

NEVADA TAX COMMISSION MEETING  
MINUTES

October 3, 2022  
9:00 a.m.

Members Present:

Ann Bersi, Chair pro tem  
Francine Lipman, Commissioner  
Jeff Rodefer, Commissioner  
Randy Brown, Commissioner  
H. Stan Johnson, Commissioner  
Sharon Byram, Commissioner  
Craig Witt, Commissioner

Members Absent:

Tony Wren, Chairman

Chairman Bersi called the meeting to order at 9:00 a.m.

I. Public Comment.

There was no public comment.

Chief Deputy Nevarez-Goodson administered an oath to all parties testifying.

II. Meeting Minutes:

A. Consideration for Approval of the August 15, 2022, Nevada Tax Commission Meeting Minutes.

Commissioner Brown made a motion to approve the August 15, 2022, Nevada Tax Commission meeting minutes. Commissioner Witt seconded the motion. All in favor. Motion carries.

III. CONSENT CALENDAR:

A. Matters of General Concern:

- 1) Bonds Administratively Waived (dates as indicated) (Sales/Use Tax):
  - a) 95Lobos LLC
  - b) Donut Time LLC
  - c) EFY LLC
  - d) Gear Hut LLC
  - e) Marquez Auto Sales LLC
  - f) OS Poke LLC

B. Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure:

- 1) Aqua Outdoors LLC
- 2) ARI Phoenix Inc.
- 3) Blue Sky the Color of Imagination
- 4) Casetify
- 5) Celluma
- 6) Delonghi America Inc.
- 7) Dukal LLC

- 8) Factorypure
- 9) Fluence Bioengineering Inc.
- 10) Fruugo.com Limited
- 11) Good Smile Connect LLC
- 12) Gourmetgiftbaskets.com LLC
- 13) Hats.com
- 14) IKEGPS Inc.
- 15) JLAB Audio
- 16) Laguna Tools Inc.
- 17) Monos Travel Ltd.
- 18) Motor State Distributing
- 19) Peter Thomas Roth Labs LLC
- 20) Satellite Phone Store
- 21) Sound Associates Inc.
- 22) SOVA Inc.
- 23) TruHearing Inc.
- 24) 4Moms

C. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:

- 1) Bank of America National Association
- 2) Fine Art Photography
- 3) Junkee Clothing Exchange
- 4) Home Depot USA, Inc.
- 5) Findlay Automotive Inc.
- 6) Chrome Hearts LLC
- 7) LV Stadium Events LLC
- 8) Nevada Group Wellness

D. Consideration for Approval of the Recommended Settlement Agreements and Stipulations

- 1) Automax of Las Vegas

E. Department's Recommendation to the Commission for Approval of an Offer-In-Compromise pursuant to NRS 360.263:

- 1) Louis P. Kahn
- 2) Jesus Corrales
- 3) Karina Bechtold

Commissioner Brown pulled Item III. B. 5) Celluma for further discussion.

Commissioner Byram pulled Item III. B. 7) Dukal LLC for further discussion.

Commissioner Byram made a motion to approve the Consent Calendar, excluding items III. B. 5) and III. B. 7). Commissioner Witt seconded the motion. All in favor. Motion carries.

Item III. B. 5) Celluma – Commissioner Brown mentioned that the request for voluntary disclosure was received by the Department on May 6, 2021. He asked if there was an issue or a reason that this case has taken so long to come before the Commission. Karyn Ebright, Revenue Officer II, was present on behalf of the Department. Ms. Ebright stated that the Department was waiting on the Taxpayer due to Avalara being short staffed. Commissioner Brown made a motion to approve. Commissioner Rodefer seconded the motion. All in favor. Motion carries.

Item III. B. 7) Dukal LLC – Commissioner Byram asked about the nature of the business relating to the sale of medical equipment and the taxability of the sales. Karyn Ebright, Revenue Officer II, was present on behalf of the Department. Commissioner Byram mentioned that some consulting firms are on a commission. If they are receiving a percentage of what they saved in penalties and interest, it may incentivize them to possibly overstate in some cases. Commissioner Byram made a motion to not approve this matter. Commissioner Witt seconded. Commissioner Byram withdrew her motion. Commissioner Witt withdrew his second. Commissioner Byram made a motion to table this matter for a future meeting of the Commission. Commissioner Witt seconded. All in favor. Motion carries.

IV. DIVISION LOCAL GOVERNMENT SERVICES:

- A. Review and Consideration to Approve an Addendum to Bulletin 212, 2023-2024 Agricultural Land Values and Open Space Property Procedures to include tables relating to the valuation of open-space golf course land and improvements.

