

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING MAY 23, 2018

In attendance: Commissioners Ken A. Roberts, Elliot S. Werk, Tom Katsilometes, and Janet Moyle, Mark Poppler, Debbie Coulson, Steve Fiscus, Michael Chakarun, John Bernasconi, Randy Tilley, Doreen Warren, Roxanne Lopez, Terry Ford, Renee Eymann, Alan Dornfest, Tom Shaner, Leah Parsons, Glenda Smith, Phil Skinner, and Kelly Martinez.

Guest: Idaho Attorney General Division Chief Kay Christensen

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 50 years of state service is appreciated. The Certificate of Service recipients in attendance were: Evan Stimpson, Tax Automated System Specialist, Coordination and Design – 10 years.

The Certificate of Service recipients not in attendance were: Brad Broenneke, Tax Appraiser, Consulting, Locally Assessed Property – 5 years; Evan Stimpson, Tax Automated System Specialist, Coordination and Design – 10 years; Tamra Kent, Tax Compliance Officer 2, Pocatello Field Office – 15 years; and Georgia Callantine, Tax Auditor 3, Pocatello Field Office – 20 years. They will receive their certificates at a later time.

The Commissioners expressed their congratulations to all the recipients and how much they appreciate all of their hard work.

Business Requiring Vote of the Commission

Minutes: Open Meeting – April 4, 2018

Commissioner Werk moved to approve the minutes of the open meeting held on April 4, 2018. Commissioner Moyle seconded the motion. There were no comments or amendments. All voted in the affirmative and the minutes of the open meeting held on April 4, 2018 were approved.

Resolution No. 18-01 – Property Tax Temporary Rules 600T, 802T, and 803T

Alan Dornfest presented Resolution No. 18-01 Property Tax Temporary Rules 600T, 802T, and 803T. Mr. Dornfest reviewed Temporary Rule 600T saying that it deals with the general nature of property tax exemptions. He said we have expanded and amended the rule to deal with a new provisional exemption passed by the legislature that was made retroactive to January 1, 2016. The provisional exemption applies to properties that while they are under construction are not completely fulfilling the requirements for the exemption. Mr. Dornfest said the rule talks about

property that is being constructed because it wasn't totally clear whether that would mean only improvements or land and site improvements. He said we believe it is broader than only improvement with its use of the word property in the statute. He said the law also talks about renovated buildings. Mr. Dornfest said item (i) under section 04 (a) states that if part of the land or other property owned by the entity seeking the exemption is to be used for non-exempt purposes, that part shall not be eligible for the provisional exemption. Mr. Dornfest said we feel that this exemption will be treated as other exemptions in Property Tax, with the exception of governmental exemptions, that the exemption would not take effect until the following year. Item (ii) under section 04 (a) states that land and existing buildings that will be considered exempt upon use of the property for exempt purposes, but that were taxable on January 1 of a tax year during which the provisional exemption was granted may be granted the provisional exemption beginning the immediately following tax year. Mr. Dornfest reviewed item (iii) which states the application for the provisional exemption may be filed with the county commissioners at any time once a building permit is issued or renovation begins. Finally, section 04 (b) discusses the property owner. The property owner may apply for the provisional exemption provided the intended use of the property is to fulfill a purpose that is exempt from property tax. The owner must apply for the exemption but need not be an exempt entity or the intended user. Mr. Dornfest said there are several provisions in the statute that say if none of these obligations that are committed to in applying for the exemption are ultimately fulfilled, there are claw back provisions.

Commissioner Moyle said she believes section (ii) is a little bit of a stretch of what the intent of the legislation was. She said the intent is that the exemption shall be granted at the time that the building permit is taken out. Commissioner Moyle said she believes that we are going around what the legislation was intended by saying that we will make it retroactive. The exemption was to be granted at the time that the permit is granted. Mr. Dornfest said certainly the exemption being retroactive meant to us that it would apply in 2016 to property that was eligible in 2016 and 2017. The problem is when the property is taxable on January 1 of a given year and a building permit is issued during the year, there is no question that it is taxable on January 1. Mr. Dornfest said the question is, does that property roll off the tax rolls and if so then the levy rates for that year are wrong.

