

NEVADA TAX COMMISSION MEETING
MINUTES

January 24, 2022
9:00 a.m.

Commissioners Present:

James DeVold, Chairman
Ann Bersi, Commissioner
Francine Lipman, Commissioner
Craig Witt, Commissioner
Sharon Byram, Commissioner
Tony Wren, Commissioner
Stanley H. Johnson, Commissioner

Commissioners Absent:

Randy Brown, Commissioner

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

I. Public Comment.

There was no public comment.

Director Hughes administers an oath to all parties testifying.

II. Meeting Minutes:

A. Consideration for Approval of the December 6, 2021 Nevada Tax Commission Meeting Minutes.

Commissioner Witt made a motion to approve the Minutes of the December 6, 2021, Nevada Tax Commission meeting. Commissioner Wren 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) Manantial De Salud LLC
 - b) Kalyans Inc.
 - c) Ryndon Gas & Food LLC
 - d) YNC Food Inc.
 - e) The Hubb Bar and Grill LLC
 - f) JM Henderson LLC
 - g) Fries N Pies LLC

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

- 1) A-Aerial Service Company Inc.
- 2) Annex Products PTY Ltd.
- 3) Asembia Specialty Pharmacy Summit
- 4) Beauty Pie USA Inc.
- 5) Chauvet & Sons LLC
- 6) Crafters Companion Limited
- 7) Decked LLC
- 8) Fashion Nova Inc.
- 9) Fezzari

- 10) GLD LLC
- 11) Hilmar Cheese Company Inc.
- 12) Independent Purchasing Cooperative Inc.
- 13) Media Resources USA Inc.
- 14) Polytron Inc.
- 15) RM Stoof & Associates Inc.
- 16) RX Green Technologies LLC
- 17) Safariland
- 18) SCM Group North America, Inc.
- 19) Sensera System Inc.
- 20) Sentai Filmworks LLC
- 21) Shift Operations LLC
- 22) Sneak Energy Limited
- 23) Spy Briefing LLC
- 24) TALAS
- 25) Tam Jewelry LLC
- 26) Tennis Express LP
- 27) Texas Precious Metals LLC
- 28) Weaver Leather LLC
- 29) Westgate Flamingo Bay Las Vegas Owners Association
- 30) Zala Group PTY Ltd.

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

- 1) Reno Rock Transport LLC
- 2) Sundt Construction Inc.
- 3) Bally Gaming Inc.
- 4) Holiday Promotions Inc.
- 5) Zepeda-Fields Enterprises Inc.

D. Consideration for the Approval 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) GMTCare LLC
- 2) Minden Fashion Show Jewelers Inc.
- 3) National Infinity Retail, LLC

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

- 1) Zion Gardens, LLC
- 2) Nevada Wellness Center
- 3) Spring Mountain Driving School

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

- 1) Armen Torosyan

Commissioner Witt recused himself from voting on Item C. 1) Reno Rock Transport LLC.

Commissioner Lipman pulled item E. 3) Spring Mountain Driving School for further discussion.

Commissioner Wren made a motion to approve the consent calendar, excluding items C. 1) and E. 3). Commissioner Byram seconded the motion. All in favor. Motion carries.

Commissioner Wren made a motion to approve Item C. 1) Reno Rock Transport, LLC. Commissioner Bersi seconded the motion. Commissioner Witt abstained. No opposed. Motion carried.

Item E. 3) Spring Mountain Driving School: Natasha Gebrael, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. Chase Whittemore, Esq. with Argentum Law was present on behalf of the Taxpayer. Ms. Gebrael stated there was a clerical error on page three of the Settlement Agreement. The total agreed amount is \$1,396,922.47. Commissioner Lipman stated that the dollar amount is correct, but we are striking the interest language, correct? Ms. Gebrael and Mr. Whittemore agreed. Commissioner Lipman made a motion to approve the Settlement Agreement of Spring Mountain Driving School, with the interest language in the description of the dollar amount struck. Commissioner Bersi seconded the motion. All in favor. Motion carries.