Jeffrey Mitchell, Deputy Executive Director, was present on behalf of the Nevada Department of Taxation. Commissioner Brown made a motion to approve the Addendum to Bulletin 212, 2023-2024 Agricultural Land Values and Open Space Property Procedures to include tables relating to the valuation of open-space golf course land and improvements. Commissioner Witt seconded the motion. All in favor. Motion carries.

- B. Determination and Allocation of Certification of Centrally Assessed 2022-2023 Unsecured and 2023-2024 Secured Unitary Property Valuations and Assessments pursuant to NRS 361.320, NRS 361.321 and 361.323.

Sorin Popa, Supervisor of Centrally Assessed Properties, was present on behalf of the Nevada Department of Taxation. Commissioner Byram asked that the formulas be corrected to correct the analysis. The valuations are correct. Mr. Popa stated that the Department will standardize throughout all of the industries.

Commissioner Brown disclosed that telecommunication equipment is considered on Page 86. His employer is AT&T and they are not centrally assessed.

Commissioner Byram made a motion to approve the Determination and Allocation of Certification of the Centrally Assessed 2022-2023 Unsecured and 2023-2024 Secured Unitary Property Valuations and Assessments pursuant to NRS 361.320, NRS 361.321 and 361.323, with the suggested corrections. Commissioner Lipman seconded the motion. All in favor. Motion carries.

V. COMPLIANCE DIVISION:

- A. Department’s Recommendation to the Commission for Denial of an Offer-In-Compromise pursuant to NRS 360.263:  
1) Zachary and Jennifer Rice

Lizette Arceo, Tax Manager, was present on behalf of the Nevada Department of Taxation. Zachary Rice was present. Commissioner Lipman made a motion to uphold the denial of the Offer-In-Compromise of Zachary and Jennifer Rice. Commissioner Rodefer seconded the motion. All in favor. Motion carries.

- 2) Landon Mandt

Lizette Arceo, Tax Manager, was present on behalf of the Nevada Department of Taxation. Landon Mandt was present. Commissioner Byram made a motion to uphold the denial of the Offer-In-

Compromise of Landon Mandt. Commissioner Witt seconded the motion. All in favor. Motion carries.

B. Approval of Refund/Credit Request in Excess of \$250,000:

1) Prudential Annuities Life Assurance Corporation

Rachel Peterson, Tax Program Supervisor I, was present on behalf of the Nevada Department of Taxation. The Taxpayer was not present. Commissioner Lipman made a motion to approve the requested refund/credit of Prudential Annuities Life Assurance Corporation. Commissioner Rodefer seconded the motion. All in favor. Motion carries.

2) K-Kel Inc. dba Spearmint Rhino

Chris Carrello, Audit Manager, was present on behalf of the Nevada Department of Taxation. Vivienne Rakowsky, Esq., was present on behalf of K-Kel, Inc. dba Spearmint Rhino. Commissioner Rodefer made a motion to approve the requested refund/credit of K-Kel, Inc. dba Spearmint Rhino. Commissioner Byram seconded the motion. All in favor. Motion carries.

3) Central Shared Services LLC dba Far West Supply Chain

Chris Carrello, Audit Manager, was present on behalf of the Nevada Department of Taxation. The Taxpayer was not present. Commissioner Byram made a motion to approve the requested refund/credit of Central Shared Services LLC dba Far West Supply Chain. Commissioner Witt seconded the motion. All in favor. Motion carries.

C. Petition for Reconsideration of Department's Denial of Exemption Status for Organization Created for Religious, Charitable or Educational Purposes pursuant to NRS 372.3261 (Sales/Use Tax):

1) Mary House Ministries

Rost Olsen, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. Stephanie Keels, Dr. Mary House and Candace House were present on behalf of Mary House Ministries. Commissioner Byram made a motion to reverse the Department's denial of exemption status for organization created for religious, charitable or educational purposes. Commissioner Witt seconded the motion. Commissioner Lipman votes - Nay. Motion carries.

2) American Heritage Partners

Rost Olsen, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. Jonathan Dickey, President, and David Hess, Secretary, were present on behalf of American Heritage Partners. Commissioner Witt made a motion to reverse the Department's denial of exemption status for organization created for religious, charitable or educational purposes. Commissioner Byram seconded the motion. All in favor. Motion carries.

D. Consideration for the Adoption of the Administrative Law Judge's Recommended Decision regarding an Appeal of the Department's Denial of Waiver of Penalty and/or Interest pursuant to NRS 360.419:

1) Mike & Mike, LTD

Lizette Arceo, Tax Manager, was present on behalf of the Nevada Department of Taxation. A representative for the Taxpayer was not present. Commissioner Lipman made a motion to uphold the Administrative Law Judge's Decision. Commissioner Rodefer seconded the motion. All in favor. Motion carries.