Commissioner Werk asked for clarification on the language of item (ii). Mr. Dornfest said his understanding of legislative intent was to go back on those properties that would ultimately fulfill the charitable or religious exemption and that those should be granted that exemption during those periods. He said his understanding of legislative intent did not overlap into the area of property that was fully taxable on January 1 of a given year as to when that exemption would exactly hit. His understanding of the intent of the law was to create a level playing field that these properties that would be used for this purpose would not be taxed during the construction period, not to say that property that was otherwise on the rolls would rolled off. Commissioner Werk said the provision (ii) in the temporary rule is to ensure that these properties that get a building permit during the course of a year are treated like any other property would in that situation, even though this would be a provisional exemption the following year. The tax rolls have already been set on January 1, so that property, if it was taxable on January 1, the tax rolls are set. As it progresses through the year and gets the building permit, it is not eligible until the following year just like any other property would be. Mr. Dornfest said that is correct with the exception of governmental property. Commissioner Werk said this statutory provision was put in place specifically for charitable or religious institutions that were embarked on a construction project of some kind. It is his understanding that (ii) simply aligns this with every other exemption and the way properties

are treated. Mr. Dornfest said he believes this treats this type of property the same as other properties subject to these similar exemptions. The second part of that is, the rule does not restrict that retroactive interpretation, however we have also been made aware that Ada County has a counter-legal argument, but the rule does not speak to that.

Commissioner Roberts said in property tax, land and improvements are assessed at a snapshot in time on January 1 and he thinks one of the key words in this is *existing* land and *existing* buildings. He said the rule certainly addresses when there is new construction. Steve Fiscus added that this was actually copied from hospital law, hospitals already have this exemption. Mr. Dornfest clarified that if you purchased a building that was taxable and then got a building permit to renovate it to make it the charitable use, the county couldn't tax that renovation that year, however the original building would still be taxed. He said clearly in the last sentence it says renovations and personal property related to the exempt purpose of the property, but that add value after the granting of the provisional exemption, shall not be taxed. Furthermore, those would not roll on during the year.

Commissioner Moyle read from the statute and the very first line says, "it is the intent of the legislature that the property that is being constructed or renovated to fulfill the purpose that is exempt from taxation under the constitution or the laws of Idaho shall not be subject to property tax during the period of construction or renovation preparatory to its completion for the tax exemption use." She said that was the intent that these would be exempt during the time of construction and that means the property, it doesn't say the improvements, it says the property. Commissioner Moyle said that is her interpretation of what the statute was and, in her opinion, item (ii) is a stretch of legislative intent. Mr. Fiscus said the laws of the State of Idaho say you must apply by April 15 for exemptions, you couldn't apply after that because the rolls have been set and taxes are being levied against that. Commissioner Moyle said she appreciates that, but House Bill 559 changed that and made it so that the application was at the time of permitting, that was the intent of this bill. Mr. Dornfest said if that is the way the Commission feels, he would suggest amending this to say something like "may be granted beginning the tax year during which renovations are begun or building permits issued." Mr. Dornfest noted that the statute allows refunds in cases where the property was taxed improperly according to the law. Those refunds will force the budgets of taxing districts to come up short anyway and they have no way of making restitution to themselves for that. That is contemplated already in the law. Mr. Dornfest said we view the law as really relating to that construction or renovation going on, not to the original property that existed on January 1.

Commissioner Roberts said the issue of a new building or new construction and applying for the permit during the construction phase, he doesn't see that as the conflict. What he sees as the conflict is where there is an existing structure and land that has been purchased by a non-profit that would fall under the exemption but had previously been on the tax rolls. Commissioner Moyle said this particular statute change is unique in the fact that in rule we have said that the application should be applied for by April 15, however this changes it because it says that the application can be granted at the time of building permit. The intent was to change the way it has been done. Commissioner Werk said when he reads it plainly, it indicates that if it is under construction it says it will not be taxed. Mr. Dornfest said in the fourth line down he would cross out "immediately following" and add after the word tax year "during which renovations are begun or building permits issued." Commissioner Roberts suggested we take a five-minute recess to let Mr. Dornfest confer with legal to get the correct verbiage. The meeting recessed for five minutes.

