

Minutes of the Utah State Tax Commission
Administrative Rule Meeting
Tuesday, September 9, 2008 – 8:00 a.m.
Room 1025, Tax Commission Building
Salt Lake City, Utah

Participating:

D'Arcy Dixon Pignanelli – Commissioner, Chair Administrative Rules
Pam Hendrickson – Commission Chair
R. Bruce Johnson - Commissioner
Marc B. Johnson – Commissioner

Commission Staff Present:

Cheryl Lee, Commission Executive Secretary

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 297-3900.

1. Commission Business

Commissioner Dixon called the meeting to order at 8:00 a.m.

Commission Dixon asked that everyone speak directly into the microphones for better recording purposes.

2. Proposed Rules for Adoption by the Commission

2.1 Rule R861-1A-16 – Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

MOTION: Commissioner M Johnson moved the rule as posted be approved. The motion passed unanimously.

2.2 Rule R861-1A-23 – Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

MOTION: Commissioner M Johnson moved the rule as posted be approved. The motion passed unanimously.

2.3 Rule R861-1A-26 – Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b 6 through 63-46b-11.

MOTION: Commissioner Hendrickson moved the rule as posted be approved. The motion passed unanimously.

2.4 R861-1A-27 – Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

COMMISSION COMMENT: Commissioner B Johnson said the previous proposed rules regarding “prehearing conferences” reflect the formal appeal procedure, however, the Tax Commission always encourage taxpayers, divisions, counties or other parties to engage in discussions of any kind with the parties involved.

MOTION: Commissioner B. Johnson moved the rule as posted be approved. The motion passed unanimously.

2.5 R865-6F-8 – Allocation and Apportionment of Net Income (Uniform division of Income for Tax Purposes Act).

COMMISSION COMMENT: Commissioner Dixon said there were three (3) written comments submitted. They are from Ensign-Bickford Industries Inc. & Subsidiaries, Oracle Corporation & Subsidiaries and Kimberly Clark Corporation & Subsidiaries.

COMMISSION COMMENT: Commissioner B. Johnson said the Multistate Tax Commission has been working on this proposed rule for several years. Even though the states collectively have not been able to achieve the level of uniformity they would like in regards to this rule, it is a step in the right direction to helping people understand Utah’s interpretation of the Uniform Division of Income for Tax Purposes Act.

COMMISSION COMMENT: Commissioner M. Johnson thought this rule maintained the Commission’s past practice in respect to the transactional and functional tests. That being that either can be used to determine business income. A business does not need to meet both tests.

COMMENT: Mr. Kim Ferrell, Corporate Tax Audit Manager, said his understanding is consistent with what Commissioner M. Johnson said and is reflected in a number of Commission decisions issued over the years.

COMMENT: Mr. Steve Young, Holmes Roberts and Owen, in behalf of Oracle Corporation, asked the Commission to reexamine their use and interpretation of terms. He said “disposition” could be read that an event of disposing of stock or selling assets has to be part of your regular trade or business, but a business may only do it once. He also asked for review of the use of “power” in the rule as the MTC rule states the word “disposition” means the act or power to relinquish.

COMMISSION COMMENT: Commissioner M Johnson said he appreciated his thoughts. He asked staff to look into the issues and get back to the Commission.

MOTION: Commissioner B. Johnson moved the rule as posted be approved. The motion passed unanimously.

3. Other Items/Adjourn

MOTION: Commissioner Hendrickson moved to adjourn. The motion passed unanimously.

Commissioner Dixon adjourned the meeting at 8:31 a.m.

Approved:

Attested: Cheryl Lee
Commission Executive Secretary