NEVADA TAX COMMISSION MEETING

MEETING MINUTES

GAMING CONTROL BOARD
1919 College Pkwy, Suite 100
Carson City, Nevada

GAMING CONTROL BOARD
Grant Sawyer State Office Building
555 E Washington Avenue, Room 2450
Las Vegas, Nevada

May 8, 2017
9:00 a.m.

Members Present:
James DeVolld, Chairman
John E. Marvel, Commissioner
Craig Witt, Commissioner
Ann Bersi, Commissioner
Francine Lipman, Commissioner
Thom Sheets, Commissioner
George Kelesis, Commissioner

Members Absent:
Tony Wren, Commissioner

The meeting was called to order at: 9:01 a.m.

Director Contine administered an oath to all meeting participants.

I. Public Comment.

Jim Hartman raised a complaint regarding an open meeting law violation in connection to today’s meeting agenda. Mr. Hartman stated his complaint is in relation to the agenda item relating to an early start marijuana program. Mr. Hartman believes the public was not properly noticed and the agenda item is insufficient and unclear. Mr. Hartman stated he is making a complaint to the Attorney General’s Office.

Tom Haynie stated he has been a resident of Nevada since 1966. Mr. Haynie commented that he was the guy behind the scenes that is bringing the point of sale of the RFID tracking system.

Chairman DeVolld asked if there is public comment that is not relating to the temporary marijuana issue. There will be time for public comment on this matter.

II. Consideration for Approval of the March 6, 2017 Nevada Tax Commission Meeting Minutes.
Commissioner Sheets moved to approve the meeting minutes of the March 6, 2017 Tax Commission. Commissioner Kelesis seconds. All in favor. Motion carries.

III. CONSENT CALENDAR:

A. Matters of General Concern:
   1) Bonds Administratively Waived (dates as indicated) (Sales/Use Tax):
      a) Boss Signs LLC
      b) JMKM Enterprise
      c) Bruce A. Horstmannhoff
      d) Martha Rico
      e) Kenner Concrete LLC
      f) MGS Investment Inc.
      g) Amena Bakery LLC
      h) Auto Store LLC
      i) Legacy 5 LLC
      j) EMELV LLC

B. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds $10,000:
   1) Central Telephone Company
   2) Community Access Systems
   3) 1st Choice Flooring LLC
   4) Molton Brown USA LLC
   5) Nevada Auto Dealership Investments LLC
   6) Touch LLC
   7) Dee Lee, Inc.
   8) The Jewelers, Inc.
   9) Walden Media Productions, Inc.
   10) Michael C. Brinkmann DVM Animal Medical Hospital
   11) Pacific Sun Tanning Company
   12) Professional Medical Services & Products
   13) Lynyrd Skynyrd BBQ and Beer
   14) Dream Car Rentals

C. Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure (Sales/Use Tax):
   1) Crest Financial Services LLC
   2) Native Instruments Northern America Inc.
   3) Action Products Marketing Corporation
   4) Capsule Tech, Inc.

D. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (sales/use and/or modified business tax)
   1) Desert Auto Trader, LLC
   2) Roseland Nursery Inc. dba Sunset Gardens
E. Consideration for Approval of Payment Plan Request: 12 Month Review  
(Sales/Use and/or Modified Business Tax:  
1) Gurjeet S. Grewel dba MD Mini Mart  
2) Judith & Raymond Metz dba Sugar’s  
3) Rodney P. Smith dba Vinylsmith

F. Consideration for Approval of Payment Plan Request (Sales/Use and/or Modified Business Tax:  
1) DGS Corporation

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) Las Vegas Resort Holdings, LLC (fka Stockbridge/SBE Holdings, LLC)

Commissioner Kelesis motioned to approve the consent portion of the agenda as a whole. Commissioner Bersi seconds. All in favor. Motion carries.

IV. COMPLIANCE DIVISION:

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

Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. The Taxpayer was present.

