

NEVADA TAX COMMISSION MEETING
MINUTES

Silver State Insurance Exchange
2310 S. Carson Street, Ste. 2
Carson City, NV 89701

Silver State Insurance Exchange
150 N. Stephanie, Ste. 100
Henderson, NV 89074

December 5, 2016
9:00 a.m.

Members Present:

James DeVold, Chairman
Francine Lipman, Commissioner
John Marvel, Commissioner
Thomas Sheets, Commissioner
Craig Witt, Commissioner
Tony Wren, Commissioner
Ann Bersi, Commissioner (arrived after the start of the meeting)

Members Absent:

George Kelesis, Commissioner

Chairman DeVold called the meeting to order at 9:12 a.m.

Deonne Contine, Executive Director, administered an oath to all meeting participants.

I. Public Comment.

Bill Terzo, representative of the Academy of Aeronautics and the Las Vegas Radio Patrol Club, commented on the amendment submitted on Temporary Regulation No. 009-16 with regard to aircrafts. Mr. Terzo believes the amendment has addressed the issues he had planned to discuss at today's meeting. Mr. Terzo would like the proposed Regulation to mirror the federal guidelines.

Chairman DeVold advised that there will be public comment at the time the regulations are presented.

II. Consideration for Approval of the October 3, 2016 Nevada Tax Commission Meeting Minutes.

Commissioner Wren made a motion to approve the Minutes of the October 3, 2016 Nevada Tax Commission. Commissioner Marvel seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

III. CONSENT CALENDAR:

A. Matters of General Concern:

- 1) Bonds Administratively Waived (dates as indicated) (Sales/Use Tax):
 - a) Lumberjacks Inc.
 - b) Ilopango Restaurant Inc.
 - c) Suesh Singh
 - d) Siriwan LLC
 - e) K J Restaurant LLC

- f) B & J Pizza Inc.
- g) Petroleum Equipment Company
- h) Harkeerat Inc.
- i) Ermias Tsegaye
- j) Sage Hill Arms LLC
- k) Richard Marc Gallery LLC
- l) Food in the Fast Lane LLC
- m) The Studio LLC
- n) Squeeze In Reno LLC
- o) Nevada Squeeze In Inc.
- p) Millan Inc.
- q) Maddox, Erin L

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

- 1) Dream Car Rentals
- 2) Insomniac Inc.
- 3) Nevada Contract Carpet Inc.
- 4) A&M Auto & Tire LLC
- 5) BMC West Corporation
- 6) BML Ventures LLC
- 7) Garden Shop Nursery
- 8) Global Security Concepts Inc.
- 9) Desert Research Institute (NSHE)
- 10) Machine Zone
- 11) Jose Carlos Urias Jr.
- 12) Audio Visual Advisors Inc.
- 13) Tesla Motors Inc.
- 14) Siemens Energy Inc.
- 15) St. Jude Medical SC Inc.

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

- 1) Humana Insurance Company
- 2) ENEL Green Power North America, Inc.
- 3) LSG Sky Chefs
- 4) Sprint PCS Assets, LLC

D. Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure (Sales/Use Tax):

- 1) IT Technologies Inc.
- 2) Challenger Lifts Inc.
- 3) PWM Electronic Signs Inc.
- 4) Box Inc.
- 5) Action Target Inc.
- 6) Production 911 LLC.
- 7) MDW Associates LLC.
- 8) Hoshino (USA) Inc.

E. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (civil penalties)

- 1) McLane/Suneast, Inc. dba McLane/Sunwest

F. Consideration for Approval of Payment Plan Request: New Payment Plans (Sales/Use and/or Modified Business Tax:

- 1) An Antique Rose Inc. dba Antique Rose Florist
- 2) 808 Hawaii Mixed Plate LLC

G. Consideration for Approval of the Administrative Law Judge's Recommended Decision regarding an Appeal of a Property Tax Abatement pursuant to NRS 361.4734.

- 1) Level 3 Communications (Washoe County Assessor)
- 2) Phillip D. Moss (Lincoln County Assessor)

Commissioner Sheets requested to pull Item B. 1) Dream Car Rentals from the agenda.

Commissioner Lipman requested to pull Item C. 4) Sprint PCS Assets for further discussion.