Item F. 1) Armen Torosyan: Commissioner Wren asked why we are making an offer-in-compromise with Armen Torosyan when it is quite apparent that the taxpayer is not trying to live up to their obligation. Lizette Arceo, Tax Manager, was present on behalf of the Nevada Department of Taxation. Ms. Arceo stated that the Department did consider the large amount owed and the taxpayer's large monthly vehicle payments. The reason that the Department is recommending approval is because the entire amount is not personally liened. Commissioner Wren did not challenge the prior approval as part of the consent calendar.

IV. COMPLIANCE DIVISION:

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

1) Zurich American Insurance Company

Brandon Mackie, Tax Program Supervisor, was present on behalf of the Nevada Department of Taxation. Mr. Mackie stated that the date on the memorandum incorrectly states June 30, 2021. The correct date is June 30, 2020. Commissioner Witt moved to approve the credit refund. Commissioner Johnson seconded 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) Equinox Reiki and Tarot

Laurie Maren was present on behalf of Equinox Reiki and Tarot. Ms. Maren explained that her business has not been able to operate as planned because of COVID. Ms. Maren stated that she should be able to get into hospitals to provide reiki to patients, but currently cannot due to restrictions.

Andrea Nichols, Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. Ms. Nichols stated there was a typo on page three of the Department's Brief. It is on page 52 of the document packet. Lines 27 and 28 are repeated on lines one and two of the next page. Ms. Nichols explained that she cannot provide legal advice to the taxpayer, but they can reapply if the primary purpose of her business becomes charitable in the future.

Director Hughes asked that Charlene Bernardo reach out to the taxpayer.

Commissioner Byram moved to uphold the Department's denial of the religious, charitable, or educational exemption for Equinox Reiki and Tarot. Commissioner Witt seconded the motion. All in favor. Motion carries.

2) National Center for American Indian Enterprise Development

This matter was continued to a future meeting.

3) Nevada Health and Bioscience Asset Corporation

Bryan Dixon was present on behalf of Nevada Health and Bioscience Asset Corporation. Mr. Dixon stated that when this application was first issued, the wrong box was checked labeling as an educational institution. This is the organization that has led the fundraising, planning, construction of and now is furnishing and providing all of the internal materials for the UNLV Medical School. The plan is, this is the entity that's going to lease the building to UNLV for a dollar a year and then eventually gift it to UNLV. Let's not overlook the fact that there's a lot of other property, libraries, desks, computer information and items of medical equipment for the clinic that still has to be purchased. This still qualifies as a charitable organization.

Andrea Nichols, Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. She stated that this organization was formed for the funding and construction of the medical building at UNLV. NRS 372.340 specifically provides that the taxes imposed under this chapter apply to the sale of personal property and the storage, use or other consumption in the state of tangible personal property by a contractor for a governmental, religious or charitable entity which is otherwise exempted from the tax unless the contractor is a constituent part of that entity. UNLV is exempt from taxes on their purchases, but this statute was passed specifically because the religious and charitable exemption does not apply to the purchase of construction materials. And it's very clear in the materials that they submitted that they were formed to construct this building. NRS 338.1423 prohibits a public body from entering into a contract for public work that provides for construction materials to be purchased by the public body or a contractor acting on behalf of the public body.

Commissioner Lipman recused herself from this matter because she is an employee of UNLV.

Commissioner Witt moved to support the denial of the religious, charitable, or educational exemption for Nevada Health and Bioscience Asset Corporation. Commissioner Wren seconded the motion. Commissioner Lipman abstained. All in favor. Motion carries.

C. Consideration of Adoption of Hearing Officer's Proposed Decision on Remand from First Judicial District Court and Taxpayer's Objection to that Proposed Decision.

1) Airlift Helicopters, Inc. and ALP, Inc.

Andrea Nichols, Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. She stated that a decision from the Administrative Law Judge (ALJ) was issued in 2018 upholding the Department's audit. The Tax Commission approved the ALJ's decision. The matter was appealed to the First Judicial District Court. The Court remanded it back to the Tax Commission, who then remanded it back to the ALJ to consider a very, very small amount of evidence. Airlift Helicopters was given the opportunity to provide flight logs. The ALJ held another evidentiary hearing and has issued another proposed order. The Department is requesting that the Tax Commission uphold the Administrative Law Judge's proposed order.

