

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

June 25, 2018
9:00 a.m.

Members Present:

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

I. Public Comment

Mona Lisa Samuelson, Medical Marijuana Patient Advocate and Community Activist, stated she is here to give a voice to the medical marijuana patients who still need legislative protection. Ms. Samuelson provided a document to the Commission. Marijuana in Nevada needs to be looked at in a stricter and more thorough manner. Testing standards are some of the best in the nation, but it behooves us to look at these in a way that speaks to the practicality of an industry. As it stands now, business licensing in Nevada for marijuana has been up and running since 2013. Only now, in July of 2018, are we seeing testing standards that require testing of pesticides and pathogens on the processed marijuana being mandated. Up until now, the only thing that was tested is the flower. Patients take serious issue. If there are any questions on the information that was provided, please contact Ms. Samuelson.

Director Anderson administered an oath to all testifying at today's meeting.

II. Consideration for Approval of the May 7, 2018 Nevada Tax Commission Meeting Minutes.

Commissioner Kelesis moved to approve the May 7, 2018 Nevada Tax Commission meeting minutes. Commissioner Lipman 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) AMD Pizza LLC
 - b) BH Retailing Inc.
 - c) BIN 702 LLC
 - d) Cordon Bleu De France Inc.
 - e) Discount Cheyenne Smokeshop LLC

- f) DK Group LLC
- g) Fast Foodies R3 LLC
- h) JJ Sushi LLC
- i) Lakeside Bar & Grill LLC
- j) McCarran Café LLC
- k) Michael G. Janik
- l) Middaugh Donald
- m) On Target Guns Inc.
- n) Tamar Luxury Cosmetics Inc.
- o) Two Fast LLC

B. Standard Direct Sales Organization Agreements (date as indicated):

- 1) Alison's Pantry

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

- 1) John Oliver Inc.
- 2) Fresenius USA Marketing Inc.
- 3) Hyperloop Technologies, Inc.

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

- 1) Western Alliance Bank
- 2) Riversource Insurance Company
- 3) Health Care Service Corporation
- 4) Pruco Life Insurance Company
- 5) Markel Insurance Company

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

- 1) ALK Abello Inc.
- 2) Arterioocyte Medical Systems Inc.
- 3) Camatic Seating Inc.
- 4) Emuamericas LLC
- 5) Immedia Semiconductor
- 6) Elemental Design
- 7) Medical Guardian LLC
- 8) Moody Bible Institute of Chicago
- 9) Navien Inc.
- 10) Neu Concepts LLC
- 11) Core Brands LLC
- 12) Riptail LLC
- 13) Squatty Potty LLC
- 14) Teletronics Technology Corporation

F. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (sales/use and/or modified business tax)

- 1) Blue Kestrel Operations, LLC
- 2) Michael and Judy Sheldon
- 3) La Choza 1

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) FP Holdings, L.P. (NTC 17-103)

Commissioner Kelesis moved to approve all matters on the Consent Calendar. Commissioner Rigby 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 (Washoe County):

- 1) Joseph T. & Carrie Lacey

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

Tami Davis, Washoe County Treasurer, was present.

Carrie Lacey, Taxpayer, was present. Ms. Lacey stated she received notice of special assessments from the Treasurer's office, but she did not receive a notice of property taxes due. A property tax statement was sent to the prior property owner in July and Ms. Lacey took ownership of the property on August 5.

Chairman DeVolld asked the Taxpayer if she is aware of NRS 361.480. Ms. Lacey said she was not.

Tami Davis stated the special assessment notice that the Taxpayer received was not originated from the Treasurer's office and may have been from the county. Quite often the records do not coincide.

Commissioner Kelesis motioned to uphold the denial of waiver of penalty and interest.

Commissioner Witt seconds the motion. All in favor. Motion carries.