Commissioner Sheets made a motion to approve the consent portion of the agenda as a whole, with the exception of items B. 1) and C. 4). Commissioner Marvel seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

Commissioner Sheets reported that Item B. 1) Dream Car Rentals requested to meet with the Department of Taxation and asked that the matter be rescheduled for a future agenda.

Item C. 4) Sprint PCS Assets. Melissa Gardner, Supervising Auditor, was present on behalf of the Department of Taxation. Commissioner Lipman asked if the Department is sure that the statute-of-limitations have not passed. Melissa Gardner stated there have been waivers secured for this particular matter. Commissioner Lipman made a motion to approve Item C. 4) Sprint PCS Assets. Commissioner Sheets seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

IV. COMPLIANCE DIVISION:

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

- 1) Ana J. Franco

Lizette Arceo, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Ana Franco, Taxpayer, was present.

Commissioner Sheets moved to approve the offer-in-compromise of Ana J. Franco. Commissioner Witt seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

- 2) Yolanda Lie

Lizette Arceo, Tax Program Supervisor, was present for the Department of Taxation. Yolanda Lie, Taxpayer, was present.

Commissioner Lipman made a motion to approve the offer-in-compromise of Yolanda Lie. Commissioner Sheets seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

- 3) John J. O'Brien

Lizette Arceo, Tax Program Supervisor, was present on behalf of the Department of Taxation. The Taxpayer was not present.

Commissioner Sheets made a motion to approve the offer-in-compromise of John J. O'Brien. Commissioner Witt seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

4) Scott Campbell

Edna Bonilla, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Scott Campbell, Taxpayer, was present.

Commissioner Lipman made a motion to approve the offer-in-compromise of Scott Campbell. Commissioner Wren seconds the motion. All in favor. Motion carries. Commissioner Bersi was not present for the vote.

5) Gary Graber

Debra Toombs, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Gary Graber, Taxpayer, was present via telephone. Commissioner Bersi announced her arrival and stated she would be voting on the matter of Gary Graber.

Commissioner Witt made a motion to approve the offer-in-compromise of Gary Graber. Commissioner Wren seconds the motion. All in favor. Motion carries

6) Bradley D. Warren

Debra Toombs, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Bradley Warren, Taxpayer, was present. Sean Warren, son of Bradley Warren, was present. Michael Leonards, Esq. was present on behalf of Bradley Warren.

Commissioner Marvel made a motion to approve the offer-in-compromise of Bradley Warren. Commissioner Witt seconds the motion. All in favor. Motion carries.

7) Scot T. Dietz

Lizette Arceo, Tax Program Supervisor II, was present on the behalf of the Department of Taxation. Scot Dietz was present via telephone.

Commissioner Witt made a motion to approve the offer-in-compromise of Scot Dietz. Commissioner Wren seconds the motion. All in favor. Motion carries.

B. 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) National Hellenic Society Inc.

Andrea Nichols, Senior Deputy Attorney General, was present on behalf of the Department of Taxation. Dimitri Dalacas was present on the behalf of the Taxpayer.

Commissioner Marvel moved to uphold the Department's denial of the exemption. Commissioner Witt seconds the motion. Commissioner Sheets opposed the motion. Motion carries by majority.

C. Appeal of Administrative Law Judge Decision pursuant to NRS 360.297:

- 1) James D. Parsons for the debts of Heetronix for Consideration of New Evidence Pursuant to NAC 360.175, and for Consideration of Motion to Remand and Stipulation to Remand
- 2) James Richard Barnard, for the debts of Heetronix

Robert Werbicky, Deputy Attorney General, was present on behalf of the Department of Taxation. James D. Parsons, Taxpayer, was present. DeArmond Sharp was present on behalf of James Richard Barnard. Robert Werbicky informed the Commission that both parties entered into stipulations to remand the matter back to the Administrative Law Judge.

Commissioner Sheets made a motion to remand the matter of James D. Parsons to the Administrative Law Judge. Commissioner Bersi seconds the motion. All in favor. Motion carries.

Commissioner Sheets made a motion to remand the matter of James Richard Barnard to the Administrative Law Judge. Commissioner Bersi seconds the motion. All in favor. Motion carries.

D. Consideration and possible action on the Revised Advisory Opinions as ordered by the Nevada Tax Commission at the April 11, 2016 Nevada Tax Commission Meeting and in accordance with the Decision and Order of the District Court.

