

**STATE BOARD OF EQUALIZATION
OPEN MEETING
MINUTES OF MEETING HELD AUGUST 19, 2021**

In attendance: Commissioners Tom Katsilometes, Jeff McCray, Elliot S. Werk, and Janet Moyle; Maria Young, Phil Skinner, George Brown.

Commissioner Katsilometes, Chairman for the State Board of Equalization, reconvened the State Board of Equalization for 2021 (Board) at 9:00 a.m. August 19, 2021.

The Board will consider the non-utility generator (NUG) valuation report from David Cooper that was requested by 10:00 today. They will also review the comparison, completed by Jerott Rudd, for Lumen Technologies, Inc.

Commissioner Katsilometes asked the Board when they will reconvene to provide definitive guidance for the decisions upon which the Board will vote Friday, August 20, 2021.

The Board recessed until 11:00 a.m.

Commissioner Katsilometes reconvened the Board at 11:00 a.m. He defined the agenda order for the meeting on Friday, August 20, 2021.

The Board has deliberated and now must provide direction for the legal team so they can prepare the decisions upon which the Board will vote. Commissioner Moyle said, having reviewed the information submitted by Mr. Cooper, there are things Tax Commission staff did correctly. She said when using the discounted cashflow model, going out 5 years, which is typical, it isn't accurate for this type of utility. When there is a contract, they know what that stream will be. She doesn't have issue with the capitalization rate and would recommend using staffs' appraisals for these properties. Commissioner McCray thanked Mr. Cooper and Mr. Arkoosh for completing these for the Board. He didn't find a compelling reason to overturn the Bureau's assessment and would support a decision upholding the Bureau's appraisal.

Commissioner Werk said this is the second time the Board has heard this issue from the NUGs, and he believes there is a lawsuit that has been going on now for about three years. Because there are 33 properties (34, in the beginning), staff spent a great deal of time; he's sure everyone has worked very hard on this. He said he finds the case that was brought before the Board to have been frivolous. He doesn't say that lightly. To use a case that says their self-interested expert is qualified, and by law in the state of Idaho, he's not, and go on from there; just frivolous. He would encourage them, if they come back to the Board again, to put together their own values to present during their appeal. Given all that, he agrees with the other two Board members that decisions should be prepared in support staff. Commissioner McCray asked Mr. Skinner to prepare summarized decisions for each of the NUGs. Mr. Skinner said he will summarize them.

The Board will consider the Lumen Technologies, Inc. proposals.

Commissioner Moyle said there was an issue late yesterday that should be considered prior to moving forward with the recommendation for the decision. It was brought to their attention that there may have been an issue with an exemption claimed: there was a zero-value placed. There

was a question about whether it was an exemption that requires an application, and it appears that it needs to be on the operator's statement. It is her understanding that it was not included on the operator's statement. Jim Powell, Senior Property Tax Appraiser, said it was not included on the operator's statement. Commissioner Moyle asked when operator's statements are due. Mr. Powell responded they are due April 30. Commissioner Moyle said this was an issue that was brought to the attention of the legal team in an email on July 1. Mr. Skinner said the email he saw indicated Bwembya Chikolwa notified staff that their calculation was missing the vehicle deduction. Commissioner Moyle said apparently there was some discussion about it. Mr. Powell said at one point, it was mentioned but they didn't provide a number. He never provided it.

Commissioner McCray asked if it is appropriate to discuss new information without both parties present. Mr. Skinner said they are talking about it at the request of the appellant. Rick Smith is on the phone. Commissioner Moyle asked Mr. Smith if he is aware of any communication with staff and whether there were numbers provided. Mr. Smith said he isn't aware of the details. He provided the email Mr. Skinner. It was dated July 1 from Mr. Chikolwa to Mr. Powell. This is licensed vehicles and is routinely granted every year. They are always deducted at the end of the process. He doesn't know when the information was given to staff. It seems it should have been worked out prior to the appeal filing, but it was included in the appeal. There is a number shown in the schedules attached to the appeal. That number is out there, and it should be a matter that is not in dispute. It's given every year. Matters are fixed after operator's statements are filed routinely. He doesn't see any reason not to fix that this wouldn't also be fixed.

Brett Jarvis, attorney representing Operating Property Bureau, asked to be recognized. Mr. Jarvis said, on the contention this should be included, he mentioned that this wasn't raised on appeal. Mr. Smith pointed out there was an appendix that showed a figure changed in their proposed appraisal that mentioned it. There was no mention of it in the appeal. It wasn't mentioned in the prehearing conference and there was no mention in any of the briefs, nor in the hours of the hearing. There was no mention until Mr. Rudd was going through his presentation and mentioned only briefly that there was an omission. Mr. Smith didn't bring it up, nor did Mr. Chikolwa. The Bureau's position is that the Board had requested of counsel and staff to draft a decision with the weighting change and the Beta change. When those figures were presented, Mr. Smith is now saying he wants to raise an additional challenge after the hearing and deliberations. The Bureau requests that exemption not be given any consideration. Commissioner Katsilometes noted the Board can take that into consideration.