Local Government Finance Section:

B. Certification of Ad Valorem Tax Rates for Fiscal Year 2018-2019 pursuant to NRS 361.4547

Kelly Langley, Budget Analyst III, was present on behalf of the Department. Ms. Langley stated the "Red Book" contains tax rates for local governments for the fiscal year 2018-2019. The Department has reviewed all of the proposed tax rates and can recommend all tax rates are within statutory limits. Roman numeral page III, entitled "Property Tax Revenue Dollars Projected," indicates a total statewide assessed value, including net proceeds of minerals, of \$119.8 billion, up from the prior year of \$111.8 billion. We project this will generate a total of about \$3.8 billion from property taxes, up from last year of \$3.5 billion dollars. On the very last page of the book appears the table of the Tax Cap factors. The residential cap is set at 3 percent, but for all other property the tax cap depends on the county in which the property is located. Each county has a general cap factor based on the higher of either the ten-year rolling average growth rate in assessed value or twice the CPI which was 4.2 percent for fiscal year 2018-2019, up from 2.6 percent the prior year.

Commissioner Rigby motioned to approve the certification of ad valorem tax rates for fiscal year 2018-2019, (the "Red Book") as prepared by the Department. Commissioner Witt seconds the motion. All in favor. Motion carries.

V. COMPLIANCE DIVISION:

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

- 1) Larry and Stephanie Schwartz

Richard Hilliard, Revenue Officer III, was present on behalf of the Department.

Patrick Ryan, Esq., was on the telephone on behalf of Larry and Stephanie Schwartz.

Commissioner Kelesis moved to approve the offer-in-compromise of Larry and Stephanie Schwartz. Commissioner Brown seconds the motion. All in favor. Motion carries.

2) Ronald F. Hover

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

Ronald F. Hover was present on the telephone.

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

3) Yader A. Gomez

Adriane Roberts-Larson, Tax Program Supervisor II, was present on behalf of the Department.

Yader A. Gomez, Taxpayer, was present.

Commissioner Kelesis made a motion to approve the offer-in-compromise of Yader A. Gomez. 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) Chani Modi

Richard Hilliard, Revenue Officer III, was present on behalf of the Department.

Chani Modi, Taxpayer, was not present.

Commissioner Kelesis made a motion to uphold the Department's denial of Chani Modi's offer-in-compromise. Commissioner Rigby seconds the motion. All in favor. Motion carries.

2) Ravi Lalla

Richard Hilliard, Revenue Officer III, was present on behalf of the Department.

Ravi Lalla, Taxpayer, was present on the telephone.

Commissioner Witt made a motion to accept the offer-in-compromise submitted by Ravi Lalla. Commissioner Bersi seconds the motion. The remaining balance of \$7,000 is due to be paid to the Department within ten (10) days. Commissioner Kelesis votes - No. Commissioner Lipman votes - No. Motion carries by majority.

3) Hassan K. Sheikh

Richard Hilliard, Revenue Officer III, was present on behalf of the Department.

Hassan K. Sheikh, Taxpayer, was present on the telephone.

Commissioner Lipman made a motion to deny the offer-in-compromise of Hassan K. Sheikh. Commissioner Lipman added this does not preclude Mr. Sheikh from providing the Department with additional information affirming that he has been out of the United States. We can then perhaps revisit another offer. Commissioner Brown seconds the motion. Commissioner Rigby votes - No. Motion carries by majority.

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) Mojave Educational Foundation Inc.

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

Mojave Educational Foundation, Inc. was not present.

Commissioner Rigby made a motion to uphold the Department's denial. Commissioner Kelesis seconds the motion. All in favor. Motion carries.

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

1) Gato Malo Inc. dba Carson City Harley Davidson

Peter Keegan, Deputy Attorney General, was present on behalf of the Department.

Katherine Hoffman, Fennemore Craig, appeared on behalf of Gato Malo Inc. dba Carson City Harley Davidson.

Ms. Hoffman stated the Department's audit and redetermination processes were flawed. The Administrative Law Judge's Decision rests on erroneous facts, applies incorrect burdens of proof and disregards critical legal issues. The matter should be remanded back to the Department with instructions to begin the redetermination process anew and to base it on the documents and data provided by the Taxpayer and available from the successor in interest who purchased the business. The Taxpayer acknowledges it owes unpaid taxes, but the methods that the redetermination used fail the statutory requirements.