Commissioner Sheets motioned to approve the offer and compromise of Eddie D. Heiner. Commissioner Bersi seconds. All in favor.

Mr. Heiner thanked the Commission and stated the offer in compromise is a hardship with his current salary. Mr. Heiner asked if this could be reevaluated.

Commissioner Sheets moved to set aside the prior approved motion and motioned to refer the matter of Eddie D. Heiner back to the Department for further review. Commissioner Bersi seconds. All in favor. Motion carries.

2) Ronald L. Paugh

Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. Steve Harris, Taxpayer Representative, and Ronald L. Paugh were present.

Chairman DeVollld requested to continue this matter and refer it back to the Department for further review.

Commissioner Lipman made a motion to refer this matter back to the Department to investigate the trust assets. Commissioner Witt seconds. All in favor. Motion carries.
3) Christopher Latham
Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. The Taxpayer was not present.

Commissioner Kelesis moved to approve the offer in compromise of Christopher Latham. Commissioner Lipman seconds. All in favor. Motion carries.

4) Peter A. Axas
Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. The Taxpayer was present.

Commissioner Sheets motioned to approve the offer in compromise of Peter A. Axas. Commissioner Bersi seconds. All in favor. Motion carries.

5) Steven E. Nelson
Brenda Rubalcava, Revenue Officer III, was present on behalf of the Department. Norman Azevedo, Esq. was present on behalf of the Taxpayer.

Commissioner Marvel motioned to approve the offer in compromise of Steven E. Nelson. Commissioner Witt seconds. All in favor. Motion carries.

6) Tom Guerrero
Kathy Fey, Revenue Officer III, was present on behalf of the Department of Taxation. The Taxpayer was not present.

Commissioner Kelesis motioned to approve the offer in compromise of Tom Guerrero. Commissioner Sheets seconds. All in favor. Motion carries.

7) James and Michaelina Stanfill
Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. The Taxpayer was present.

Commissioner Sheets moved to approve the offer in compromise of James and Michaelina Stanfill. Commissioner Kelesis seconds. All in favor. Motion carries.

8) Kenneth R. White Jr.
Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. The Taxpayer was present.

Commissioner Lipman moved to approve the offer in compromise with confirmation of the account being current. Lizette Arceo, Tax Manager, confirmed that the account is current. Commissioner Bersi seconds. All in favor. Motion carries.
9) Douglas B. Bennett

Mary Patton, Tax Program Supervisor III, was present on behalf of the Department of Taxation. Tyler Bennett and Josh Hicks, Esq. are present on behalf of the Taxpayer.

Chairman DeVolld disclosed that he is the vice chairman on the board of Renown Health Systems. Chairman DeVolld stated he does not have authority over third party providers and will continue discussing this case.

Commissioner Sheets motioned to reject the Offer in Compromise. Commissioner Bersi seconds. Commissioner Marvel agreed with the motion and the second and suggested it be remanded back to the Department for further evaluation. Commissioner Witt stated he saw issues and believes the company can do better.

Commissioner Sheets set aside his motion to reject and referred the matter back to the Department of Taxation for further review. Commissioner Sheets disclosed that he is of counsel to the law firm of McDonald Carano. Commissioner Bersi seconds the motion. All in favor. Motion carries.

B. Taxpayer’s Appeal of Administrative Law Judge Decision pursuant to NRS 360.297:
   1) Paul Wulfenstein, Responsible Party for the debts of Liberty Duct LLC

Vivienne Rakowsky was present on behalf of the Department of Taxation. The Taxpayer was present. Director Contine swore in Mr. Wulfenstein. Kenneth Long, Esq. was present and testified on behalf of the Taxpayer and Liberty Duct LLC.

A motion was made by Commissioner Kelesis to uphold the Administrative Law Judge’s decision. Second by Commissioner Bersi. All in favor. Motion carries.