Commissioner Katsilometes recognized Mr. Smith for final comment. Mr. Smith clarified, in the notice of appeal, a figure was given (\$180 million) that reflected the exemption that was part of the appendix attached to the notice of appeal. [Mr. Smith lost telephone connection]

Commissioner Werk asked Commissioner Moyle about the statutory guidance, which she provided.

The call was re-established. Mr. Smith continued that the exemption was included in the appeal. It was part of the calculation of the value that the taxpayer was seeking. The exemption is shown in the appendix. It's unfortunate they didn't bring it up during the hearing. This is the kind of thing that typically happens to ensure the math is right. If there were any dispute about

whether this deduction is correct, he could be more understanding of staffs' position, but it seems they are just resting on a technicality he doesn't believe has any merit. Everyone knows the exemption is there, the vehicles are out there and if it isn't allowed, they will be taxed twice.

Commissioner Werk said, in looking at Idaho Code 63-602C it talks about exemptions that require application. It's clear that it is talking about the operator's statement. It is interesting because when tax cases are evaluated, frequently people miss deadlines by a day. The decisions are that they missed the deadline. The Commission doesn't have a right to say that statute doesn't apply. Everyone is treated the same when it comes to following the law. Because of the way the law reads, and how it connects, and because this wasn't included on the operator's statement, he can't see including the exemption for the vehicles because they weren't properly requested as required by law. Commissioner Moyle said this is tough. It appears it needed to be on the operator's statement, and it wasn't. Mr. Smith asked if he can be granted permission to attempt to cure the omission. Commissioner Katsilometes said he can send in additional information, but it appears the Board has decided. Mr. Jarvis said if the Board wants that information, the Bureau can put that together, but the time for bringing issues was last week. He objects to accepting more briefing on any legal issues, but if the Board wants it, the Bureau should also be entitled to submit briefing.

Commissioner Moyle said this was brought to staffs' attention in an email. Whether it was followed through, she doesn't know, and it is included in their documentation for the appeal.

Commissioner McCray said at the end of the day, they are establishing a value. The number at the end is what matters. He said he isn't sure that getting into the details of how an appraisal is done is what they are here to accomplish. Commissioner Moyle would like legal guidance on the exemptions. At the county level, an exemption can be approved at any time by the Commission. Is that the same for the Board? Mr. Skinner said he is looking and doesn't have a conclusive answer. In Idaho Code section 63-602J, at the county level, it is very clear. If it is an operating property, though, it must be in the operator's statement. Commissioner Moyle read a portion of the statute. Commissioner Werk said he believes the Board has the authority to set a value. Whether it was in the operator's statement or not, he believes the Board has the authority to ask staff to include that value. His preference is to follow the law.

Commissioner Katsilometes asked the Board to provide a recommendation to staff. Commissioner McCray said the taxpayers made a compelling argument for a value adjustment. There is room for interpretation for what that value may be and noted he isn't criticizing staff's work, but believes an adjustment is appropriate. He asked that a decision be prepared that adjusts petitioner's system value of \$38,080,000,000, with a taxable value of \$ 223,000,000. Commissioner Werk agreed. Commissioner Moyle supports that but questioned whether the exemption should also be included. She asked for a legal opinion and asked that the decision be drafter with the motor vehicle exemption included in the value. She said she is unclear about whether the Board feels the exemption should be included. Commissioner McCray said he purposefully omitted discussing the exemption or any of the other math that came up with the value. He gave the value he felt comfortable with and it is lower than staff submitted originally.

Mr. Skinner clarified that is the draft with the 60%/40% weighting with a Beta of 1.0 and not calculating for the exemption.

Commissioner Werk asked if Mr. Smith is still on the phone. Commissioner Werk thanked Mr. Smith and Mr. Chikolwa. The hearing was very professional, and he appreciated the back-and-forth. He really appreciated this case: it was well-done by both sides, was a pleasure to hear, and just wanted to thank everyone.

Mr. Smith asked Mr. Skinner about the value given by Commissioner McCray. As he heard the motion, it was for \$223 million flat and basically settled all the existing issues including the exempt vehicles. Mr. Skinner said he prepared two drafts yesterday and the 60%/40% with a Beta of 1.0 yields that number. Mr. Smith thanked Commissioner Werk for his comments saying he knows staff work hard and he appreciates working with them.

Commissioner Katsilometes reviewed the agenda for Friday. The first item will be the 4-R Act, and the Action Items will be Consent Agreement that Idaho Power and Avista agreed to with the Tax Commission. Then the Board will read each of the NUG appeals into the record and the value for 2021 and vote on each one. Commissioner McCray asked if they are allowed unanimous consent. Mr. Skinner said he and Ms. Young will prepare a spreadsheet for the Board and each appellant will be read and voted upon in turn. After that, the Board will vote on the Lumen Technologies, Inc. decision, then Alan Dornfest and Jerott Rudd will present the equalization of centrally assessed values, irrigation exemptions, and the equalization of the county assessments and abstracts.

Commissioner Katsilometes recessed the Board until 9:00 a.m. on Friday, August 20, 2021.

Maria Young
Secretary

Tom Katsilometes
Chairman of the Idaho State Board of Equalization