- 1) Nevada Ready Mix, Inc. vs. Nevada Tax Commission, State of Nevada; Case A-15-722297-J
- 2) Service Rock Products vs. Nevada Tax Commission, State of Nevada; Case A-15-722303-J

Vivienne Rakowsky, Deputy Attorney General, was present on behalf of the Department of Taxation. Paul Jones was present on behalf of the Taxpayer. Michael Brown, Nevada Counsel, was present via telephone on behalf of the Taxpayer. Mr. Brown stated this matter is scheduled for hearing tomorrow morning before Judge Bell.

Commissioner Sheets made a motion to adopt the revised advisory opinions for Nevada Ready Mix, Inc. and Service Rock Products with no changes. Commissioner Sheets requested that the Department commence regulation making to secure ascertainable standards and to be sure everybody is operating the same. Commissioner Bersi seconds the motion. All in favor. Motion carries.

- E. Pursuant to NRS 360.265, consideration for approval of the removal of the names of certain debtors, including the amount of tax, penalty and interest, from the records of the Department for debts exceeding 5 years due and collection being impossible or impracticable

Kathy Williams, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Commissioner Lipman made a motion to approve Item IV. E. Commissioner Marvel seconds the motion. All in favor. Motion carries.

V. DIVISION OF LOCAL GOVERNMENT SERVICES:

A. Consideration for Approval of Adoption of Temporary Regulations:

- 1.) Adoption of proposed temporary regulation relating to the proper determination of taxable situs for aircraft and the proper allocation of taxable value when multiple locations with tax situs exist; definition of aircraft subject to the regulation excluding centrally-assessed aircraft; providing that no taxable situs is acquired for aircraft owned by an active-duty servicemember or for aircraft owned by a foreign air carrier; providing for the types of information necessary when declaring aircraft for valuation purposes; providing that the portion of the total taxable value for which there was no allocation or apportionment within Nevada for the immediately preceding year is not subject to the general abatement afforded under NRS 361.4722; and other matters properly relating thereto. Temporary Regulation No. 009-16 on Locally-Assessed Aircraft Taxable Situs and Allocation of Taxable Value

Terry Rubald, Deputy Director, was present on behalf of the Department of Taxation. Deputy Director Rubald reviewed Temporary Regulation No. 009-16 for the Commission.

Chairman DeVolld called for public comment on proposed Temporary Regulation No. 009-16.

Dan Wray stated this regulation will cause taxpayers to pay \$300 to \$400 to figure the taxes that are due. Mr. Wray suggested the possibility of making it an advantage for aircraft owners to move their aircrafts to Nevada.

Jim Susa was present on behalf of two clients, including MGM Resorts, which each own multiple aircrafts. Mr. Susa participated in both workshops for the proposed regulation. Mr. Susa's clients are in support of the regulation as amended.

Donald Morse, member of the High Sierra Radio Control Club of Carson City, stated he has a concern with Section 19 in connection with small unmanned aircraft weighing less than 55 pounds. The amendment to the proposed regulation seems to alleviate the issue.

Josh Hicks, McDonald Carano, commented on behalf of Net Jets. Mr. Hicks requested that Section 33 of the proposed regulation not pass as part of the temporary regulation. Net Jets recently became aware of the issue and did not attend the workshops. Mr. Hicks thanked the Department for working with him. Net Jets manages fractional ownership in aircraft, which allows people to purchase fractional ownership or lease a fractional ownership in aircraft. Fractional ownership taxation is an evolving area of law, and since there has not been input with regard to this issue, it would make sense to pull this off and revisit it when it becomes permanent. California addressed fractional ownership of aircraft by statute not by regulation. There may be constitutional issues if tax is being imposed on fractional owners without regard to due process or concerns about where those people or aircraft are located. Mr. Hicks expressed concern in Section 33 Subsection 2, which sounds like actual tax and liability could be imposed on a management company. If this is the case, Mr. Hicks requests that this be rewritten. Mr. Hicks asked that Section 33 be pulled in its entirety from the regulation.

Ashley Armstrong was present on behalf of Flirtey, a Reno based drone delivery company. Flirtey is the first drone delivery company in U.S. history. Flirtey believes that this tax will be burdensome on the UAV and small UAS industry. Flirtey has hundreds or thousands of drones, whereas manned aviation has far smaller fleets. This tax could contradict many of the niche factors that Nevada has attributed to this industry's growth. The economic benefit that Nevada gets, whether it is employment opportunities or revenues from local businesses, are possibly greater benefits than any proposed tax.

