

NEVADA TAX COMMISSION MEETING

MINUTES

Nevada Legislative Building
401 S. Carson Street, Room 2134
Carson City, Nevada

Legislative Counsel Bureau
Grant Sawyer State Office Building
555 E. Washington Ave., Room 4412
Las Vegas, Nevada

August 13, 2018
9:00 a.m.

Members Present:

James DeVolld, Chairman
George Kelesis, Commissioner
Francine Lipman, Commissioner (via telephone)
Ann Bersi, Commissioner
Sharon Rigby, Commissioner
Craig Witt, Commissioner
Randy Brown, Commissioner
Tony Wren, Commissioner

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

I. Public Comment.

There was no public comment.

Director Anderson administered an oath to all meeting participants.

II. Consideration for Approval of the June 25, 2018 Nevada Tax Commission Meeting Minutes.

Commissioner Kelesis made a motion to approve the June 25, 2018 Nevada Tax Commission Meeting Minutes. Commissioner Brown seconds 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) AAA Cutting Board Specialists of Nevada LLC
 - b) BFB Corporation Inc.
 - c) Bengoa Eye Care Ltd.
 - d) Biggs & Kids Market Inc.
 - e) FRSCO Corporation
 - f) HT2 Franchising LLC
 - g) Johnny Macs Restaurant LLC
 - h) Kimberly J. Gordines
 - i) Lonnie W. Ewing
 - j) LVNV RG LLC
 - k) MCZC LLC

- 1) Reno Blinds & Repair
 - m) Wellock Wellness LLC
- B. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:
- 1) Extenet Systems Inc.
- C. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (sales/use and/or modified business tax)
- 1) University of Nevada, Reno
 - 2) Tokyo Boys, LLC
 - 3) Certified Motor Company, LLC
 - 4) Barcor Inc. dba Nestle Tollhouse Café
 - 5) Speedy Recovery

Commissioner Brown disclosed Extenet Systems, Inc. is a vendor of AT&T. Mr. Brown was advised by counsel that he could testify on this matter.

Commissioner Rigby pulled Item C. 1) University of Nevada, Reno, for further discussion.

Commissioner Wren made a motion to approve the Consent Calendar, excluding Item C.1). Commissioner Kelesis seconds the motion. All in favor. Motion carries.

Item C. 1) University of Nevada, Reno

Mary Dugan, General Counsel – University of Nevada, Reno, was present.

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

Commissioner Rigby stated she has practiced in the area of net proceeds for over 30 years. Taxpayers and practitioners in this area have very little case law to rely upon. Commissioner Rigby asked if an audit was done for this taxpayer.

Andrea Nichols stated the recent changes with net proceeds of minerals law require royalty recipients to file a report with the Department. The Department has always advised the University they had to pay net proceeds of minerals tax on the royalties that they received. The University asked for an advisory opinion. The advisory opinion stated the net proceeds of minerals tax does not apply to the University. The University had previously asked the Department if the exemption from property tax applies to the net proceeds of minerals tax. The Department, through the Attorney General's Office, had always advised no. The exemption from property tax is separate from the net proceeds of minerals tax. The University then asked if the University is considered a "person", as defined in statute. We looked at the definition of "person" in NRS 0.039, and the University is not a person. After the Department determined that the net proceeds of minerals tax does not apply to the University, the University then requested a refund. Part of the proceeds of mineral tax that had been collected from the University was already paid to Humboldt County. We agreed that we are not going to claw that back. The University is part of the settlement. We agreed to refund the part that has been paid to the State.

Commissioner Rigby stated this opens up a can of worms because there are a lot of royalty recipients that are not a person, they are a legal entity.

Ms. Nichols stated this may be something that needs to be addressed by the Legislature. The advisory opinion is specific to the University.

Ms. Dugan agreed that this would apply continuously to the University, even if it were a different mining company. One of the concerns may be mitigated by the definition of “person” in NRS 0.039 which says it does include a natural person, any form of business or social organization, and any other non and/or legal entity, including, but not limited to, a corporation, partnership, association, trust, or even an unincorporated organization. It then goes on to say it doesn’t include a government, governmental agency, or a political subdivision of government.

Commissioner Brown disclosed that he is an Emeritus Trustee for the University of Nevada Foundation. Counsel advised Commissioner Brown to make this disclosure, and also advised him that he can participate in the matter.

Commissioner Kelesis made a motion to continue this matter for 120 days to obtain an Attorney General’s Opinion. Commissioner Bersi seconds the motion. All in favor. Motion carries.

IV. DIVISION OF LOCAL GOVERNMENT SERVICES:

A. Taxpayer’s Appeal of the Assessor’s Denial of Waiver of Penalty and Interest per NRS 361.4835 (Douglas County):

1) Russell Resney and Autum Gray

Jeffrey Mitchell, Deputy Director – Local Government Services, was present on behalf of the Department of Taxation.

