

IDAHO STATE TAX COMMISSION

COMMISSIONERS' OPEN MEETING MINUTES OF MEETING JULY 12, 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, Michael Chakarun, Robin O'Neill, Tom Shaner, Rick Anderson, Chuck Pond, George Brown, Phil Skinner, Erick Shaner, David Young, Nathan Nielson, Becky Ihli, Alan Dornfest, Glenda Smith, and Kelly Martinez.

Guests: Associated Taxpayers of Idaho President Miguel Legarreta
Idaho Society of CPAs Executive Director Laura Lantz

Public Session

Commissioner Richard Jackson 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 130 years of state service is appreciated. The Certificate of Service recipients in attendance were: Kevin Jones, Geographic Information System Analyst, Sr. Property Tax – 5 years; Carol Venn, Taxpayer Services Representative, Taxpayer Resources – 5 years; and Richard (Rick) Anderson, Tax Specialist, Property Tax – 10 years.

The Certificate of Service recipients not in attendance were: Sandra Jordan, Tax Compliance Officer 1, Collections – 5 years; Aaron Butikofer, Tax Auditor 3, Audit/Pocatello Field Office – 10 years; Alexander (Alex) Chizewsky, Tax Appraiser, Consulting, Property Tax/Pocatello Field Office – 20 years; Antoinette (Toni) Friend, Tax Compliance Officer 3, Collections – 20 years; Mary Kerbs-Anderson, Technical Records Specialist 1, Property Tax – 25 years; Janice Boyd, Tax Bureau Chief, Audit – 30 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 – June 7, 2017

Commissioner Werk moved to approve the minutes of the open meeting held on June 7, 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 June 7, 2017 were approved.

Resolution No. 17-07 – Property Tax Temporary Rule 020T

Alan Dornfest presented Resolution No. 17-07 Property Tax Temporary Rule 020T. Mr. Dornfest said he is requesting this temporary rule in addition to Rule 612 which is a companion rule dealing with various aspects of valuations of park recreational vehicles. At the time Rule 612 was approved, we had overlooked that there was this companion rule that provides for methods of

valuation of various types of recreational vehicles. This was pointed out to us by email correspondence from Jack Lyman and he is correct so we are rectifying that today by submitting this resolution for approval. Mr. Dornfest said while we have specific depreciation schedules for specific types of recreational vehicles, we do not have such for park models so there is a lot of debate on what the appropriate depreciation or calculation system would be. Instead of prescribing a specific table, the assessor should use the available standard industry indices and if they cannot find such indices then they should determine the market value from sale price or appraisal procedures. Assessors are to use appropriate methodologies as found in the professional literature. Mr. Dornfest unveiled the language yesterday at the rules committee meeting as they are also seeking a permanent rule, and he believes Mr. Lyman was very pleased with the language in this temporary rule. Commissioner Roberts said he did receive correspondence yesterday from Mr. Lyman indicating he is pleased with the rule. Commissioner Katsilometes moved to approve Resolution No. 17-07 and Commissioner Roberts seconded the motion. All voted in the affirmative and Resolution No. 17-07 Property Tax Temporary Rule 020T was approved.

Human Resources Administrative Policies

Roxanne Lopez, Human Resources Officer, presented the Administrative Policy Memorandums for approval as follows:

Administrative Policy Memorandum No. 18-01: New Two Factor Authentication Policy

Administrative Policy Memorandum No. 18-02: Acceptable Use of Tax Commission IT Resources Policy

Ms. Lopez said the purpose of Administrative Policy Memorandum No. 18-01: New Two Factor Authentication Policy is to establish and define the Tax Commission's standards for two factor authentication. Two factor authentication provides an additional layer of security before access is granted to Tax Commission email accounts and is also required by the IRS to protect Federal Tax Information for accounts using web-based applications such as Office 365. Two factor authentication is intended to reduce the risk of unauthorized access into agency email accounts by persons seeking to compromise its computers or obtain access to confidential information.

Commissioner Werk said he is assuming the purpose of this policy is to dovetail with our efforts to migrate to Office 365 and the fact that dual factor is going to be instituted in the next few weeks. Ms. Lopez said that is correct. Commissioner Werk noted that the policy is very specific stating that employees must authenticate themselves, no other employee can authenticate for someone else. Commissioner Werk moved to approve Administrative Policy Memorandum 18-01 and Commissioner Katsilometes seconded the motion. Commissioner Roberts said this first step in getting a policy will likely need to be amended as we continue our fight against fraud and identity theft. He went on to say that this is something we take very seriously and the speed at which we have to try to keep up with fraud is amazing. This is an internal standard for our employees to follow but we have a lot of work to do. All voted in the affirmative and Administrative Policy 18-01: New Two Factor Authentication Policy was approved.

