

**UTAH STATE TAX COMMISSION  
MEETING MINUTES**

9:00 a.m., Monday, August 27, 2012

Commission 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

**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  
Julie Alsop, Finance Director

**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 9:07 a.m. and noted the meeting was delayed due to technical difficulties.

**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 Open and Closed Commission Meeting Minutes of Thursday, July 26, 2012.**

**MOTION:** Commissioner M. Johnson moved approval of the Open and Closed Commission Meeting Minutes of Thursday, July 26, 2012. The motion passed unanimously.

**IV. 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-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. R861-1A-46 Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110
- c. R884-24P-33 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301

Commission Cragun explained that the proposed rule R861-1A-20 corrects statutory references. In the 2009 General Session the Legislation repealed Utah Code Section 59-10-532, 59-10-533 and enacted Utah Code Section 59-1-1410. The rule deletes references to the repealed laws and replaces them with the enacted statutes.

Commission Cragun explained that rule R861-1A-46 is a new procedure. The rule amendment provides a voluntary procedure that if a requester of a refund initiates a large number of refund requests it could ask the Taxpayer Services Division to use a sampling method when processing the request.

Mr. Richard Vankomen, Tax Practitioner, stated that the rule amendment is a step in the right direction. However, he also explained his concerns with the rule. He asked if a refund is timely dismissed and the rule says that taxpayer is only able to appeal whether or not the information is received timely, can the taxpayer appeal whether or not it should have been required to submit the requested documentation.

Commission Chair B. Johnson replied the Commission will review whether there was adequate information received. If the information received was adequate then the Commission would remand it to the Division to consider the information and make a decision on the merits. The decision on the merit could then be appealed to the Commission.

Mr. Richard Vankomen's concern is that the taxpayers can lose their rights if they did not submit the right information.

Commissioner Cragun explained this provision is patterned after rules currently applicable to locally assessed property appeals. If a property owner fails to submit evidence to support their claim then the case may be dismissed for failure to provide that information. The only appeal right they have is for the Commission to determine whether or not the case was properly dismissed. They would retain the right to challenge any requirement by the county for a particular document.

Commission Chair B. Johnson thanked Mr. Vankomen for his comments.

Commissioner Cragun presented the proposed amendment to Rule R884-24P-33. The amendment is an annual valuation guideline for personal property tax. Counties and property owners will use the valuation guidelines for 2013 personal property tax assessments.

Commissioner Cragun noted that the in its 2012 general session the State Legislature adopted House Bill 387 which repeals the schedule for short-life expensed property and creates a new schedule for non- capitalized personalized personal property. The rule amendments reflect those changes.

Commissioner Dixon asked why the rule text does not indicate the previous year's percentage on table 24 and table 27.

Mr. Herbert Jenkins with the Property Tax Division, Appraisal Manager, replied the data is static because although the tables are included, they are rarely used.

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

#### **V. Consider Amending Administrative Rules**

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

- d. 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
- e. R865-21U-6 Liability of Purchasers and Receipt For Payment to Retailers Pursuant to Utah Code Ann. Section 59-12-107

The amendment to rule R861-1A-26 clarifies an attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted *pro hac vice* in Utah.

Commissioner Cragun stated that he received a public comment from Steve Young who petition for the rule change that indicated that the rule looks great.

Commission Chair B. Johnson asked that the Commission make a change in the future for the rule to state that an attorney not only needs to be licensed, but in good standing.

The proposed amendment to Rule R865-21U-6 defines terms, repeals unnecessary language and indicates on which form certain purchasers shall file and remit use tax. Specifically, it eliminates the \$400 limit for reporting and paying use tax with an individual income tax return.

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

#### **VI. Appointing Administrative Rule Coordinator for the Utah State Tax Commission**

Commission Chair B. Johnson reported that he has designated Lynn Solarczyk as the administrative rule coordinator pursuant to Governor's Herbert executive order issued December 6, 2011 (EO/013/2011).

## **VII. Budget Request**

Mr. Conover presented the summary budget building block requests for fiscal year 2013. Mr. Conover and Julie Alsop answered Commissioners' questions.

### **1. Fund Immigration Bills that were passed in the 2011 General Session (HB116 and HB469)**

Mr. Conover explained the variable costs will be based on the number of immigrant permit holders and their employers that will file the new returns. This workload is expected to be manageable, therefore nothing is being request at this time for ongoing costs.