An unknown speaker from the Academy of Aeronautics agrees that this should not affect the hobbyist. The Academy removes its objection.

Reza Karamooz, President of the Nevada Business Aviation Association stated any sort of tax burden on aircraft will drive business away from Nevada. An abatement was put into effect after the 2015 legislative session, and since, there have been positive effects with an increase of aircraft maintenance and aircrafts have returned to the state. Business is doing better. Mr. Karamooz believes the focus should be to bring more aircraft to the state.

Aaron Hogue is a partner in a California manufacturing business, which now has a division in Nevada. Mr. Hogue purchased a hangar in Boulder City, Nevada, and currently hangars one aircraft there. Two aircraft are hangared in Paso Robles, California. Mr. Hogue contacted the Clark County Assessor's office and it became apparent that because this involves multiple aircraft and multiple partners, they did not understand how to address the situation. Mr. Hogue received a full tax bill from both Clark County and San Luis Obispo County and asked that this type of issue be resolved.

Doug Scott, Clark County Assessor's office, stated the Assessor's office supports the proposed temporary regulation. Mr. Scott gave an overview of the Assessor's process for fractional ownership. On May 31, 2012, the Assessor's office consulted District Attorney, Paul Johnson. Mr. Scott read Mr. Johnson's e-mail reply for the Commission: *"Owner or owners registered with the FAA are responsible for taxes in full. The property is taxed for its full value regardless of how many owners it has. The percentage of ownership each owner is provided as tenants in common, the owners are jointly liable for the entire tax due and if that full tax isn't paid, property may be sold. Mr. Johnson then referenced AG opinion 80-40."* Mr. Scott suggested that Section 33 of the proposed regulation clarify an aircraft be treated no differently from any other type of property. An aircraft is a single taxable unit which must be taxed to the owner or owners. Mr. Scott does not see a valid reason to strike Section 33, but would have no objection to taking out Subsection 2 of Section 33. He asked that Subsection 1 be included as part of the regulation.

Jonathan Daniels, a representative of Praxis Aerospace Concepts, was present via telephone. Mr. Daniels reinforced Mr. Karamooz's comment about manned aircraft and expressed concern regarding similar issues arising for unmanned aircraft. One good thing about this taxation proposal is the opportunity to identify people misrepresenting themselves as recreational versus commercial.

Terry Rubald, Deputy Director, responded regarding commercial unmanned aircraft and the framework under which we operate. We know that commercial unmanned aircraft is subject to taxation for two reasons. NRS 361.045 states all property within the state of Nevada shall be subject to taxation. Secondly, NRS 360.753 states that an owner of a business may apply for a partial abatement of property taxes on aircraft under qualifying conditions. Pursuant to Section 30, if an aircraft has acquired taxable situs, it is the burden of the taxpayer to provide documentation. This will help the aircraft owner with partnerships in aircraft and the assessors will be able to refer to these regulations.

Chairman DeVold reviewed the method in which 28A seems to address Mr. Hogue's concerns. The Chairman asked Josh Hicks to respond regarding fractional ownership.

Josh Hicks stated that a fractional owner may or may not know where the aircraft is going, so there are issues as to whether any state could actually reach out and impose its tax. California, for example, passed fairly extensive legislation on this. Josh Hicks requested that both paragraphs 1 and 2 be removed from Section 33.

Bernadette Allen Moore, a member of Net Jets, shared that once an owner purchases a fractional interest in an aircraft, there are costs associated with participation in the programs, and those costs aren't allocated to our owners based on a direct passover. We do not maintain knowledge of where our owners are based and whether or not they have taxable situs in a particular jurisdiction because they are the legal owner of the fractional interest they purchase in a specific number of aircraft.

Chairman DeVold requested that there be an additional workshop on this matter.

Commissioner Wren moved to approve Temporary Regulation No. 009-16, including the amendment to Section 3, and requested that Section 33 paragraphs 1 and 2 be pulled and set for a subsequent workshop. Commissioner Marvel seconds the motion. Commissioner Witt opposed. Motion carries by majority vote.