- E. Department's Request for Approval of Motion to Dismiss Taxpayer's Appeal and Affirm Decision of the Administrative Law Judge:  
1) Billy Ray Martinez, LLC dba BRM Wholesale

Natasha Gebrael, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. A representative for the Taxpayer was not present. Commissioner Lipman made a motion to approve the Motion to Dismiss the Taxpayer's Appeal and to affirm the Decision of the Administrative Law Judge. Commissioner Byram seconded the motion. All in favor. Motion carries.

VI. REGULATION(S):

- A. Consideration for the Adoption of Permanent Regulation LCB File No. 056-21: Regulation relating to taxation; establishing criteria for when live entertainment is provided by or entirely for the benefit of a governmental entity for the purposes of an exemption from the live entertainment tax administered by the Department of Taxation; providing that a person claiming the exemption on the live entertainment tax for entertainment provided by or entirely for the benefit of a governmental entity has the burden of proving by a preponderance of the evidence that the person satisfies the criteria for the exemption; requiring such a person to submit certain records to the Department; and providing other matters properly relating thereto.

Chief Deputy Yvonne Nevarez-Goodson reviewed LCB File No. 056-21. There was no public comment. Commissioner Byram made a motion to adopt LCB File No. 056-21. Commissioner Johnson seconded the motion. All in favor. Motion carries.

- B. Consideration for the Adoption of Permanent Regulation LCB File No. 068-21: A Regulation relating to taxation; establishing provisions governing the delivery of alcohol sold by retail liquor stores to consumers; requiring brew pubs to maintain certain records related to the manufacture of malt beverages for sale to a wholesaler located outside this State; and providing other matters properly relating thereto.

No action was taken on LCB File No. 068-21.

- C. Consideration for the Adoption of Permanent Regulation LCB File No. 173-22: A Regulation relating to taxation; establishing procedures for the filing of petitions with the Director of the Department of Taxation for declaratory orders as to the applicability of certain statutory provisions, regulations and administrative decisions; establishing procedures for the disposition of such petitions; and providing other matters properly relating thereto.

Chief Deputy Yvonne Nevarez-Goodson reviewed Regulation LCB File No. 173-22.

Public Comment: George Hritz, Staff Member for the Nevada Taxpayers Association. The Nevada Taxpayers Association supports the idea of the Declaratory Order because it will allow a more objective consideration of a question than through an advisory opinion. However, this regulation makes the declaratory order confidential unless appealed, thus depriving the public of the ability discern how the Administrative Law Judge has issued a binding decision on a tax issue. The Nevada Taxpayers Association feels that they should be made available to the public and subject to redaction of taxpayers confidential information. Section 10 of the proposed regulation allows for the Department to adopt a different interpretation. According to the Taxpayers Bill of Rights the Taxpayer has the right to rely on written guidance. Pursuant to NRS 360.291(1)(h) The taxpayers have the right to obtain specific advice from the Department concerning taxes imposed by the State." Pursuant to NRS 360.294

Providing that the Department can waive tax, penalty and interest when a taxpayer has relied on written advice provided to the taxpayer by the Department. There is currently a process in place for a different interpretation and its done by appealing the Departments decision to the Nevada Tax Commission, a statutory or regulatory amendment or a published Attorney General Opinion. The Department currently utilizes this process, for example if a taxpayer ask for an advisory opinion in a middle of an audit, it's not allowed because the question will be answered during the due process of the audit. The Department shouldn't be allowed to reinterpret a statute or a regulation as an executive branch agency. Is a final declaratory order that was appealed to the Commission subject to judicial review?

Commissioner Rodefer made a motion to adopt Regulation LCB File No. 173-22. Commissioner Witt seconded the motion. Commissioner Johnson and Commissioner Byram vote – Nay. Motion carries.

- D. Consideration for the Adoption of Permanent Regulation LCB File No. 174-22: A Regulation relating to taxation; revising provisions governing the imposition and collection of sales and use tax for repair work performed pursuant to a contract with the State or a political subdivision; and providing other matters properly relating thereto.

Chief Deputy Yvonne Nevarez-Goodson reviewed LCB File No. 174-22.

