

**UTAH STATE TAX COMMISSION  
MEETING MINUTES**

9:00 a.m., Thursday, July 26, 2012  
Room 1000, 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 (Excused)  
Scott Smith, Deputy Executive Director

**Commission Office:**

Christa Johnson, Commission Executive Assistant

**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. and noted that Mr. Barry Conover, Executive Director is excused.

**II. 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 Commission Meeting Minutes of Thursday, June 14, 2012**

**MOTION:** Commissioner Dixon moved approval of the Thursday, June 14, 2012 Commission Meeting Minutes. The motion passed unanimously.

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

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

- a. R861-1A-12 Policies and Procedures Regarding Public Disclosure 41-3-209, 59-1-210, 59-1-403, 59-1-405
- b. R873-22M-42 Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5

Commissioner Cragun stated the amendment to rule R861-1A-12 deletes language that is contained in statute; provides that hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation are open to the public, and clarifies that all other hearings before the commission are confidential tax matters and not open to the public. The amendment further states that orders resulting from enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation are public information, and clarifies when all other commission orders may be disclosed to persons other than the named parties.

Commissioner M. Johnson explained that he has concerns with the text language of the rule. He provided examples and reasons for his concerns. In particular he was concerned that hearing provisions for the various statutes - Property Tax, Motor Vehicle Enforcement, and Motor Vehicle Business Regulation appeared to be inconsistent. He was also concerned that there had not been enough discussion on closing property tax hearings and the redaction process.

Commissioner Dixon explained there was a long-standing practice of closing residential property tax hearings and redacting names, personal information, tax amounts, and geographic information from the associated tax commission orders if they are to be used publically, and her review indicated this practice has been in place for over 20 years. Commissioner Dixon explained that retaining geographic information in redacted copies of orders may allow third parties to identify the subject property especially in rural counties. She noted there have been reviews and discussions of the redaction process.

Commission Chair B. Johnson noted that the Utah Constitution's open courts provisions envision public presentation of sensitive information when resolving grievances with the government. Nevertheless, he favors submitting the proposed rule amendment for public comment to learn what the parties who appear before the Tax Commission think about the issue.

Commissioner Dixon expressed concerns about publishing to third parties the sort of confidential information that the taxpayers who appear before the Tax Commission *pro se* often speak about during hearings.

**MOTION:** Commissioner Cragun moved to submit proposed rule amendment R861-1A-12 as presented to the Division of Administrative Rules. The motion passed with Commissioner M. Johnson voting in opposition.

Commissioner Cragun Stated the rule amendment to Rule R873-22M-24 2012 indicates the documents and information an insurance company must submit with an application for a nonrepairable certificate to prove that it meets the statutory requirements to receive a nonrepairable certificate.

The rule may not become effective before the statute's effective date of October 1, 2012.

**MOTION:** Commissioner Cragun moved to submit proposed rule amendment R873-22M-24 as presented to the Division of Administrative Rules. The motion passed unanimously.

## V. Consider Amending Administrative Rules

Commissioner Cragun introduced, and explained the following proposed rule amendments for the Commission to consider and make effective:

- a. R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5
- b. R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104
- c. R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017
- d. R865-12L-14. Local Sales and Use Tax Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210 and 59-12-210.1
- e. R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107
- f. R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702
- g. R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104
- h. R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004

He said that he is not aware of any public comment on the proposed amendments.

Rule R861-1A-20 clarifies that appeals of Motor Vehicle Division and Motor Vehicle Enforcement Division actions must be filed within 30 days of the date of the division's notice.

Commissioner Dixon asked if faxed and e-mailed appeals would be included under electronically-filed documents received by midnight of the 30-day time period.

Commissioner Cragun replied that fax and e-mail would be considered electronically-filed documents and would be timely if received by midnight of the 30<sup>th</sup> day.

Commissioner Cragun noted potential issues determining which time zone controls when considering timely filings.

Commission Chair B. Johnson suggested that the time zone be addressed at a future date.

Rule R865-6F-6 changes reflect current agency practice and result from case law and amendments to the corresponding Multistate Tax Commission model rule. Rule R865-9I-49 revises the date by which the trustee of the Utah Educational Savings Plan Trust must file information with the Tax Commission concerning amounts contributed to or disbursed from the trust from January 31 to March 31. Rule R865-12L-14 updates the current rule on sales tax redistributions to reflect changes made in 2012 HB 476. Rule R865-19S-123 indicates the London fixing price that a seller shall use to determine the amount of sales tax due in specie legal tender and in dollars when the London fixing price is not available for the day on which a purchase is made in specie legal tender. Rules R867-2B-2 and R867-2B-4 are repealed since the

statute that authorizes them was repealed by 2012 SB 243. Rule R884-24P-66 reflects a request by county assessors that the rule require a property owner to provide a county board of equalization (BOE) evidence with the application form when appealing the valuation of property.

**MOTION:** Commissioner Cragun moved to approve the foregoing proposed rule amendments as presented. The motion passed unanimously.

#### **VI. Acquiring Additional JustWare Licenses**

Commissioner Cragun explained that under the contract with NewDawn Technologies for its JustWare case management application the Commission has 54 remaining “Business Intelligence” hours. Michael Roussin from the Department of Technology Services who supports JustWare recommends that the Commission authorize exchanging the remaining “Business Intelligence” hours for two additional user licenses: one for Neil Hood who serves as Michael Roussin’s backup and one for future needs.

Commissioner Dixon asked if additional user licenses may be purchased at anytime within budgetary constraints.

Commissioner Cragun responded that a license may be purchased at anytime. However the opportunity to convert the 54 remaining “Business Intelligence” hours to two additional user licenses ends this month.

**MOTION:** Commissioner Cragun moved to authorize exchanging the 54 remaining “Business Intelligence” hours for two additional user licenses. The motion passed unanimously.

#### **VII. Adjourn to Closed Session**

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

#### **VIII. Return to Open Session**

Commission Chair B. Johnson called the meeting back to order at 11:00 a.m.

#### **IX. Consider settlement request in JMH Holdings Corp. v. Utah State Tax Commission, Second District Court case no. 110702305**

**MOTION:** Commission Chair M. Johnson moved to approve in substance and consistent with the discussion held in closed session the proposed response to the Plaintiff’s June 5, 2012 letter. The motion passed unanimously.

#### **X. Adjourn**

Commission Chair B. Johnson adjourned the meeting at 11:01 a.m.

**Approved on:** Monday, August 27, 2012

**Attested:** Christa Johnson

Executive Assistant

Utah State Tax Commission