Mr. Keegan stated the Administrative Law Judge's Decision is supported by law and by fact. The Taxpayer did not provide resale certificates for the approximate \$7.6 million in auction sales of trade-in motorcycles. The evidence produced was on Excel spreadsheets and showed very little information about the transactions. The 2007 audit specifically identified that resale certificates must be maintained and updated. This was not done. Regarding the \$1 million dollars in loans that were identified by the Taxpayer and put into the IRS tax returns, there is no documentation to prove exemption of these loans. Drive away permits were not provided during the audit or the redetermination, as required by NRS 372. The Administrative Law Judge determined these were taxable sales. The taxes were not remitted to the State of Nevada. The 25.4 percent exemption that was applied at the estimated audit and the redetermination covered approximately \$10 million dollars in exemptions. The amount the Taxpayer is asking for does not rise to the 25.4 percent exemption totaling \$10 million.

Commissioner Kelesis made a motion to remand the matter back to the audit division at the Department and to allow the Taxpayer the opportunity to produce the documents within ninety (90) days. Commissioner Bersi seconds the motion. All in favor. Motion carries.

E. Taxpayer's Appeal (pursuant to NAC 360.175) of Administrative Law Judge's Decision Revoking Seller's Permit pursuant to NRS 372.145.

1) Smogs R Us LLC, dba Uncle Max's Auto Sales & Leasing

David Pope, Senior Deputy Attorney General, was present on behalf of the Department.

The Taxpayer was not present.

Commissioner Brown asked if the Taxpayer waived the twenty-one day waiver requirement.

Mr. Pope stated the Taxpayer was personally served 5 working days prior to the meeting, pursuant to NRS 241.033. The Taxpayer was served at 9:00 a.m. on Monday, June 18, 2018.

Commissioner Rigby said the Department has been more than patient with this Taxpayer and made a motion to uphold the Administrative Law Judge's Decision to revoke the seller's permit of Smogs R Us. Commissioner Brown 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 stated the Department appeared before the Interim Finance Committee and asked for additional resources and budgetary flexibility in response to the stronger than anticipated start of the adult use marijuana industry, which has put some operational pressures on the Department. We were able to obtain some additional resources and flexibility to address the growth.

Last week the Supreme Court ruled in the South Dakota v. Wayfair case. States are free to pursue sales tax collections from online retailers who do not have nexus in the state. Our initial estimate of what the potential impact might be is approximately \$30 million in general fund sales tax revenue.

B. For Information Only: Marijuana Enforcement Presentation.

Presentations given by: Bill Anderson, Executive Director – Nevada Department of Taxation; Melissa Flatley, Deputy Attorney General; and Jorge Pupo, Deputy Director – Marijuana Enforcement.

Commissioner Rigby expressed concern regarding crime with marijuana establishments being cash only businesses. Is this being addressed in the upcoming legislative session?

Ms. Flatley stated the Act does include a portion to address the issues with banking. It is a misconception that banks are not allowed to handle marijuana money, there are just additional reporting requirements involved. There was additional guidance given to banks on how to handle marijuana money that was not rescinded. They rank the marijuana businesses based on a risk of illegal activity and they have to file additional reports for deposits made over \$10,000, or if they are suspected to derive from marijuana activities, but it does not prohibit the banks. Banks refuse to do it because of the additional requirements.

Director Anderson stated the Department is receiving significant cash. The Department does have stringent policies and procedures in place. Going forward we will be taking additional steps for additional safety and security, not only for our employees, but also for taxpayers and visitors.

VIII. Next Meeting Date: August 13, 2018

IX. Public Comment.

Mona Lisa Samuelson, Nevada's medical marijuana patient representative, thanked the Tax Commission for their hard work and for doing such a good job of regulating recreational marijuana. As mentioned, medical marijuana didn't have testing on processed marijuana until the Tax Commission got involved. There is a list of chemicals that marijuana is tested for. As this is a growing industry, the chemicals are always changing. If the chemical is not on the list, it is not tested for. Thanks to the Governor's Task Force and the Tax Commission, these issues are being taken care of. The Deputy Director assured me ILAC is not going under, but is being re-worked. With this being a new industry, the most important thing is that we have concerned, intelligent individuals looking at the right information so we can have a responsible industry that we can all be proud of. Thank you.

X. Items for Future Agendas.

Commissioner Rigby asked to visit a discussion on penalties for failure to file being based on a percentage of tax rather than on, for instance, net proceeds penalty for failure to file is \$5,000 per return. This is probably a statutory change. It is not consistent between different tax types.

XI. Meeting adjourned at 11:59 a.m.