John Bartlett, Esq. was present on behalf of Airlift Helicopters, Inc. and ALP, Inc. Mr. Bartlett stated that he did file an objection to the ALJ's decision. The taxpayer is asserting that the assessments of use tax against what amounts to three helicopters is incorrect and should be reversed. This is consistent with the arguments made previously in matters before the remand.

Commissioner Byram motioned to uphold the hearing officer's proposed decision on remand from the District Court. Commissioner Bersi seconded the motion. All in favor. Motion carries.

D. Consideration for Approval of proposed Findings of Fact and Conclusions of Law, pursuant to the First Judicial District Court's Order for Remand dated November 16, 2021, pursuant to NRS 233B.125 and NRS 233B.130:

1) Orthopaedic Summit Association, Inc.

Andrea Nichols, Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. This matter previously came before the Tax Commission in December of 2020. After considering the briefs and oral argument, Mr. Devoy presented witnesses at that hearing. The Commission voted to uphold the Department's denial of Orthopaedic Summit Association's application for exemption from sales and use tax as an educational organization finding that the primary purpose of the organization was to present seminars geared towards persons in the field of orthopedic medicine. The Tax Commission's decision was sent to the First Judicial District Court on a petition for judicial review. It was sent back again from the First Judicial District Court for the small purpose of issuing findings of fact. We ask that the Tax Commission adopt the proposed decision (Exhibit E).

J. DeVoy, Esq. with Holland & Hart was present on behalf of Orthopaedic Summit Association, Inc. Since this is on remand, the Commission has the ability to examine the record again and arrive at alternate conclusion of fact and the findings of fact and conclusions of law based on the record evidence that was previously submitted. Turning first to the purported trade show that the Orthopaedic Summit Association puts on, it is an educational event. It is not an exhibition hall. It's not a place for people to buy and sell. It has cadaver labs, live surgeries being performed, and it trains physicians in order to provide these services using cutting-edge technologies such as the Davinci machines that are used in hospitals throughout Nevada. That record evidence exists, and within making these findings of fact and conclusions of law and looking at the record again, Orthopaedic Summit Association respectfully submits that this information be considered and an alternate decision be reached that grants the sales and use tax exemption going forward for all of its activities in Nevada, not just the idea that it is solely in existence to provide this trade show.

Commissioner Byram made a motion to uphold the findings of fact, conclusions of law, pursuant to the order for the matter of Orthopaedic Summit Association. Commissioner Witt seconded the motion. All in favor. Motion carries.

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

1) Amigo Brands LLC

Natasha Gebrael, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. The Department received information from Amigo Brands that they had inventory located at a Reddy Ice storage facility. Amigo Brands LLC is not a Nevada company. On December 8th, the Department conducted an inspection at the Reddy Ice warehouse and found 58 pallets of Amigo Brands liquor contained at the warehouse. Reddy Ice does not hold a Nevada liquor license, and so the storage of the liquor was in violation of Nevada law. The Department seized the liquor in place. ALJ Smith held that Amigo Brands failed to meet its burden by the preponderance of the evidence that the seizure was improper and denied Amigo Brand's request to have the liquor returned to its possession. ALJ Smith allowed Amigo Brands the chance to submit documentation regarding liquor that came from a Florida supplier, and that liquor was in its complete form, so it was ready for consumption and to be sold to a wholesaler. All of that happened in Florida, so that liquor was only shipped improperly to our state. Amigo Brands did submit that documentation and the Department accepted it, and then this appeal followed. On January 14, 2022, the Department was present at Reddy Ice to observe the liquor being shipped back to Florida. While at Reddy Ice, the Department noticed additional liquor from Florida and it was also seized. The Department is allowing for this liquor to be returned to Florida as well. The taxpayer does not agree with the seizure, and they would like the liquor from a Wisconsin supplier, which is a base raw liquor, to be treated the same as the Florida liquor. The Wisconsin liquor was not just shipped into our state unlawfully, they were ready to sell it unlawfully. There is an extra egregious step that was taken here. It is raw material. This is importing into our state improperly without a license. Then it is making liquor, so you're getting something to a final stage to be consumed in our state without being licensed, and then selling that liquor through an unlicensed location to a wholesaler.