Ms. Lopez said Administrative Policy Memorandum No. 18-02: Acceptable Use of Tax Commission IT Resources Policy replaces Administrative Policy Memorandum No. 14-01. The purpose of this policy is to outline the agency's acceptable use standards for Tax Commission business. Unacceptable or inappropriate use exposes the agency to various risks, including but not limited to compromise of systems and information, potential legal issues, and virus attacks. This policy is consistent with the previous policy with the only exception that we added verbiage to include the two factor authentication where an employee must authenticate themselves in order to

access their general email. If employees elect to use their own personal cell phones for that authentication process, this gives them the authority to do so.

Commissioner Werk clarified that we added section six to the policy, which addresses the use of an employee's personal cell phone for two factor authentication. It may be simpler for an employee to use their cell phone, especially if they are traveling, but it is always going to be a voluntary choice it is not required but allowed for this purpose only. Commissioner Roberts moved to approve Administrative Policy Memorandum 18-02 and Commissioner Werk seconded the motion. All voted in the affirmative and Administrative Policy 18-02: Acceptable Use of Tax Commission IT Resources Policy was approved.

Administrative Reports

Audit Division, Randy Tilley

Randy Tilley reported on the fraud activities through the week of July 7, 2017. The audit division has stopped 253 fraud and identity theft returns in the amount of \$477,054, which is down from last year's total of 463 at \$737,387. This is a trend he has talked about in the past, confirmed fraud has gone down primarily due to the extraordinary efforts of states, IRS, and our industry partners on the financial side and software side to identify fraudulent returns and stop them from getting in to the system.

Commissioner Werk said we are seeing this decrease in fraudulent returns, we still have a chunk of unknown returns where people have not responded to the request for information letters. We are still in the position of not knowing exactly what we have because we just can't filter out everything. Commissioner Werk said we also understand that regardless of the declines in the fraudulent returns, we are really in a position of always keeping our guard up because they get more sophisticated over time and generally go to wherever the weakness is. We are in a good position but we need to keep getting better and we can't stop what we are doing. Mr. Tilley said they continue to send out letters to taxpayers to verify identity, they sent out 29,578 letters so far this year. They have completed review of all of the documentation that has come back in and they are now working on those letters where the taxpayer has not responded, as there are over four thousand of those refunds we are holding for verification. Commissioner Roberts asked how that compares to last year and Mr. Tilley said it is right about the same as last year.

Mr. Tilley reported on fiscal year end numbers saying they have completed 18,778 audits, examinations, and reviews, which was up a little bit from last year's number of 18,493. A significant change this year is that our recoveries are up substantially. Last year their recoveries were at \$40,244,922 and this year we are at \$66,805,432. The increase is primarily related to the closure of several large multistate corporate audits; those take a significant amount of time but when they do finally come to a resolution those dollars show up in the recovery amounts. Mr. Tilley also reported that was an increase in the number of audits that have been done for CP2000 and other non-filer work as well.

Management Services, Mark Poppler

Mark Poppler reported that fiscal year end is keeping accounting busy. Legislative Services auditors will be coming to the Tax Commission beginning this afternoon, there is an opening conference with them at 2:30 p.m. and he will find out the scope of the audit for this year. Mr. Poppler said they think it is just the CAFR audit where they audit large receipts of various tax types, however last year they did the three-year internal control audit as well where they look a little more deeper at some of our processes. Mr. Poppler said the Tax Commission will probably issue our final numbers tomorrow, however the STARS system stays open longer at year end so they officially close their system next week. Finally, Mr. Poppler reported in February that the Tax Commission had received a federal grant for a fuels evasion work and that paperwork has finally

come through. The grant is in the amount \$22,500 which is \$7,500 more than we were expecting and Mark Stones and his unit will use the funds for training and attending the FTA conference for fuels.

Revenue Operations, John Bernasconi

John Bernasconi gave a quick update on where Revenue Operations ended the fiscal year for returns processing and refunds. They ended the fiscal year fairly flat, they were up 10,000 returns which is about 1.4% over last year. The paper returns were only off by about 2,000 returns, so that was very consistent with last year. Electronically filed returns were up by about 12,600 returns and refunds are close to the same, they have issued about 13,000 more refunds than last year. A large part of that increase is due to how quickly returns are getting through the fraud manager. Mr. Bernasconi said the average refund is up by \$13, this year it is \$559 versus \$546 last year.

