

**UTAH STATE TAX COMMISSION
MEETING MINUTES**

9:00 a.m., Thursday, April 12, 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:

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

Executive Director's Office:

Scott Smith, Deputy Executive Director
Lynn Solarczyk, Director of Legislation

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 9:06 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. Ratification of the Appointment of Aman Kudiya as Director of Internal Audit, as Recommended by Commissioner Dixon.

Commissioner Dixon, as the supervising commissioner over Internal Audit, recommended to her fellow Commissioners the appointment of Mr. Aman Kudiya as the Director of Internal Audit. Commissioner Dixon outlined Mr. Kudiya's qualifications and experience for the position. She noted Mr. Kudiya is a Certified Public Accountant, a Certified Data Analyst and a Certified Fraud Examiner, and has 27 years of experience as an Information Systems Auditor for the Utah State Tax Commission.

Commission Chair B. Johnson recognized Mr. Kudiya and Mr. Doral Vance, former director of Internal Audit, and thanked them for their work at the Utah State Tax Commission.

MOTION: Commissioner Dixon moved to appoint Aman Kudiya as the Director of Internal Audit. The motion passed unanimously.

Commissioner Dixon explained that under Article IV, Section 10 of the Utah Constitution, Mr. Kudiya needed to take the Oath of Office.

Commissioner Dixon administered the Oath of Office to Mr. Kudiya.

Mr. Kudiya thanked the Commissioners, introduced his family and spoke briefly.

Commissioner Dixon left the meeting momentarily.

IV. Consider Approving Commission Meeting Minutes of Thursday, February 23, 2012

MOTION: Commissioner Cragun moved approval of the Thursday, February 23, 2012, Commission Meeting minutes. The motion passed with Commissioner M. Johnson abstaining and Commissioner Dixon absent.

V. Conflict Waiver Request [action item]

Commission Chair B. Johnson explained that the Commission received a letter from Chapman and Cutler LLP requesting a conflict waiver. Chapman and Cutler LLP currently represents and in the past has represented the State of Utah in bonding issues. Under the rules of professional conduct, they have asked for the State's consent to represent the Bank of American Fork in a tax lien matter.

Commissioner M. Johnson disclosed that one of the senior executives of the Bank of American Fork is a close friend of his.

MOTION: Commission Chair B. Johnson moved to agree to waive any potential conflict in tax lien judgment 0866408135. The motion passed unanimously with Commissioner Dixon absent.

Commissioner Dixon returned.

VI. Annual Open and Public Meetings Act training by Assistant Attorney General Sheila Page

Ms. Page gave a PowerPoint presentation on the Open and Public Meetings Act and recent changes in the law.

VII. Approve submission of proposed rule amendments to Division of Administrative Rules for publication in 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-16 Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207
- b. R877-23V-7 Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210
- c. R877-23V-22 Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704
- d. R884-24P-68 Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115

The amendment to rule R884-24P-68, replaces the amount “\$3,500 or less” from the rule and replaces it with the phrase “at or below the statutorily prescribed amount” to reflect the consumer price index increases required by statute. In Rule R877-23V-7, the proposed amendment replaces the terms “automobile” and “vehicle” with the statutorily defined term “motor vehicle.” This amendment resolves ambiguities argued in recent appeals. Proposed Rule R877-23V-22, establishes what may constitute reasonable cause to reduce or compromise a penalty imposed under Title 41, Chapter 3; provides that a person seeking to reduce or compromise a penalty must demonstrate that reasonable cause to reduce or compromise the penalty exists and recommend the amount by which the penalty should be reduced or compromised; provides that ignorance of the law or inability to pay do not constitute reasonable cause. The proposed amendment to Rule R861-1A-16 provides that the Commission’s delegation of duties does not apply to appeals for waiver of penalties imposed by the Motor Vehicle Enforcement Division under Title 41, Chapter 3.

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

VIII. Consider Amending 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

Commissioner Cragun presented the following proposed rule amendments for the Commission to consider and make effective:

The amendment to Rule R865-3C-1, corrects a drafting error in subsection (2)(d).

Rules R861-1A-9 and R884-24P-66 regulate State and County Board of Equalization functions. The proposed amendment to Rule R861-1A-9 deletes provisions related to appeals to a county

Boards of Equalization. The proposed amendments to R884-24P-66 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.

Commissioner Cragun reported that he had received public comments on these proposed changes from Weber County Assessor John Ulibarri and Juab County Assessor Shirl Nichols. He also discussed the amendments with Wasatch County Assessor Peggy McKenzie.

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

Commission Chair B. Johnson said he is scheduled to preside at a Formal Hearing and turned the gavel over to Commissioner M. Johnson to conduct the rest of the Commission Meeting.

IX. Legislative Issues for Interim Committees

a. Adoption Credit

Commissioner Cragun discussed Adoption Credit issues raised in recent appeals. He asked if the Commission desires to ask the legislature to review the matter during the interim.