Matthew Dushoff, Esq. was present on behalf of Amigo Brands LLC. We are not asking the Commission to overturn the ruling. Amigo Brands LLC is asking you to permit the return of the bulk Wisconsin Galloway Cream and Rum that is in its sealed and complete form. We ask, under NAC 360.175.6 and NRS 369.420, that this be shipped back to Wisconsin just like the Florida liquor was shipped back. It is still sealed just like the Florida liquor. It is still in its complete form. The Department argues that the shipping from Wisconsin is somehow more egregious than the bottles from Florida, but I cannot see that. We ask pursuant to NRS 369.420 that the Commission does use its discretion to at least permit the unrectified shipments be shipped back to Wisconsin, and if the Commission sees fit, to allow the rectified product to be returned to NLVT or allow even the unrectified product to be returned to NLVT, who is a licensed rectifier. We ask to issue a \$10,000 fine, or if the Commission seeks an additional fine. The Department would get money and the Department would not have to absorb the cost of destroying the 264 gallons of cream. Thank you.

Commissioner Wren made a motion that the product be shipped back to Wisconsin with the appropriate tracking means and that we fine Amigo Brands \$15,000 to be paid within 60 days.

Chairman DeVolld confirmed that 6,000 gallons of cream would go back. Everything else would stay seized by the State of Nevada?

Mr. Dushoff confirmed that 23 pallets are made up of the cream.

Commissioner Wren confirmed the motion. Commissioner Bersi seconded the motion. All in favor. Motion carries.

V. REGULATION(S):

- 1) Consideration for the Adoption of Permanent Regulation LCB File No. R130-21: A Regulation relating to taxation; establishing provisions for the administration, calculation and payment of the tax imposed on the Nevada gross revenue of certain entities engaged in the business of extracting gold or silver, or both, in this State; and providing other matters properly relating thereto.

Shellie Hughes, Executive Director of the Nevada Department of Taxation, presented LCB File No. R130-21 to the Commission. After Assembly Bill 495 was passed during the 2021 legislative session, we had several meetings with the Nevada Mining Association discussing implementation of the bill. The Nevada Mining Association provided us with draft regulatory language on or about October 14, 2021. The Department made slight revisions to this language adding in some provisions for the administration of the tax, and we submitted our draft language to the Legislative Council Bureau (LCB), and LCB prepared the original draft of LCB File Number R130-21 which was returned to the Department on or about December 23, 2021. It's important to note that LCB reviews the language provided and determines if we are acting within our authority. If our draft language contains actions which are not within our authority, LCB will not include that language in the proposed regulation. Once we received the proposed regulation back from LCB, we scheduled a workshop for January 10, 2022, to elicit input on the regulation. We received two comments. After the workshop, we took those comments into consideration and made some revisions to the language. The draft you have before you today contains those revisions. The regulation must be heard by several commissions before it can become effective. The first commission is this body, the Nevada Tax Commission. This commission hears the regulation and chooses whether to adopt the regulation. The second commission to hear this regulation is the Mining Oversight Accountability Commission. This commission is not required to adopt the regulations, but they will review the regulation and provide a report with its feedback on the regulation to the Legislative Commission. The third and last commission to hear this regulation and review it will be the Legislative Commission, and they will determine whether to approve it and whether it requires changes. Director Hughes walked the Commission through the sections of the regulation and the changes that were made.

Chairman DeVolld disclosed that Pete Ernaut is a client of the Chairman's employer and someone that he regularly deals with. Chairman DeVolld stated that he does not think there is a conflict, but Mr. Ernaut did attempt on several occasions to have discussions with the Chairman on this regulation.

