

**UTAH STATE TAX COMMISSION
MEETING MINUTES**

9:00 a.m., Thursday, January 26, 2012

Commission Hearing Room 1025, 210 North 1950 West, Salt Lake City, Utah

Participating:

R. Bruce Johnson - Commission Chair
Marc B. Johnson - Commissioner
D'Arcy Dixon Pignanelli - Commissioner
Michael J. Cragun - Commissioner
Barry Conover - Executive Director

Commission Office Staff Present:

Christa Johnson, Commission Executive Assistant
Charlie Roberts, Public Information Officer

Note: A list of others present, a copy of related materials and an audio recording of the meeting can be obtained from the Office of the Commission at 801-297-3901.

I. Call to Order

Commission Chair B. Johnson called the meeting to order at 9:04 a.m.

II. Public Comment Public Comment (individuals or groups wishing to address the Commissioners for up to three minutes on matters not related to a pending or reasonably imminent appeal to the Tax Commission)

Commission Chair B. Johnson noted that no one wished to address the Tax Commissioners at this time.

III. Consider Approving Minutes Of Previous Meetings

MOTION: Commissioner Dixon moved approval of the Thursday, December 22, 2011, Open and Closed Commission Meeting minutes. The motion passed unanimously.

IV. Consider approving 2012 Notice of Scheduled Meetings

MOTION: Commissioner Cragun moved to approve the 2012 Notice of Scheduled Meetings. The motion passed unanimously.

V. Consider Tax Commission positions on pending legislation

Ms. Lynn Solarczyk, Legislative Director, stated that Commission Chair B. Johnson proposed the following bill status recommendations.

Ms. Solarczyk reported on HB 34 – Sales and Use Tax Act Revisions. She explained that the bill addresses the effective date of a sales and use tax enactment or increase for purposes of a transaction for a billing period if the transaction is reported on a billing statement that includes

the amendment's; addresses the application of a tax rate repeal or decrease for purposes of a transaction for such a billing period if the transaction is reported on a billing statement; both changes conform statutes to the Stream Sales Tax Agreement.

MOTION: Commissioner Dixon moved to approve HB 34 Sales and Use Tax Act Revisions as a Tax Commission Bill. The motion passed unanimously.

Commissioner Dixon noted that the Governor's Office should have been notified that this is an agency bill.

Ms. Solarczyk reported on HB 36 - Sales and Use Tax - Computer Software and Other Tangible Personal Property Amendments. She explained that the bill provides that detaching certain tangible personal property, including prewritten computer software, from other tangible personal property is not a repair; provides that if an optional computer software maintenance contract consists of taxable and nontaxable products that are not separately itemized on an invoice, the purchase of the maintenance contract is 40 percent taxable and 60 percent non-taxable.

Commissioner Dixon asked if the industries were aware of this bill. Ms. Solarczyk replied that HB 36 comes from the perspective of the industries.

Mr. Scott Smith, Deputy Director, stated that the bill simplifies sales tax on computer-related invoices.

MOTION: Commissioner Dixon moved to approve Tax Commission support of HB 36 Sales and Use Tax - Computer Software and Other Tangible Personal Property Amendments as a (B) bill. The motion passed unanimously.

Commissioner Dixon clarified bill positions: A=Tax Commission Bill, B=Tax Commission Supports, C=Tax Commission Takes No Position, D=Tax Commission Opposes and E=Tax Commission Appropriation Bill.

Ms. Lynn Solarczyk reported that HB 250 - Tax Credit for Dependent with a Disability was placed on the agenda in error.

Ms. Lynn Solarczyk reported on SB 27 - Amendments to Revenue and Taxation Title. She explained that the bill clarifies that the Tax Commission may refund taxes erroneously paid by a person; codifies that a taxing statute is construed in favor of a taxpayer and an exemption or credit is construed against a taxpayer; addresses the taxability of a transaction consisting of taxable and non-taxable property, products, or services by codifying Tax Commission rule that allows the seller to either separately state the non-taxable items on the invoice or identify the non-taxable items, by reasonable and verifiable standards, from the books and records the seller keeps in the ordinary course of business; provides that if an item is required by statute to be separately stated on an invoice, that requirement is satisfied if it is separately stated on an invoice provided at a later time.

Commissioner Dixon asked of her fellow Commissioner Marc Johnson, as the supervisor of the economic unit that does fiscal notes on proposed legislation, if he could disclose whether the tax commission had been asked to provide a fiscal note on the bill. She noted there was no fiscal note for the bill on the Legislature's public website.

Commissioner M. Johnson stated it looked like a bill on which the tax commission would do a fiscal note.

Ms. Solarczyk stated the tax commission has done two fiscal notes on the bill; one in November 2011 and one again for the 2012 session, both of which she has seen. Ms. Solarczyk replied the Commission has been reluctant to publicly release its fiscal note comments because the legislative fiscal analyst does not always accept the report provided by the Utah State Tax Commission economists.

Commissioner Dixon stated in general she was not comfortable with the commission taking a position on the bill when all the information is not available to the public.