### **2. Administrative Law Judge (ALJ)**

Mr. Conover explained that additional resources are being requested to help keep up with the growth in tax appeal workload.

Commissioner Dixon stated that last year she submitted a similar budget request for a non-juris doctorate administrative law judge devoted to locally assessed property tax appeals. She stated she prepared the budget documents for this request for a law trained ALJ and supports requesting this position because it is her understanding it is more amenable to the full commission; however she noted her preference is still a non-law trained ALJ.

Commission M. Johnson concurred with Commissioner Dixon and supports the budget for a non-juris doctorate administrative law judge.

Commissioner Cragun stated that he is opposed to asking for additional money for an Administrative Law Judge. He explained that Salt Lake County has limited the Commission to only scheduling fourteen hearings a week, which has the greatest impact on the delay in issuing appeal orders. Hiring an additional Administrative Law Judge will not eliminate the delay. To reduce the work load burden on current Administrative Law Judges, offer faster resolution for appeals from property owners in the other counties that do not place the same restrictions as Salt Lake County and take advantage of last year's rule amendments Commissioner Cragun suggests appointing temporary hearing officers to handle the initial hearings for locally assessed property tax appeals.

Commission Chair B. Johnson spoke in favor of requesting the law trained ALJ position.

### **3. Electronic Payment Fee Appropriation Adjustment (align to current estimate)**

Mr. Conover explained that the current estimates for electronic payment costs for motor vehicle transactions are lower than the amount originally appropriated. This request is to reduce this appropriation for both the current year and FY14 to more closely align with current estimates.

### **4. Liquor Distribution Appropriation Adjustment (required in statute)**

Mr. Conover explained that these are pass-through funds to local law enforcement entities to supplement their alcohol and drug enforcement programs.

#### **5. DMV Building Landscaping**

Mr. Conover explained that this budget request was initiated by complaints about the exterior appearance and maintenance at the South Valley location.

Commissioner Dixon suggested Mr. Conover also approach the Building Board to see if the request could be funded through the Division of Facilities and Construction.

MOTION: Commission Dixon moved to approve the one time request to Fund Implementation of the Immigration Bills Passed in 2011. The motion passed unanimously.

MOTION: Commission Dixon moved to approve the building block for an Administrative Law Judge. The motion passed with Commission Chair B. Johnson, Commissioner M. Johnson, Commission Dixon voting aye and Commission Cragun voting nay.

MOTION: Commission Dixon moved to submit the requests for the Electronic Payment Fee Appropriation Adjustment, the, Liquor Distribution Appropriation Adjustment, and the one-time allocation for the, DMV Building Landscaping, to the Governor's Office. The motion passed unanimously.

#### **VIII. Executive Director's Report**

Mr. Conover reported that the revenue portion of GenTax has all been implemented.

Mr. Conover reported that the kick-off of Motor Vehicle module development was on July 9, 2012.

Mr. Conover reported on the progress of the security review meetings with Deloitte & Touche. They are in the last week of the meetings and the report will come out at the end of September.

Commissioner Dixon asked if the red couches in the lobby were donated to the Utah State Tax Commission.

Mr. Conover replied that Department of Facilities and Construction Management obtained them from another State facility and that there was no consultation with the Tax Commission.

#### **IX. Commissioners' Reports**

Commissioner Cragun reported that the annual employee recognition breakfast will be held on Tuesday, September 6, 2012, and Governor Hebert will attend for a portion of the event.

Commission Chair B. Johnson reported on the Multistate Tax Commission Annual Conference where three speakers made presentations. The first speaker was Dr. Sanjay Gupta, who spoke on the impact of FIN 48 on tax avoidance by multistate businesses. His conclusion was that state and local taxes spiked at the time FIN 48 became effective, but indications are that things are now returning to normal. The second speaker was Professor Michael McIntyre who spoke on the use of Offshore Tax Havens. Estimates suggest that \$11 to \$32 trillion of assets held offshore result in federal tax losses of \$100 to \$280 billion. The last speaker was Professor John Kindcaid who gave a brief history of federalism, noting that we are now in an era of “coercive” federalism, where the balance of power lies with the federal government. The Model “Communications Transaction Tax Centralized Administration Act” was adopted providing three models.

**X. 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.

**XI. Return to Open Session**

Commission Chair B. Johnson called the meeting back to order at 10:48 a.m.

**XII. Adjourn**

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

**Approved on:** Thursday, September 27, 2012

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