

**UTAH STATE TAX COMMISSION
MEETING MINUTES**

9:00 a.m., Thursday, April 11, 2013

Commission Room 1000, 210 North 1950 West, Salt Lake City, Utah

Participating:

R. Bruce Johnson - Commission Chair
D'Arcy Dixon Pignanelli - Commissioner
Michael J. Cragun - Commissioner
Robert P. Pero - Commissioner
Barry Conover - Executive Director (Excused)

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 Johnson called the meeting to order at 9:03 a.m.

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 Johnson noted that no one from the public wished to address the Commissioners at this time.

III. Consider Approving Open and Closed Special Commission Meeting Minutes of Thursday, February 21, 2013 and Commission Meeting minutes of Thursday, February 28, 2013.

MOTION: Commissioner Dixon moved approval of the Open and Closed Special Commission Meeting Minutes of Thursday, February 21, 2013, and Commission Meeting minutes of Thursday, February 28, 2013.

IV. Redaction of commission orders appealed to a formal hearing, but settled before the hearing, and redaction of commission orders appealed to court after a final court decision or settled before the court hearing.

Commissioner Dixon gave an overview of the Tax Commission Redaction Program and the Redaction Website where redacted Commission decisions which can be found at <http://tax.utah.gov/commission-office/decisions>.

Commissioner Dixon explained that reading redacted Commission decisions can increase taxpayers' and practitioners' understanding and application of tax law when preparing for a hearing before the Commission. Confidential information is redacted from decisions in

accordance with confidentiality laws. If someone is able to identify a person, entity or subject property when reading a redacted Commission decision, they should immediately notify the Tax Commission. Some Commission decisions involve new laws, case law, new issues or general guidance from the Commission. These decisions have been issued over several years and are considered “Guiding Decisions”. Recently issued Commission decisions are available on the searchable database of redacted decisions. Tax Practitioners who have knowledge of a Commission Decision that has not been redacted, and hold it does give guidance, may request redaction of the order using the TC-415 Redaction Request Form which is also found on the Commission Redaction Website.

Commissioner Dixon outlined the following items for commission discussion.

Item One: Current Redaction Practice: At this time, the Commission does not redact and post commission orders appealed to District Court or the State Supreme Court. In addition, the Commission does not cite Commission orders appealed to court in subsequent Commission decisions until a court ruling is rendered. The Commission does not redact an order appealed to court where the parties settled before the court hearing.

Options: Commissioner Dixon noted that the options provided are for discussion purposes, and the commission welcomes input.

Option One: At the conclusion of the court proceedings, if a Commission order has not been protected or made a closed appeal file, the Commission will redact the commission order and place the following at the top of the order before posting:

POSSIBLE STATEMENT FOR THE TOP OF THE ORDER:

This Tax Commission order was appealed to _____ court on _____. The Court issued an order on _____. The court decision was not appealed further. It is the Commission’s practice to redact the Commission’s Order and post to the Tax Commission website when there are no further court proceedings on the order, and if the Commission’s order was not order protected or vacated. Note: This Order does not show any findings or conclusions that may have been affirmed or reversed by the Court.

Option Two: If the matter appealed to court is settled before a court hearing, the Commission will discern if there is guidance in the Commission order that may be helpful to other taxpayers or tax practitioners, and ask the parties if the order can be redacted in whole or in part and posted.

POSSIBLE STATEMENT FOR THE TOP OF THE ORDER:

This Tax Commission order was appealed and then settled. It is the Commission’s practice to redact and post to the Tax Commission website commission orders that involve new law or case law, new issues or general guidance from the Commission. The settlement agreement allows for redaction and posting of the portions provided. Note: This Order does not show any findings or conclusions that may have been affirmed or reversed by the Court.

Option Three: Continue current practice not to redact.

Item Two: Current Redaction Practice: The Commission does not redact commission orders appealed to a formal hearing and then settled before the formal hearing.

Commissioner Dixon noted that during deliberations the Commissioners and Administrative Law Judges discuss whether the issues in the appeal and the forthcoming commission order will give guidance to taxpayers and tax practitioners for future appeals.

Option One: If the Commission notes an order for redaction that is subsequently appealed, and then later stipulates, the Commission could in a deliberation consider the following:

- A Did a party ask the Commission to vacate the Commission decision when they stipulated?
- B. Is there no other guidance for the issues in the Commission's decision in another order?
- C. Is it the best thinking of the Commission, even if there are other orders on a similar issue?

Recognizing a party or parties may appeal an initial hearing order as a means to preempt a Commission decision from becoming Commission precedence there may still be reason to redact that Commission decision if it gives guidance to other taxpayers on a particular issue. Consideration of these questions could assist the Commission in determining if the Commission order merits redaction and if it should inquire of the parties, prior to signing the stipulation, if the order can be redacted.