Commissioner Dixon stated she supports asking if the Legislature would like to review and clarify what qualifies under the Special Needs Adoption Credit.

Mr. Conover supports the Commission asking the Legislature for guidance on the Adoption Credit. He also said that the state income tax instructions will be clearer next year on what qualifies and what does not qualify based on the current understanding of the law.

Commissioner Dixon and Commissioner Cragun will discuss the Adoption Credit concerns with the Chairs of the Tax and Revenue Interim Committee.

X. Schedule AS for All New Employees in the Internal Audit Unit and the Appeals Staff Pursuant to Utah Code Ann. Section 59-1-206

Commissioner Dixon read the content of Utah Code Section 59-1-206: Appointment of staff -- Executive director -- Compensation -- Administrative secretary -- Internal audit unit -- Appeals office staff -- Division directors -- Criminal tax investigators.

(1) The commission shall appoint the following persons who are qualified, knowledgeable, and experienced in matters relating to their respective positions, exempt under Title 67, Chapter 19, Utah State Personnel Management Act, to serve at the pleasure of, and who are directly accountable to, the commission:

- (a) in consultation with the governor and with the consent of the Senate, an executive director;
- (b) an administrative secretary;
- (c) an internal audit unit; and
- (d) an appeals staff.

Commissioner Dixon stated that to be in compliance with the 59-1-206, the Commission could adopt schedules AS and AD, which are exempt under 67-19-15 and would apply to 59-1-206:

Schedule AS

- (i) whose appointment is required by statute to be career service exempt;
- (ii) whose agency is not subject to this chapter; or
- (iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees.

Schedule AD

- (i) are in a confidential relationship to an agency head or commissioner; and
- (ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent

Commissioner Dixon stated that in adopting the use of Schedule AS, the Commission would be able to determine which Schedule--AD or AS--is most appropriate for each position in the Office of the Commission in compliance with 59-1-206. According to the Department of Human Resource (DHRM), the status of Schedule B (merit) employees in the Office of the Commission may be changed to career service exempt Schedule AD or AS positions as follows:

1. Have DHRM change the schedules for the positions to AD or AS, but not the assignment of the incumbents. This option would not require any salary increases for current employees. Future appointments to the positions would be Schedule AD or AS employees.
2. Have DHRM change the schedules for the positions to AD or AS, and offer at least one-half of one percent salary increase, up to the maximum of the position range, as an incentive for the incumbents to convert to the new schedule. Incumbents would have 60 days from the offer date to elect to convert from Schedule B to Schedule AD or AS. If they choose not to convert, they will remain in their assignment as Schedule B, even though the position's schedule has changed. Once non-converted incumbents terminate, their positions would be filled with Schedule AD or AS employees.

The Commissioners discussed the use of schedules AS and AD for the Office of the Commission.

MOTION: Commissioner Dixon moved to have the Department of Human Resource Management change the schedules for future positions advertised in the Appeals Staff and Internal Audit to AS.

Commissioner M. Johnson explained that he would like additional discussion before he makes a decision on Appeals Staff and would like to have all four Commissioners present.

SUBSTITUTE MOTION: Commission M. Johnson moved to have the Department of Human Resource Management change the schedules for future positions advertised in the Internal Audit to AS. The motion passed unanimously.

XI. Executive Director's Report

Mr. Conover recognized Mr. Doral Vance and his new assignment as the Director of the Criminal Investigation Unit (CIU).

Mr. Conover reported that on May 21, 2012 the Utah State Tax Commission will be moving over to Goggle Mail (Gmail) from Novell GroupWise e-mail. The Tax Commission is working on some security concerns the IRS has with Google Mail.

Mr. Conover reported meeting with a delegation from Pakistan that explored transparency and taxation issues at the Governor's Office of Planning and Budget (GOPB).

Mr. Conover reported that as of April 10, 2012, the Tax Commission received 87 percent of state income tax returns electronically and 2,400 income tax paper returns.

XII. Commissioners' Reports

Commissioner Cragun discussed an excerpt from a Division of Real Estate newsletter that indicates that the Division is aggressively enforcing the appraiser licensing statutes with respect to people who are paid representatives for property owners in valuation appeals. When paid representatives offer analysis, opinions or conclusions of value without an appraiser's license, the Division may issue a Cease and Desist Order.

Commissioner Cragun reported that after he and Commission Chair Bruce Johnson visited with Division Director Jonathan Stewart and Assistant Attorney General Xanna Hardman on the issue. He and Commission Chair Bruce Johnson are inclined to prohibit people to whom the Division has issued a Cease and Desist Order from appearing in Tax Commission hearings. Commissioner Marc Johnson said that he has some reservations about prohibiting anyone from appearing at Tax Commission hearings but would like to discuss the issue before making any decisions.

Adjourn

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

Commission Chair B. Johnson adjourned the meeting at 10:49 a.m.

Approved on: Thursday, June 14, 2012

Attested: Christa Johnson

Executive Assistant

Utah State Tax Commission