Tyre Gray, President of the Nevada Mining Association was present. Mr. Gray stated that AB 495 was a product of hundreds of hours of discussions between the mining industry, the Legislature, the Governor and the Nevada education community. The intent was to produce one thing: Additional funding for K-12 education while preserving the viability of Nevada's foundational industry. Mr. Gray brought attention to three areas of the regulation. Area number one: The collection period for the taxes that will eventually be due in April 2022. Number two: The revenues that are subject to collection and by whom; and number three: The naming of the taxes created by AB 495. Education is the beneficiary of this tax and there is no clearer way to do that than to make sure that the term "education" is included in the name. It is important to recognize that in order to be subject to this tax, a person must meet two criteria. Number one: You must extract gold and silver within the State of Nevada, and you must sell the gold and silver that was extracted. AB 495 is clear that the tax created by AB 495 is effective on July 1 of 2021, and any attempts to collect revenue that are generated before its effective date would not be consistent with the plain language of the bill.

Public Comment.

John Vellardita, Executive Director of the Clark County Education Association. We represent over 18,000 educators here in Clark County, and we educate over 72 percent of all students in the State of Nevada. I was a primary participant in the AB 495 being passed. We worked very closely with the mining industry, the legislative leadership, the Governor and other stakeholders. I'm here to speak to support naming this tax the mining education tax, and the reason is very clear is what the intent was behind passing this legislation. Another piece of legislation that was passed in that last session was SB 543. It reformed the funding formula for K-12 education, and within it, it had specified funding streams that would go directly to K-12. It was in that context that AB 495 identified the new tax on mining to go specifically through K-12 public education starting in fiscal year 2024. So intent is meaningful, and in politics, it's very important to kind of memorialize that because we do have term limits, and there is different legislators that get into session, and we'd like to support having this tax named what the intent was, and that's the mining education tax. Thank you for your time.

Christine Saunders, Policy Director with Progressive Leadership Alliance of Nevada. Assembly Bill 495 in this past session is a strong start to address the privileged position mining has held in Nevada's Tax Code and now. We believe that the regulations that were put out by the Commission properly implement the intention of the legislation. While we have heard some concerns about the name, we believe the name of the tax should remain as the gold and silver excise tax which is in line with the naming of other taxes being based on what is taxed, not where the revenue goes. In addition, we support maintaining the taxable period for 2021 beginning on January 1 and ending on December 31. This seems abundantly clear in Assembly Bill 495 Section 62. While this bill was introduced towards the end of session, conversations were going on behind the scenes for months prior, and two amendments were made before the bill was signed. The need to preserve what was voted on by bipartisan support in full view of the public rather than manipulate it during the regulatory process. Thank you.

Commissioner Byram moved to approve the adoption of a permanent regulation LCB File Number R130-21 with language that was received as of this morning, with the edits as of this morning, but modified by the three edits that have been suggested by Mr. Tyre Gray, including the name of the tax being the mining education tax, the clarification about the contracted service so that it was both extraction and selling, and also to clarify that the effective date for any taxation is July 1, 2021 going forward. Commissioner Wren seconded the motion. All in favor. Motion carries.

VI. 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).

There were no questions regarding the informational items.

VII. BRIEFING:

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

Executive Director Hughes reported to the Commission: Melissa Flatley joined the Department as our new Chief Deputy on January 10th, and Jennifer Roebuck was promoted to Deputy Director of Compliance on January 3rd. Director Hughes also recognized Guy Childers. Guy has been promoted to Audit Tax Manager. That position was left vacant from Jennifer's promotion, and Guy starts his new role today. Secondly, since the first round of MBT refunds were sent out in August of 2021, the Department has been diligently working to make sure the remaining refunds were sent out in a timely manner. At the beginning of this process, we estimated that \$80.3 million dollars would be refunded and that included interest. As of today, the total refunded amount is approximately \$64.9 million dollars. The remaining balance of approximately \$50.4 million has not been refunded to taxpayers due to out-of-date account information and/or lack of response from the taxpayers, and it has been placed as a credit on taxpayers' accounts. Once the taxpayer updates its account, a refund can be issued or the taxpayer can choose to use the credit on a future liability. In some instances, if an account had an existing tax liability, the credit was applied to that liability pursuant to Nevada law. We are still asking taxpayers who believe they are due a refund but have not received it to contact the Department.

VIII. Next Meeting Date: March 7, 2022

IX. Public Comment.

There was no public comment.

X. Items for Future Agendas.

No future agenda items were discussed.

XI. Adjourn.

Meeting adjourned at 12:26 p.m.