Russell Resney and Autum Gray, Taxpayers, were present.

Kathy Lewis, Clerk Treasurer for Douglas County, was present.

Autum Gray stated she paid the property tax early. The payment was returned because you are not allowed to pay property taxes early. Ms. Gray did not receive the returned payment in the mail. The matter was initially brought to small claims court, but they did not have jurisdiction.

Commissioner Brown stated he has had some experience with property tax payments to the Douglas County Treasurer. Commissioner Brown stated the system could use some work.

Jeff Mitchell stated the appeal was received timely.

Commissioner Kelesis made a motion to grant the taxpayer’s appeal. Commissioner Bersi seconds the motion. Commissioner Witt votes - No. Motion carries by majority.

V. COMPLIANCE DIVISION:

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

1) Richard Alan Anderson

Lizette Arceo, Tax Manager, was present on behalf of the Department of Taxation.

Richard Alan Anderson, Taxpayer, and Michelle Anderson were present.

Commissioner Rigby made a motion to approve the offer-in-compromise of Richard Alan Anderson. Commissioner Witt seconds the motion. All in favor. Motion carries.

2) David Nicol

Sue Kessner, Revenue Officer III, was present on behalf of the Department of Taxation.

David Nicol, Taxpayer, was present.

Commissioner Wren asked what has changed since the last time Mr. Nicol was before the Commission.

Sue Kessner stated the Taxpayer has agreed to pay the additional tax.

Commissioner Kelesis made a motion to approve the offer-in-compromise of David Nicol. Commissioner Brown seconds the motion. All in favor. Motion carries.

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

- 1) Dean Gualazzi

Alberto Dorier, Taxpayer Representative, was present on the telephone on behalf of the Taxpayer. Dean Gualazzi was not present. Mr. Dorier stated he has had power of attorney since 2014.

Adriane Roberts-Larson, Tax Program Supervisor II, was present on behalf of the Department of Taxation. Ms. Roberts-Larson stated the Department is familiar with Mr. Doier and he is in the Department's records.

Commissioner Rigby moved to deny the offer-in-compromise of Dean Gualazzi. Commissioner Wren seconds the motion. All in favor. Motion carries.

C. Taxpayer's Appeal of Administrative Law Judge's Decision pursuant to NRS 360.245 and NAC 360.175:

- 1) Angelica Textile Services, Inc.

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

Commissioner Bersi disclosed Angelica Textile Service was her client in private practice 25 years ago. Counsel informed Commissioner Bersi that with this disclosure, and the relationship being so far removed, she can participate and vote on this matter.

Russell Coffee, Tax Director - Angelica Textile Services, Inc. was present. Mr. Coffee testified that when the account was set up with the Department of Taxation, it was decided our measure of tax was to pay the tax on purchases rather than to charge tax on sales. Based on this, we should not have to pay tax on sales. The Department argued that we have a separate sale with our surcharges. When linens are not returned, we call it a loss surcharge. The title never changes hands. All of our charges are nontaxable with our rental contracts because we pay tax on the purchases. These are rental charges.

Ms. Nichols stated Mr. Coffee is correct in that when you lease property, you can either pay tax on the purchase or on the lease stream. The issue is the replacement and loss charges. NAC 372.938 talks about property being sold after its lease. We think the replacement charges are analogous to a sale after the lease. NAC 372.940 also deals with mandatory charges, including any charges assessed for damages for which the lessee is held responsible. These replacement and loss charges are mandatory charges and, I think, they fall under both of these regulations.

Commissioner Kelesis moved to uphold the decision of the Administrative Law Judge. Commissioner Bersi seconds the motion. All in favor. Motion carries.

VI. 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).

VII. BRIEFING:

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

Director Anderson: In December 2018 we will schedule a Tax Commission meeting with all commissioners attending in the North. In May 2019, all commissioners will meet in the South.

On September 13, 2018 at 10:00 a.m. there will be a special meeting of the Tax Commission regarding a regulation in relation to the Wayfair decision regarding online retailers with no presence within the State. We have worked with the Legislative Counsel Bureau's legal department on the Regulation. The Legislative Commission will convene thereafter.

B. For Information Only: Presentation – Local Government Services

Jeffrey Mitchell, Deputy Director – Local Government Services, gave a presentation of the Department of Taxation's Local Government Services Division.

VIII. Next Meeting Dates: September 13, 2018 and October 1, 2018

IX. Public Comment.

There was no public comment.

X. Items for Future Agendas.

No items were discussed.

XI. Meeting adjourned at 10:33 a.m.