Property Tax Division Administrator, County Support, Steve Fiscus

Steve Fiscus reported that summer school for assessor appraisal staff is scheduled for July 24-28. He said the county Boards of Equalization adjourned Monday and one county received a one-day extension because they had a list of appeals they couldn't get to. Mr. Fiscus said now is the time that those counties that were out of compliance with their levels of assessment earlier begin working with us to make sure they become compliant. There were ten counties with eleven categories of property that were out of compliance so the consulting appraisers are working with those counties to make sure they are in compliance and that the county commissioners sitting as the board of equalization didn't do something to take them out of compliance. There is one county that has been completed and he said they anticipate the other counties getting to that point as well. Mr. Fiscus said the appraisers in the operating property/public utility section are having meetings with taxpayers to be able to give additional information and then the appraisers give their information as well. Taxpayers then have until August 1 to appeal to the State Board of Equalization if they do not feel they have been treated fairly. Mr. Fiscus said they have had a considerable amount of these informal meeting this year, more than they have had in the past and one of the main reasons was there was a more consistent valuation approach with the non-utility generators. Alan Dornfest made a presentation last Friday for the Elmore County Commissioners and the interesting part of that is there was a legislator in attendance who had some concerns about some of the things shared in the presentation. Mr. Fiscus said they will take those concerns to the Assessor's Conference in McCall later this summer for discussion.

Collection, Debbie Coulson

Debbie Coulson reported on Fiscal Year 2017 totals as follows: collection recoveries totaled \$112,912,218.28 (preliminary) which is a decrease of \$4,841,973.84; the number of collection cases created was 104,237; the number of collection cases closed was 104,563 which is an increase of 5,569 over last year and 326 more cases were closed than opened for the fiscal year; the vendor offset program recoveries were \$128,126.27; and the temporary sellers permit recoveries were \$1,903,588.09 which was an increase of \$277,482.40 over last year. Ms. Coulson said the number of outbound calls handled through virtual call jobs (Phone Power) was 115,915 and inbound calls handles through automated call distribution (Phone Power) was 107,194. The abandoned rate for calls this fiscal year was 8%, which is down from 11% last year.

Ms. Coulson said they will be focusing a lot of effort over the next 30 days on educating the public about their responsibilities if they are making retail sales or renting property for the solar eclipse on August 21, 2017. They have a flyer that they will be handing out once it is approved, and will be focusing their efforts in Weiser, Sun Valley, and Idaho Falls, as they are areas within the eclipse direct path.

Public Information Director, Taxpayer Resources, Doreen Warren

Doreen Warren reported that this month the Taxpayer Resources Unit (TRU) is concentrating on promoting and educating taxpayers on the responsibilities of collecting and remitting taxes that apply when taxpayers sell or rent out during the solar eclipse event in August. TRU has collaborated with Collection and Audit divisions to develop educational materials, web pages, an online application, and they have also made public appearances. Ms. Warren said they are also partnering with the Department of Commerce to promote this event.

They are wrapping up the Fiscal Year 2017 business plan and one of their achievements was an overall reduction of “where’s my refund” calls of almost 28%. Income Tax forms and instructions development are ahead of schedule this year. In fact, Individual forms are 100% complete and Business forms are approximately 75% complete. Ms. Warren said they are concentrating on incorporating “Plain Talk” into the Individual Income Tax Instructions as well.

Ms. Warren said their Fiscal Year 2018 business plan is under development, and they have already gotten a jump-start on several objectives such as: Plain Talk training is scheduled for August 15-17; updating Revenue Operation’s Request for Information paragraphs to Plain Talk; developing a strategy to address publications on the Tax Commission website; developing a plan to promote the IRS “Don’t Take the Bait” campaign for tax professionals; and reviewing TPS data to attempt to be proactive in our preparation for the next fiscal year.

Tax Appeals Manager, Michael Chakarun

Michael Chakarun reported on the case totals for fiscal year ending June 30, 2017. He noted that this update only includes cases handled by the appeals group and does not include cases managed by the Deputy Attorney Generals. It is also the first full fiscal year that Tax Appeals has operated as a separate unit within the Tax Commission. Mr. Chakarun said they began the fiscal year with 425 cases in inventory and the average age of those cases was 385 days. They ended the fiscal year with 381 cases in their inventory with an average age of 384 days per case. Of the 381 cases, they have issued decisions on 71 cases and they will remain in the inventory until the 91-day period for taxpayer appeal expires before they close the case. The average age of the 71 cases was 429 days. Mr. Chakarun said this leaves them with 310 active cases with an average age of 380 days. There are four cases included in that number that are before the Board of Tax Appeals. During Fiscal Year 2017 they closed 441 cases with an average of 403 days per case.