MOTION: Commissioner Dixon moved to support line 154, which supports the right of a taxpayer to appeal, and to take no position on lines 1053-1056 and 1163-1166 in the bill.

Mr. Clark Snelson, Assistant Attorney General explained his concerns with lines 1052 -1056, 1162-1166, 1772-1805 and 2124 – 2021 is that the company can re-characterized their transaction error after the fact. He recommends that the Commissioners oppose lines 1053-1056, and 1163-1166 and support line 154 in SB 27.

SUBSTITUTE MOTION: Commissioner Cragun made a substitute motion that the Tax Commission oppose lines 1053-1056 and 1163-1166. The substitute motion passed with Commissioners B. Johnson, M. Johnson and Cragun voting aye and Commissioner Dixon voting nay.

MOTION: Commissioner Dixon moved that the Tax Commission support line 154 in SB 27. The motion passed unanimously.

VI. Acceptance of Proposed 2012 Internal Audit Plan

Commissioner Dixon, supervisor of the Internal Audit Unit in the Office of the Commission, gave an overview of the internal audit plan operation. She recognized Mr. Doral Vance, Director of Internal Audit, and asked him to give additional details on the Internal Audit Plan.

Mr. Vance recognized Mr. Aman Kudiya, an internal auditor. He thanked the Commissioners and Executive Director for their input on the internal audit plan.

Commissioner Cragun expressed his appreciation that the internal audit worksheet cross references to the statute that establishes the internal audit requirements.

Mr. Conover said that he appreciates the work of Mr. Vance and Mr. Kudiya. The internal audit unit is improving many processes in the divisions of the Utah State Tax Commission.

MOTION: Commissioner Dixon moved acceptance of the Internal Audit Plan for 2012. The motion passed unanimously.

VII. Executive Director's Report

Mr. Conover received a concern from a taxpayer regarding Rule R865-21U-6 Liability of Purchasers and Receipt for Payment to Retailers Pursuant to Utah Code Ann. Section 59-12-107. The rule does not allow a taxpayer to report use tax that exceeds \$400 on their individual income tax return. The rule requires taxpayers in that circumstance to get a sales tax license and file quarterly returns.

Mr. Conover asked if the Commission could have a discussion of ideas of amending rule R865-21U-6 language to be compatible with requiring businesses to file sales tax quarterly and allowing individual taxpayers to report any amount of use tax on their income tax return.

Commissioner Dixon suggested having an informal recorded Commission Work Meeting where the Commissioners and Executive Director could have this discussion.

VIII. Commissioners' Report

Commission Chair B. Johnson reported that he attended the Mid-Winter Commissioners' Meeting Co-sponsored by the Federation of Tax Administrators and MultiState Tax Commission. One of the topics of the meeting was fraudulent electronic filing and the efforts to combat fraudulent return filings. He noted that the Utah State Tax Commission's Suspicious Filers Unit received praise from the presenters for their efforts.

Mr. Conover stated that the Utah State Tax Commission prevented over \$1 million of fraudulent refunds last year.

Commission Chair B. Johnson asked Mr. Conover to give an annual report on fraudulent refunds filings.

Commission Chair B. Johnson reported that the WSATA meetings have been on hold for the last few years. However, California has agreed to host the meeting that is scheduled for the fall of this year. He offered to have Utah host the 2013 meeting, with current Vice-chair Fred Pablo of Hawaii presiding upon becoming chair. Hawaii will plan the substantive program but Utah will assist in locating and coordinating with the venue and suggesting program and spouse entertainment. He asked that Charlie Roberts, Public Information Officer, and Christa Johnson, Commissioners' Executive Assistant, help arrange the event with assistance from the Executive Director's staff.

Commissioner Cragun reported on HB 255- Motor Vehicle Business Regulation Penalties. He explained the bill provides that the State Tax Commission may, waive, reduce, or compromise any of the civil penalties imposed by the Motor Vehicle Enforcement Division for a violation of the Motor Vehicle Business Regulation Act if reasonable cause is shown and by making a record

of its actions. The Legislature has taken some action on this bill. Based on the Tax Commission's vote to support the bill last fall, he has given testimony in favor of the bill and will continue to represent the Tax Commission as the bill progresses.

IX. Adjourn to Closed Session

MOTION: Commissioner Cragun moved to meet in a closed session to discuss pending or reasonably imminent litigation. The motion passed with Commissioners B. Johnson, M. Johnson, Dixon and Cragun voting aye.

X. Return to Open Session

Commission Chair B. Johnson called the meeting back to order at 10:24 a.m.

XI. Consider Approval of a Settlement Offer for Oracle Corp and Subsidiaries v. Utah State Tax Commission, Third District Court, case no. 080926150

MOTION: Commissioner Cragun moved to approve the proposed settlement agreement. The motion passed unanimously.

XII. Adjourn

Commission Chair B. Johnson adjourned the meeting at 10:27 a.m.

Approved on: Thursday, February 23, 2012

Attested: Christa Johnson
Executive Assistant
Utah State Tax Commission