

**UTAH STATE TAX COMMISSION  
MEETING MINUTES**

9:00 a.m., Thursday, February 9, 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 (by telephone)  
Michael J. Cragun - Commissioner  
Scott Smith, Deputy Executive Director

**Excused**

Barry Conover - Executive Director

**Executive Director's Office:**

Lynn Solarczyk, Director of Legislation

**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 9:01 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 asked if anyone wished to address the Tax Commissioners. There were no comments.

**III. Consider Approving Minutes Of Previous Meetings**

Commission Chair B. Johnson said the Commission will defer approval of the meeting minutes of January 26, 2012 until the next Commission meeting.

**IV. Consider withdrawing Rule R865-3C-1 Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204 approved for submission to Division of Administrative Rules on December 8, 2011.**

Commissioner Dixon joined in on the meeting participating by telephone.

Commissioner Cragun explained that in the December 8, 2011 meeting the Commission submitted proposed Rule amendment R865-3C-1 Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204. When the rule was in the process period, a public comment was received that the rule amendment had a typo in the draft text subsection (2)(d) stating “intangible” should read “tangible.”

**MOTION:** Commissioner Cragun moved to withdraw the foregoing proposed rule amendment. The motion passed unanimously.

**V. Approve submission of proposed rule amendments to Division of Administrative Rules for publication in the Utah Register**

Commissioner Cragun presented the following proposed rule amendments for the Commission to consider and submit for publication to the Division of Administrative Rules:

- a. R861-1A-9 Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2- 212, 59-2-1004, and 59-2-1006
- b. R865-3C-1 Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204
- c. R884-24P-66 Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2- 1004

The amendment to Rule R865-3C-1, correct the drafting error in subsection (2)(d). Rule R861-1A-9 and R884-24P-66 both regulate Board of Equalization functions. The proposed amendment to Rule R861-1A-9 deletes requirements related to appeals to a county Board of Equalization. The proposed amendments to R884-24P66 relocate the county Board of Equalization procedures, provide that both the taxpayer and the assessor must agree on before a factual error leads to reconvening a Board of Equalization, and adds to the list of possible factual errors the classification of a property that is eligible for valuation under the Farmland Assessment Act. The amendment also removes a requirement that a county Board of Equalization give a taxpayer a second notice to provide information missing from an appeal application.

Commission Chair B. Johnson addressed the County Board of Equalization procedure. He said if there is a dispute between the taxpayer and the county, the rule allows the taxpayer to file an appeal within the statutory period.

**MOTION:** Commissioner Cragun moved to submit the foregoing proposed rule amendments as presented to the Division of Administrative Rules. The motion passed unanimously.

**VI. Consider adoption of Amending Administrative Rules**

Commissioner Cragun presented each of the rule amendments for the Commission to consider.

- a. R865-19S-32 Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103

- b. R877-23V-20 Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209
- c. R877-23V-21 Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105
- d. R884-24P-62 Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201

The proposed amendment to Rule R865-19S-32 clarifies that changes for fuel in a transaction for the lease or rental of a motor vehicle not subject to sales tax if the fuel charges are optional and separately stated. A comment was received on February 7, 2012, inquiring about the effective date of the rule. The Commissioners' assistant responded that the Division of Administrative Rules website states that the earliest date it may become effective is February 7, 2012, but that the rule is on the Tax Commission's February 9, 2012 agenda for consideration. It will become effective if the Commission votes to approve the amendment.

The amendments to Rule R877-23V-20 create a rebuttable presumption regarding reasonable cause to deny a license. A comment was received on February 7, 2012, inquiring about owing restitution. The Division responded that the rule does not affect the requirement of the Division to deny someone a license who owes restitution.

The amendments to Rule R877-23V-21 establish data storage policies for the Motor Vehicle Enforcement Division's automated license plate recognition system, with a one-year retention period. The rule was drafted at the direction of the Administrative Rules Review Committee.

Commissioner Dixon indicated that a Legislator inquired about a process question and asked if that would be considered a public comment. Commissioner Cragun responded that Rep. Curtis Oda and a legislative staff member inquired about the process, but did not comment on the content of the amendment.

The amendments to Rule R884-24P-62 incorporate public comments received when the amendments to the rule were adopted by the Commission on December 9, 2010. A written comment was received on January 31, 2012, from Salt Lake County.

Mr. Zachary Shaw, representing Salt Lake County District Attorney's Office, reiterated the County's opposition to the use of an aircraft pricing guide when valuing airlines. He expressed the County's concern that requiring aircraft pricing guide information in an appraisal even when that information is not relied upon to establish the valuation will create confusion.

**MOTION:** Commissioner Cragun made a motion to adopt the rule amendment as proposed. The motion passed unanimously.

Commission Chair B. Johnson expressed appreciation to Salt Lake County for reviewing the rules and giving their input.

## **VII.** 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 96 Sub 1– The bill, entitled “Sale or Use of Certain Software Programs” prohibits a person from knowingly selling, purchasing, installing, transferring, using, or possessing any automated sales suppression device or phantomware; provides that the penalty for a first offense is a third degree felony and any 20 subsequent offenses are second degree felonies; provides an additional penalty of a fine for any person convicted of violating these provisions.

Commissioner Dixon noted that HB 96 Sub 1 was also amended yesterday. The Committee accepted an addition to line 70 that inserts “with the intent to defraud” after the word “phantomware.”

Ms. Solarczyk reported on HB 255, “Motor Vehicle Business Regulation Penalties.” 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.

Commissioner Cragun stated that the bill has passed the House of Representatives Committee and suspects that the bill will be on the Senate Committee agenda Monday.

**MOTION:** Commissioner Cragun moved to formally approve Tax Commission support of HB 96 and HB 255 as (B) support bills. The motion passed unanimously.

Commission Chair B. Johnson noted that the Commission supports a bill that would include support for substitute and amended bills. The legislative process moves too quickly for the Commission to come back and hold a public meeting. If the Commission takes action on a bill and the bill text changes significantly, the Commission will reconsider the bill and vote on that bill.

## **VIII. Adjourn**

**MOTION:** Commissioner Cragun moved to adjourn.

Commission Chair B. Johnson adjourned the meeting at 9:48 a.m.

**Approved on:** Thursday, February 23, 2012

**Attested:** Christa Johnson  
Executive Assistant  
Utah State Tax Commission