Public Comment: George Hritz, Staff Member for the Nevada Taxpayers Association. NAC 372.390 provides a standard for determining whether a person who performs repairs should collect sales tax as a retailer or remit use tax as a service provider. On one hand, a repairer is treated as a retailer of parts and materials if the value of the parts and materials is substantial in relation to the total charge. As a retailer, the repairer remits sales tax collected from their customers pursuant to NRS 372.105. On the other hand, a repairer is treated as a service provider if the value of the parts and materials is insubstantial in relation to the total charge. As a service provider, the repairer either pays sales tax on their acquisition of the parts and materials or remits use tax on the acquisition cost of the parts and materials pursuant to NRS 372.185. This standard for differentiating whether a repairer is acting as a retailer or a service provider has been followed since at least 1968. The proposed amendment to NAC 372.290 does not have anything to do with the standard for determining whether a repairer is acting as a retailer or a service provider. Nonetheless, it would change the tax treatment of a repairer who is acting as a retailer based on the identity of the customer. As far as we can discern, the identity of the customer has never been a criteria for determining whether a transaction is subject to sales tax pursuant to NRS 372.105 or a use tax pursuant to NRS 372.185. Currently, when a repairer, who is acting as a retailer, engages in a sale transaction with the State, or a political subdivision of the State, the transaction is exempt from sales tax pursuant to NRS 372.325. The proposed amendment to NAC 372.290 would effectively deny the repairer and her customer of the benefit of the exemption, by requiring the repairer to pay use tax on the cost of parts and materials included in the exempt transaction. Importantly, the cost of the proposed amendment will be borne by the repairer. A repairer, who is acting as a retailer, has set her price based on the assumption that she will be able to collect sales tax from their customer. However, the proposed amendment of NAC 372.290 would require the repairer to remit use if the customer were the State or a political subdivision of the State. In this situation it is unlikely the repairer will have set a separate, higher price for transactions with the State or a political subdivision of the State. Instead, the repairer will need to pay the use tax out of her profit. Finally, the proposed amendment to NAC 372.290 makes the sales and use tax more complicated. Currently, a repairer, who is acting as a retailer, is subject to the same rules as any other retailer. But, the proposed amendment to NAC 372.290 would create an exception for transactions with the State or a political subdivision. For these transactions the repairer would not be treated as a retailer, but as a service provider. This is likely to become a tax trap for the unwary.

Commissioner Byram made a motion to adopt LCB File No. 174-22. Commissioner Rodefer seconded the motion. All in favor. Motion carries.

- E. Consideration for the Adoption of Permanent Regulation LCB File No. 175-22: A Regulation relating to taxation; revising procedures concerning the filing of certain briefs and other documentation in an appeal to the Nevada Tax Commission; and providing other matters properly relating thereto.

Chief Deputy Yvonne Nevarez-Goodson reviewed LCB File No. 175-22 and mentioned a correction to Subsection 5. Currently the regulation states that the respondent shall file an answering brief and identify the parts of the record that are relevant to his or her appeal. Instead, it should say not appeal, but relevant to his or her response because this is the provision that governs the respondent. If the Commission is inclined to adopt this regulation, Chief Nevarez-Goodson asked that it adopt it with this amendment.

Commissioner Rodefer suggested an addition to Subsection 10 requiring that an extension of time be granted based upon a good-faith showing by the moving party.

Public Comment: George Hritz, Staff Member for the Nevada Taxpayers Association. The Nevada Taxpayers Association supports LCB File No. 175-22 as written. It allows the parties to stipulate to the extended briefing schedules on an appeal to the Commission.

Commissioner Rodefer made a motion to adopt LCB File No. 175-22 with amendments to Subsection 5B and Subsection 10. Commissioner Byram seconded the motion. All in favor. Motion carries.

#### VII. INFORMATIONAL ITEMS:

- A. Penalty and Interest Waivers granted by the Department for Sales/Use Tax, Modified Business Tax and Excise Tax (dates as indicated).
- B. Approval and Denial Status Report Log for Organizations Created for Religious, Charitable or Educational Purposes (dates as indicated) (Sales/Use Tax Exemption).

Commissioner Byram asked that the dollar amounts be in order and that the decimal points be lined up rather than the dollar amounts.

#### VIII. BRIEFING:

- A. Briefing to/from the Commission and the Executive Director.

Chief Deputy Yvonne Nevarez-Goodson reported on behalf of Director Hughes: We want to thank our Las Vegas staff for getting the room ready today. It was quite the undertaking to make sure everything was in place for today's in-person meeting, so we wanted to especially thank them for their work on that. Director Hughes also asked me to let the Commission know that our Executive Director as well as our deputy directors of compliance and IT will be attending the Western States Association of Tax Administrators Conference in Spokane between October 23rd and 26th, and so we look forward to them bringing back a brief to you after that meeting. And then finally, we wanted to let you know that we will be issuing the quarterly tax notes this week to all interested parties.

- IX. Next Meeting Date: December 5, 2022

- X. Public Comment.

There was no public comment.

XI. Items for Future Agendas.  
No items were discussed.

XII. Meeting adjourned at 1:10 p.m.