

**UTAH STATE TAX COMMISSION
SPECIAL MEETING MINUTES**

9:00 a.m., Tuesday, November 13, 2018

Commission Hearing Room 1025, 210 North 1950 West, Salt Lake City, Utah

Participating:

John L. Valentine – Commission Chair

Michael J. Cragun – Commissioner

Rebecca L. Rockwell – Commissioner

Lawrence C. Walters – Commissioner - *Participating by phone*

Scott Smith – Executive Director

Commission Office:

Jennifer Franklin, Commission Executive Assistant

Note: A copy of related materials and an audio recording of the meeting can be found on the Tax Commission website: <http://tax.utah.gov/commission-office/meetings>.

I. Call to Order

Commission Chair Valentine called the meeting to order at 9:00 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 Valentine asked if anyone wished to address the Tax Commissioners. There were no comments.

III. Consider Approving Special Commission Meeting Minutes of October 25, 2018

MOTION: Commissioner Walters moved to approve the Special Commission Meeting Minutes of October 25, 2018. The motion passed unanimously.

IV. Consider amending Administrative Rules

1. Rule R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.
2. Rule R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136.
3. Rule R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

Commissioner Rockwell explained that the following proposed rule amendments are for the Commission to consider adopting. The rules were published in the Utah Bulletin on October 1, 2018 and the public comment period ended on October 31, 2018. We received public comment on Rule R884-24P-33 only.

Rule R865-19S-32. Leases and Rentals. The proposed amendment eliminates language requiring all amounts received or charged in connection with the lease or rental of tangible personal property to be included in the computation of sales and use tax on the transactions. The statutory definition of “purchase price” or “sales price” in §59-12-102 provides definitive guidance.

MOTION: Commissioner Rockwell moved to adopt the amendment to Rule R865-19S-32. Lease and Rentals. The motion passed unanimously.

Rule R865-9I-2. Determination of Utah Resident Individual Status. The proposed amendment eliminates special residency language applying only to military servicepersons that is already governed under federal law.

MOTION: Commissioner Rockwell moved to adopt the amendment to Rule R865-9I-2. Determination of Utah Resident Individual Status. The motion passed unanimously.

Rule R884-24P-33. 2019 Personal Property Valuation Guides and Schedules. Section 59-2-107 authorizes the Utah State Tax Commission to promulgate rules that define classes of items considered to be personal property and provide valuation percent good schedules to value locally assessed personal property. County assessors must use the percent good schedules as contained in this rule. Any deviation which affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use.

****Public Comment disclosed****

Commissioner Rockwell noted that the Commission had received public comment on Rule R884-24P-33 (“Rule 33”) in the form of a letter from Salt Lake and Davis County. The letter urged the Commission to take action to repeal a deduction for refineries under Rule 33. Commissioner Rockwell stated that at the last Commission meeting where Rule 33 was discussed, the Commission discussed this issue but did not take action to repeal the deduction. Commissioner Rockwell urged the Commission to not take administrative action to repeal the deduction in Rule 33 for several reasons: (1) allowing the deduction is a longstanding Commission practice and the Commission has committed to inform the Legislature and the Office of the Legislative Fiscal Analyst when changing a longstanding practice; (2) this is a tax policy decision with constitutional implications that the Legislature should consider; (3) repealing the deduction will have fiscal impacts that the Legislature should evaluate; and (4) the Legislature should consider receiving public comment from the counties and industry.

MOTION: Commissioner Rockwell moved to adopt the amendment to Rule R884-24P-33. 2019 Personal Property Valuation Guides and Schedules. The motion passed unanimously.

MOTION: Commissioner Rockwell moved to send letters to the chairs of the Administrative Rules Review Committee of the Legislature and the Revenue and Taxation Interim Committee of the Legislature recommending that they consider studying whether to repeal

the deduction for refineries under Rule 33. Letters will be sent to representatives of Salt Lake and Davis Counties informing them that we requested the two aforementioned committees to study the deduction for refineries in Rule 33. The motion passed unanimously.

V. Approve submission of proposed Rule amendment to the Office of Administrative Rules for publication in the Utah Register [action item]

1. Rule R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5. The proposed amendment states that the permissible measure of central tendency is reduced from within ten percent to within five percent of the legal level of assessment for county-wide residential property in counties of the first through fourth class.

Commissioner Rockwell presented the Rule amendment for the Commission to consider and submit for publication to the Office of Administrative Rules. Publication of the Rule will occur on December 1, 2018 in the *Utah Register* bulletin and the public comment period will end on January 2, 2019.

Commissioner Walters expressed his concern that counties don't have access to the data necessary in order to achieve the new standard.

Commissioner Rockwell advised that the Commission adopt the rule as there is an expectation on the part of the Legislature and a recommendation in an audit for the Commission to adopt the rule.

Commission Chair Valentine echoed Commissioner Walters' concern in that buyers and sellers are not mandated to report transaction details and therefore the counties may have a difficult time achieving the standard being set.

Property Tax Director Denny Lytle acknowledged that it is a high standard that is being requested under the Legislative Audit, although the existing standards for the smaller counties were left in place. Primary residential properties in larger counties are the only ones being affected by this new measure.

Commission Chair Valentine questioned how Representative Hawke's bill, if passed, would affect this standard. Director Lytle confirmed that if passed, Rep. Hawke's bill could potentially result in difficulties in this new standard being met. Commissioner Rockwell posed the question to Director Lytle whether or not counties would be able to meet this new enhancement level, despite not having access to sales disclosure data. It is Director Lytle's belief that they can.

MOTION: Commissioner Rockwell moved to submit the proposed Rule amendment to the Office of Administrative Rules. Commission Chair Valentine placed the motion for debate. There was no debate and the motion passed unanimously. The Rule amendment will be referred to the Office of Administrative Rules for publication.

VI. Consider Publication Revisions

1. Publication 25: Sales and Use Tax General Information
2. Publication 37: Business Activity and Nexus in Utah

Commission Chair Valentine called for comment on each Publication. There were none.

VII. Commissioners' Reports

Commissioner Cragun wished Executive Director Appointee Scott W. Smith well as he awaits Senate Confirmation. Commissioner's Valentine, Walters and Rockwell also expressed the Tax Commission's support for Scott W. Smith in his new endeavor.

Commission Chair Valentine spoke of the Multi-State Tax Commission ("MTC") meetings he attended the previous week. A white paper produced by the MTC's legal counsel staff addressed the issue of platform sales occurring by someone who is an expediter, such as Amazon. It is Commission Chair Valentine's belief that the Commission could benefit from the Legislature being informed of those types of sales and establishing statutory direction. In addition to platform sales tax, financial transactions cleared through a particular venue could be ones that the Commission may have to consider for collection, as are lending activities that occur in a state that are secured by property within the state.

During the MTC conference meetings, Utah was held up as a model of how combined-reporting states should determine apportionment factors.

VIII. Executive Director's Report

Scott W. Smith thanked the Commission for their support. He alerted the Commission to the removal of the credit against corporate tax for employment of a homeless person pursuant to Section 59-7-903 of the Utah Code if certain criteria are met. This removal would occur on the year 2020 return.

IX. Adjourn

MOTION: Commissioner Cragun moved that the Commissioners adjourn. The motion passed unanimously.

Commission Chair Valentine adjourned the meeting at 9:30 a.m.

Approved on: December 13, 2018
Attested: Jennifer Franklin
Executive Assistant, Utah State Tax Commission