- 2.) Adoption of proposed temporary regulation relating to appraiser certification and continuing education, providing additional subject matter courses eligible for credit; amending the basis for awarding contact hours by the Department; providing consistency with the requirements of NRS 361.223 regarding completion of continuing education during a three-year period by property tax appraisers; and providing other matters properly relating thereto. Temporary Regulation LCB File No. T010-16 on Appraiser Certification and Continuing Education

Terry Rubald, Deputy Director, was present on behalf of the Department of Taxation. Ms. Rubald reviewed the proposed temporary regulation for the Commission.

Chairman DeVolld called for public comment on proposed Temporary Regulation LCB File No. T010-16.

Jeff Payson with the Clark County Assessor's office made a comment in support of the Regulation

Commissioner Marvel made a motion to adopt Temporary Regulation LCB File No. T010-16.

Commissioner Sheets seconds the motion. All in favor. No opposed. Motion carries.

B. Centrally Assessed Properties Section:

- 1.) Addition to Certification of Centrally Assessed Property Valuation, 2016-17 Unsecured Roll, 12 Month CWIP:
 - a. Southern California Edison Company
 - b. Beehive Telephone Company, Inc.

Jeffrey Mitchell was present on behalf of the Department of Taxation.

Commissioner Sheets made a motion to approve the addition to the certification of centrally assessed property 2016-2017 unsecured roll construction work in progress for Southern California Edison Company and Beehive Telephone Company, Inc. Commissioner Marvel seconds the motion. All in favor. Motion carries.

- 2.) Addition to Certification of Centrally Assessed Property valuations, 2017-18 Secured Roll, 6 Month CWIP:
 - a. Southern California Edison Company
 - b. Beehive Telephone Company, Inc.

Jeffrey Mitchell was present on behalf of the Department of Taxation.

Commissioner Sheets made a motion to approve the addition to the certification of centrally assessed property 2017-2018 secured roll construction work in progress for Southern California Edison Company and Beehive Telephone Company, Inc. Commissioner Marvel seconds the motion. All in favor. Motion carries.

C. Informational Item:

- 1) Progress on amendments to Nevada Administrative Code Chapter 361 with regard to the determination of remainder parcels and the proper calculation of the abatement applied to remainder parcels; and other matters properly related thereto.

Terry Rubald was present for the Department of Taxation. Ms. Rubald gave an overview of the Department's efforts to initiate rulemaking with regard to proper application of the property tax abatement for remainder parcels. The Department has embarked on a review of the regulation and initial amendments have been proposed for consideration. The Department held a workshop on November 1, 2016 and additional workshops will be scheduled with regard to this matter.

Chairman DeVolld suggested the Commission attend the upcoming workshops.

VI. COMPLIANCE DIVISION:

A. Informational Items:

- 1) Penalty and Interest Waivers granted by the Department for Sales/Use Tax, Modified Business Tax and Excise Tax (dates as indicated).

- 2) Approval and Denial Status Report Log for Organizations Created for Religious, Charitable or Educational Purposes (dates as indicated) (Sales/Use Tax Exemption).

Materials were submitted to the Commission for review.

VII. Consideration for Approval of Adoption of Permanent Regulations:

- A. Adoption of the proposed regulation is to establish requirements for an employer to claim a credit against tax imposed on certain employers if the employer matches the contribution of an employee to certain college saving plans; and providing other matters properly related thereto. LCB File No. R137-16.

Shellie Hughes, Chief Deputy Director, was present on behalf of the Department of Taxation. Ms. Hughes reported that the Department held a workshop on the proposed regulation on September 30, 2016. There were no comments received at the workshop.

Chairman DeVolld asked for public comment. There was no public comment.

Commissioner Marvel made a motion to approve LCB File No. R137-16. Commissioner Lipman seconds the motion. All in favor. Motion carries.

VIII. BRIEFING:

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

Deonne Contine, Executive Director, discussed the legalization of recreational marijuana in Nevada. The Department of Taxation is responsible for the taxation and the regulation of all of the marijuana establishments. We are currently working closely with the Department of Public and Behavioral Health. There is a lot of support for an early start.

IX. Next Meeting Date: January 23, 2017

X. Public Comment.

There was no public comment.

XI. Items for Future Agendas: Item B. 1) Dream Car Rentals was pulled from the agenda and will be rescheduled for a future agenda.

XII. Meeting adjourned at 12:30 p.m.