After five minutes, the meeting reconvened. Mr. Dornfest said there are really a couple of issues because there are different ways to read the statutory language and what he is hearing from the Commission is that you would rather read it to mean the entire property is exempt. He said that is up to the Commission to decide that. Mr. Dornfest said as he discussed this with Deputy Attorney General George Brown, the statutory language pertains only to the word “property” meaning the construction or renovation going on or all the property. That is an open question that we are not explicitly addressing in this. Commissioner Werk said under section 04 (a), it talks about property that is being constructed may include land, buildings, and associated personal property. If we change the language in (ii) as suggested, we are not expanding the exemption except to the extent that when you get the building permit or start renovations it is exempt from that day. Mr. Dornfest said the same property would be exempt in his opinion, however he would not agree that it is exempt from that day, rather it would be exempt retroactively to the beginning of that tax year or if appropriate to prior tax years. Commissioner Werk does not believe that was the intent of the legislature.

Commissioner Katsilometes moved to approve Resolution 18-01, specific to Property Tax Temporary Rule 600T as presented without any changes. The motion died due to the lack of a second. Commissioner Werk said when he reads the statutory intent language, he doesn’t read it as saying it is suddenly exempt from taxation for the entire period of time, he does not think that is the intent at all. He said if the change in the language makes that be the case, then he cannot agree with that change either. Commissioner Werk says he feels it would be better to put this off and be able to discuss all the potential ramifications. Commissioner Roberts said he thinks it would be appropriate to give some direction to the rules drafters. He said the clear reading of the language says that when a purchase is made or when the entity begins renovations, from that point forward it is tax exempt. He said the law is requiring that the amount of tax is prorated. Mr. Fiscus said from a practical standpoint that sounds okay, but from a technical standpoint it is a very difficult task to do. Mr. Dornfest said there could be another way to construct the rule and that would be the refund provision. This law does have a refund provision, so in other words leave the original language and write another section to add to the refund provision. Commissioner Werk moved to table Property Tax Temporary Rule 600T until the June 13, 2018 open meeting. The motion died due to the lack of a second. Ms. Christensen said that that not moving on the rule, defeats the rule so the Commission is back at square one.

Next, Mr. Dornfest discussed Property Tax Temporary Rule 802T saying this rule relates to new construction rolls primarily. The changes in this rule also relate to the same issue, the provisional exemption. The main change is on the second page, section E, that says if an addition to the new construction roll then the taxing districts received a bump upward in their budgets. He said what this does is give the Counties instructions on how to determine the amount of taxable value to be deducted for this provisional exemption. Mr. Dornfest said this creates a timing problem because the County has no control over the new construction roll after the fourth Monday in July and this law did not change that. So basically, we said on the immediate next new construction roll following the granting. Mr. Dornfest pointed out there was a typo on the next to last page under section vii there was a typo where it said “constriction” and it should be “construction”. This typo has been corrected on the official copy that the Commissioners are considering today. Commissioner Katsilometes moved to approve Resolution 18-01 pertinent to Property Tax Temporary Rule 802T and Commissioner Moyle seconded the motion. All voted in the affirmative and Property Tax Temporary Rule 802T was approved.

Finally, Mr. Dornfest said Property Tax Temporary Rule 803T deals with the whole process by which budgets are certified, the information that comes into the County, and ultimately to the Tax Commission for the property tax portion of the budget. Again, we are dealing with the provisional exemption, but we are dealing with two different aspects of it here. As he mentioned earlier, there is a provision for refunds and in the law those refunds have to be subtracted from the budgets of the taxing districts. There is a procedure in this rule for doing that subtraction. There are also provisions for recapture, in other words a claw back provision that is contained in the law. Mr. Dornfest said those recaptured taxes have been set up on a schedule as other monies that come into counties. Monies that are received by taxing districts through June 30 of a year are to be subtracted from their current year's budget. We have that language on the second page in subsections (vii) and (viii) which include recovered recaptured property tax and refunds or revoked provisional property tax exemptions. The counties and taxing districts have a reporting mechanism, a requirement to report any refund or revocation monies to us. Mr. Dornfest said the fifth page under subsection (ix), discusses the amount of money received as a result of distributions of the revoked provisional exemptions. Section 06 discusses special provisions, saying refunds are not included in the balance to be levied. He said the last change he wanted to point out is under section 06 (d) where they have changed it from the third to the *first* Monday in August which is a result of the statutory change of how the reporting works for monies being billed for the solar tax. Commissioner Werk moved to approve Property Tax Temporary Rule 803T and Commissioner Katsilometes seconded the motion. All voted in the affirmative and Property Tax Temporary Rule 802T was approved.