Commissioner Werk noted that there are a lot of reoccurring issues such as double claimed dependents, it would be interesting to see whether we are having an impact by doing educational outreach on that topic. Mr. Chakarun said double claimed dependents and non-filers are the two largest case categories.

There were no more administrative reports.

Reports on Rules Committees

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

Tom Shaner, Sales and Use Tax Rules Interim Committee Chair, reported they submitted 19 sales tax rules requests and they have all been approved. They were able to combine dual purposes on one request so they are moving forward with 17 rules. The working drafts for all of the rules that have notices published will be on the website soon and they will be accepting public comment both in writing and at the open meetings. There are open meetings scheduled for July 18 at 2 p.m. and August 10 at 9 a.m.

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

Alan Dornfest, Property Tax Rules Committee Chair, reported they had a meeting yesterday and there are 16 rules to go before the legislature. Of those, they have six on their table; primarily four of those are fundamentally finished and deal with the percentage of homeowners' exemption or circuit breaker allowed in cases of community property plus another individual with that specified interest. Mr. Dornfest said they needed to add a couple of rules to that process so those were not published until July. The two biggest rules they are working on are the rules regarding the park model recreational vehicles, however they believe the controversy is resolved. Finally, Rule 631 is the rule that there has been some controversy over regarding the NN exemption. Part of the issue there is how detailed they want to get in the rule because it is primarily a discretionary exemption and is not mandatory. Mr. Dornfest said they may not be able to resolve all of the issues on that rule and some of the issues may take further legislation, which was his suggestion to the concerned legislator at the meeting last week. He said they are waiting on the remaining rules to finalize at the August 1 meeting.

Commissioner Roberts said because the 602NN exemption is discretionary for county commissioners to authorize it or not, it seems it is going to set up a scenario sooner than later where you have a county that will grant an exemption to one company, however a similar company could apply and be denied. Commissioner Roberts said the litigation could be very interesting. Mr. Dornfest said that actually came up in two contexts, one in yesterday's meeting and one at a meeting with Elmore County. At the meeting in Elmore County, there was a heated debate regarding liability that resulted in no real resolution. In the other discussion where this came up yesterday, the representatives from the Canyon County Assessor's Office indicated that they are very concerned with that and they are setting up their own very specific rules to try to prevent that.

Commissioner Roberts asked where the Tax Commission's tax liability falls in that process and what could we do about that to educate legislators for a need of a different policy. Mr. Dornfest said that is a good point, this is set up as a discretionary exemption on the part of the county commissioners and we delve very minimally into most exemptions. Mr. Dornfest said the county should be getting legal advice on this from its prosecuting attorney and except for very broad issues that are very well within our domain, we should not give advice on that. The biggest area that we are expecting to address in our rule is the concept we haven't had before called *base value*, saying there was value there on this property and the exemption can only be granted to the extent there is more value. Mr. Dornfest said they are addressing that in the rule with examples, but beyond that, this is a county decision. Commissioner Katsilometes said he thinks counties will start competing with each other for these exemptions. Mr. Dornfest said after going through these examples yesterday, his advice to the group was that we should not be making those decisions. If the law is unclear and needs clarification, that may come up next year during legislation. Mr. Fiscus said they encourage counties to not dedicate dollars to this exemption, especially tax dollars; it should be done as a percentage of the value.

Product Tax Rules – Committee Chair, Don Williams

Doreen Warren presented the report for the Product Tax Rules Committee saying they are working on 15 rules at this point, seven of which are negotiated. Since the last update, the committee has added one wine rule to be updated and that is regarding a section on supplemental inventory. There are two beer and two wine negotiated rules that have been worked and will be in the August bulletin. Ms. Warren said seven non-negotiated rules have been updated and will be presented to the Commissioners as a resolution for adoption in November. The committee has one non-negotiated motor fuel rule and seven negotiated in progress. The next internal meeting is scheduled for July 20 at 9 a.m. and addition meeting is tentatively scheduled for August 1 if they need the additional time. The public Product Tax Rules meeting is scheduled for August 3 at 9 a.m.

There were no more rules committee reports.

Other Business

There were no items of other business.

Public Comments

Commissioner Jackson 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, and Werk all voted in favor and the motion passed. Commissioner Jackson left the meeting for a brief time and returned during the Executive Session.

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

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

Richard W. Jackson