POSSIBLE STATEMENT FOR THE TOP OF THE ORDER:

This Tax Commission order was appealed and then settled. It is the Commission's practice to redact and post to the Tax Commission website commission orders that involve new law or case law, new issues or general guidance from the Commission. The parties agreed to allow redaction and posting of the portions provided. Note: This Order does not show any findings or conclusions that may have been settled differently by the parties.

Option Two: Continue current practice not to redact.

Commissioner Dixon explained that a Commission decision is not redacted immediately after the order is sent out. Either party may, within 20 days from the date of the order, request reconsideration or, within 30 days of the Commission's final order, request judicial review of the matter. The average time period is 90 days for a Commission Decision to be redacted.

Commissioner Dixon noted that the Commission currently has a pending redaction request. The Parties have been notified that the Commission's current practice is not to redact the Commission Order under the condition's presented; the Commission would need to consider a change in practice.

Mr. John McCarrey stated that this is very helpful information to get out to the public. He asked that the Commission look further into how protective orders fit within this policy. In addition, he

raised the point that initial hearing decisions by law are not matters of record and questioned if commission orders from initial hearing have some type of precedential status.

Commission Chair Johnson stated that no record of an initial hearing can be kept. He asked if the Commission is violating statute by keeping a record of the written initial hearing decision.

Mr. McCarrey stated that parties that go through this process may have some concern with the policy allowing the information to be part of the public record.

Commission Cragun asked how the Commission should balance the Tax Code's prohibition on making a record in initial hearings with the Utah Administrative Procedures Act's (UAPA) requirement that the Commission makes a final decision.

Mr. McCarrey suggested that the Commission could treat an initial hearing decision that is not appealed to a formal hearing as a settlement agreement then issue a dismissal order to comply with UAPA.

Commissioner Cragun suggested that the Commission could seek legislative guidance and ask them to address the initial hearing process. The guidance may say something along the lines of, "If the parties fail to exhaust their administrative remedies then any decision issues by the Tax Commission in an initial hearing then becomes the final action of the agency."

Commissioner Dixon asked Mr. McCarrey to clarify what is the record.

Mr. McCarrey responded that personal notes are not part of the record.

Commission Chair Johnson stated that when he was in the private sector an incident had come up where a similar case was previously heard by the Tax Commission and a decision was issued, but not available in a redacted form for the public. If the Tax Commission would have provided him a redacted copy he could have saved his client from the entire process all together.

Mr. McCarrey recommends that the Commission consider placing a confidentiality disclaimer on all decisions that will serve to notify the parties that the order may be redacted and placed on-line.

Commissioner Dixon added that if an order is then subsequently appealed to court, the Commission may have an obligation to put on the top of the decision that this Tax Commission order was appealed to court.

Mr. Timothy Bodily, Salt Lake County District Attorney's Office, stated that Salt Lake County's position is that all commission decisions should be published. He explained that searching the database provides helpful tools for Taxpayer before they determine to go forward with the appeal process.

Mr. Kelley Wright, Salt Lake County Deputy District Attorney, Representing Utah Association of Counties (UAC), asked that the Commission consider making a distinction between posting

and redaction of a decision. He believes the law does not protect the taxpayers name from being redacted out primarily in property tax decisions.

Commissioner Dixon stated that at this time, she holds that it is more helpful to taxpayers and tax practitioners when the Commission posts decisions to the Redaction Website that provide guidance. Commissioner Dixon asked Mr. Bodily if it would be beneficial if the Tax Commission were to list on the decision, that the decision has been appealed to court.

Mr. Bodily said he believes this would be beneficial.

Commissioner Dixon asked Mr. Bodily if had knowledge as to whether all Commission Orders appealed to court were placed in the State Law Library.

Mr. Bodily said it was his understanding they would not; someone who knows of the court appeal, would have to request copies of the documents in the court appeal from the court clerk, and put the documents in the State Law Library.

Commission Chair Johnson thanked those who participated in the discussion for their comments and time in this matter.

Commissioner Dixon suggested that we put the recording of the meeting on our website for taxpayers, and practitioners to listen to and submit suggestions to the Tax Commission. Comments may be submitted to our Executive Assistant in the Office of the Commission.

Commission Chair Johnson suggested that Commissioner Dixon exercise her discretion in determining the appropriate course with the pending redaction request.

Commissioner Cragun echoed Commission Chair Johnson's confidence in Commissioner Dixon's discretion. He believes that if there is a redaction request that the Commission should redact the decision unless there is significant reason not to publish the redacted decision.

Commissioner Dixon thanked her fellow Commissioners for their confidence and suggested that the Commission continue this discussion in a future Commission meeting.

Commission Chair Johnson adjourned the meeting at 11:13 a.m.

Approved on: Wednesday, June 5, 2013

Attested: Christa Johnson
Executive Assistant
Utah State Tax Commission