Commissioner Werk moved to approve Resolution 18-01 with the exception of Rule 600T, by striking the language regarding adopting Property Tax Temporary Rule 600T. Commissioner Moyle seconded the motion clarifying that the resolution will be amended to strike all language that includes Temporary Rule 600T. Commissioner Werk agreed. Commissioners Werk, Moyle, and Roberts voted in the affirmative and Commissioner Katsilometes voted opposed. The motion passed with a majority decision and Resolution 18-01 as amended was approved.

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

Administrative Reports

Collection, Debbie Coulson

Debbie Coulson reported that they are gearing up for increased calls to the phone power unit from the added collection cases from the 2017 individual income tax filing season. Through May 21, phone power has handled 257,468 calls. The week of May 7 they mailed 24,000 statement of account letters which are the first letters sent out once a collection case is opened. Ms. Coulson reported that the Pocatello office relocation is still in progress and the leases for Twin Falls and Coeur d'Alene field offices are in the process of being renewed at their current locations. She said they held their annual compliance officer training in Boise the week of May 1. Collection received three new positions for Fiscal Year 2019: two Compliance Technicians and one Compliance Officer. Ms. Coulson reported that collection recoveries for Fiscal Year 2018 year to date is \$104,133,708.71 which is an increase of \$8,354,988.39 over last fiscal year. They have closed 94,300 collection cases year to date and there have been 86,242 cases created.

Public Information and Taxpayer Resources, Doreen Warren

Doreen Warren reported that they have completed the state tour visiting with approximately 200 CPAs and field office staff. The visits were productive, informative, and effective, with positive feedback from the CPAs. Ms. Warren said the CPAs who have used the Taxpayer Access Point (TAP) upload feature, where taxpayers can save and upload documents in a secure process, were pleased with the ease and convenience of this new functionality. And, even though most had not heard of the *Quick Pay* option in TAP, they are anxious to promote it and use it. Ms. Warren said they have also been invited to join other practitioner groups at their upcoming annual conferences.

Ms. Warren said they are busy with the implementation of the 2018 tax laws and they are also fine-tuning the state W4 requirements along with the tax reform page on our website. She said they are also heavily involved in developing forms and instructions. She noted that tax season is not over, and phones are still ringing. They are doing their best to provide timely and effective customer service.

Finally, Ms. Warren announced that Lisa Schroeder has joined their team as the new Taxpayer Services and Outreach Manager. Lisa previously worked for Revenue Operations and has already hit the ground running.

Revenue Operations, John Bernasconi

John Bernasconi reported that as Ms. Warren stated, the tax season is not over yet. They are still processing returns and they continue to take phone calls to resolve issues. He said the new tax season has also begun for his division, so the forms teams are beginning to meet to discuss changes. Mr. Bernasconi reported that year to date they have issued 511,949 refunds for a total of \$296,882,235.50. There are still 32 temporary employees on board, but it is dwindling quickly. Mr. Bernasconi reported that 676,162 Individual Income Tax (IIT) returns have been filed electronically this year, compared to 646,961 last year. IIT returns filed using paper are basically flat with 126,234 this year versus 127,189 last year. He said they believe they are seeing a plateau on the conversion rate to electric filing, most new filers are filing electronically. Mr. Bernasconi noted that they are going to begin testing on the new service pack changes that will be implemented this fall. Commissioner Katsilometes asked for a comparison on refunds from last year to this year and Mr. Bernasconi will get that information to the Commissioners.

Management Services, Mark Poppler

Mark Poppler reported that we are getting very close to fiscal year-end and there is a lot going on in accounting. There are still auditors from Legislative Services on site and they will be here for another month. He said refunds tracked on a fiscal year basis are about \$8 million more than last year and the refund fund itself is at about \$30 million more than a year ago. Mr. Poppler said the service pack will go live on September 10.

Tax Appeals, Michael Chakarun

Michael Chakarun had no report.

Audit Division, Randy Tilley

Randy Tilley had no report.

