams, Product Tax Rules Committee Chair, reported that the committee is working on 14 rules, six are negotiated and the committee withdrew one rule and added four since the last report. One of those four rules has recently been accepted and the other three rules have not been submitted to DFM yet. The committee finalized seven non-negotiated rules and the proposed rules will be in the July bulletin. The notice of intent to negotiate rules will also be in the July bulletin and the next meeting is tentatively scheduled for July 11, 2017 at 9 a.m.

There were no more rules committee reports.

Other Business

There were no items of other business.

Public Comments

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

There were no public comments.

Public Session

There being no further business the meeting was adjourned.

Kelly Martinez

Tom Katsilometes