Human Resources, Roxanne Lopez
Roxanne Lopez had no report.

Property Tax Division, County Support, Steve Fiscus

Steve Fiscus reported they are working with counties to get their year-end rolls done and assessment notices have to be sent out by the first Monday in June. He said they are also finalizing the values with the counties because there are counties that are out of compliance and he believes they will all meet those compliance levels. Mr. Fiscus said they are finalizing their values on public utilities, those should be going out soon. They are preparing for summer school which will be held towards the end of July and with that we have an announcement out for the Education Director position. Mr. Fiscus reported that the circuit breaker applications are being processed. The Committee on Forest Land Taxation Methodology (CFTM) met on Monday in Coeur d'Alene to review a proposed Rule 962 which came from a subcommittee of the CFTM. There is still some work to be completed before formal adoption of that rule. He said CFTM will be meeting several times over the next two years, there was an informal Memorandum of Understanding to move forward and review timber valuations to see what can be done in the future. The law sunsets in 2022, so there will need to be some work done prior to that sunset. Mr. Fiscus said they are going to need an appropriation for this travel, more often or not the meetings take place in North Idaho. Mr. Fiscus, Alan Dornfest, Matt Virgil, and Phil Skinner will be attending the County Commissioners and Clerks Conference in Moscow to share potential impacts from this year's value increases and their duties as the Board of Equalization.

Information Technology, Terry Ford

Terry Ford introduced herself as the new IT Information Services Manager at the Tax Commission. She said in addition to the state-wide mandatory cybersecurity training, we are working to create a cybersecurity culture throughout the agency since the best defense is our employees. She said prior to the phishing attack, IT had already started developing a security culture with the support of the Executive Leadership Team, so it receives the focus and attention it requires. She said we want to make sure our current and future security program fits within our existing culture and cybersecurity must be in a language that everyone can understand. They are working to train staff to be able to identify threats, understanding that they will change over time. We need to play to our strengths, understand and address our risks. Ms. Ford said helping everyone embrace and understand cybersecurity is a team effort. She said we are keeping cybersecurity in the minds and hearts of all employees. We all know that data needs to be protected by firewalls and strong passwords. Ultimately, we are working to develop a cybersecurity culture that make it easier for our people to "do the right thing". Commissioner Werk said there will always be a balance between security and being able to do work, we will need to find that balance.

There were no more administrative reports.

Reports on Rules Committees

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

Alan Dornfest, Property Tax Rules Committee Chair, reported that there was a committee meeting yesterday and the next meeting is scheduled for June 12. He said there was very good attendance at the meeting. One of our key areas of rulemaking this next go around is in the

agriculture area. They had a representative of the public attend from the Twin Falls area and he has been working with the subcommittee to work on agricultural rules. There are also some agricultural rules they are working on through research Rick Anderson is doing on the hops industry and other similar industries. Mr. Dornfest said there is a new circuit breaker law regarding disabled veterans additional benefit that goes in next year. They are working on a few statutory provisions, mostly dealing with the issue of transferability. Another issue that came up when Mr. Dornfest presented circuit breaker rules to the Legislative Committee was about the way that deeds are interpreted for ownership when there are community interests. He said they are doing a slight tweak on the rules for operating property to make sure the preliminary values are out in time for assessors to be able to appeal values as they are permitted to do by statute. There is also another statutory change last year that added operating property to the type of property that can be eligible for a new capital investment exemption.

Sales and Use Tax Rules – Sales and Use Tax Rules Committee Chair, Leah Parsons

Leah Parsons, Sales and Use Tax Rules Committee Chair, reported the internal committee has been meeting since March. There are 17 rules in the legislative package so far this year, 15 of those are related to sales tax, one is a hotel/motel/campground rule, and the last one is an E911 rule. Ms. Parsons said 15 of those rules have been approved by the Division of Financial Management and two are pending approval. She said they have had three rules in the May bulletin, there will be six in the June bulletin and six in the July bulletin. The first negotiated rule meeting is scheduled for this afternoon to discuss the three rules that were in the May bulletin.

There were no more Rules Committees 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, Werk, Moyle, and Katsilometes, 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 Werk moved to adjourn and Commissioner Moyle seconded the motion. All voted in the affirmative and the meeting adjourned.

Kelly Martinez

Ken A. Roberts