2) Artiques Home Furnishings and Décor LLC

Louis Csoka was present on behalf of the Department of Taxation. Paul Page was present on behalf of Artiques Home Furnishings and Décor LLC.

Commissioner Kelesis made a motion to continue this matter for thirty (30) days. Commissioner Sheets seconds and asked to amend the motion to continue this matter to the Tax Commission meeting scheduled on June 26, 2017. Commissioner Kelesis agreed to amend the motion. Commissioner Witt 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) Alzheimer’s Disease and Related Disorders Association, Inc.

Melissa Flatley was present on behalf of the Department of Taxation. Greg Lam, Esq. and Jacob Harmon were present on behalf of the Taxpayer.
Chairman DeVolld stated the brief that was submitted by the Taxpayer and presented to the Commission ten minutes prior to the meeting starting was not taken into consideration.

Commissioner Sheets moved to deny the reconsideration. Second by Commissioner Kelesis. All in favor. Motion carries.

2) National Congress of Parents and Teachers

Melissa Flatley was present on behalf of the Department of Taxation. Jim Thomasell was present on behalf of the Taxpayer.

Commissioner Witt motioned to support the Department’s decision. Second by Commissioner Marvel. All in favor. Motion carries.

V. **DIVISION OF LOCAL GOVERNMENT SERVICES:**

A. Consideration for Approval and Adoption of the 2017 – 2018 Ratio Study (Pursuant to NRS 361.333).

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

There was no public comment.

Commissioner Marvel made a motion to approve the adoption of the 2017-2018 Ratio Study. Second by Commissioner Sheets. All in favor. Motion carries.

B. Discussion and Consideration for Approval for the 2018-2019 Personal Property Manual as authorized under NRS 361.227 and NAC 361.1365.

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

There was no public comment.


C. Discussion and Consideration for Approval of the 2018 – 2019 Improvement Factor Study (Pursuant to NRS 361.261(2))

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

There is no public comment.

Commissioner Witt moved to approve the 2018-2019 Improvement Factor Study. Second by Commissioner Bersi. All in favor. Motion carries.
D. Review and Consideration for Adoption of Bulletin 207 – 2018-2019
Agricultural Land Values and Open Space Property Procedures as authorized under NRS 361A.140 and NRS 361.325(1)(b)

Chuck Bailey, Supervisor – Local Assessed Properties, and Heather Drake, Deputy Director – Local Government Services, were present on behalf of the Department of Taxation.

Commissioner Witt expressed his disappointed that only 18.9 percent of polls were returned. Mr. Witt mentioned that he expects hay prices to go down.

Commissioner Witt made a motion to adopt Bulletin 207 – 2018-2019 Agricultural Land Values and Open Space Property Procedures. Second by Commissioner Marvel. All in favor. Motion carries.

VI. COMPLIANCE DIVISION:
A. Discussion and possible approval of Technical Bulletin 17-0001 - Private Party Transfers of Firearms

Shellie Hughes, Chief Deputy Director, was present on behalf of the Department of Taxation.

Commissioner Kelesis motioned to approve Technical Bulletin 17-001. Second by Commissioner Sheets. All in favor. Motion carries.

VII. Consideration for Approval of Adoption of Temporary Regulations:
A. Adoption of proposed Temporary Regulation relating to Remainder Parcels

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

Maryann Weidner with the Clark County Assessor’s Office stated the Assessor is in support of the new calculation.

Jim Sousa, representing MGM International, stated this language is a good modification of the language.

Cheryl Bloomstrom, Nevada Taxpayer’s Association, thanked the staff for the number of workshops. The methodology may or may not create additional tax obligations. Please consider carefully.

Josh Hicks, with McDonald Carano and representing Howard Hughes, supports the temporary regulation.

Commissioner Marvel asked if this can be made retroactive.

Jennifer Crandell, Special Counsel to the Tax Commission, stated it can be made retroactive.
Commissioner Marvel made a motion to approve the temporary regulation relating to remainder parcels. Second by Commissioner Kelesis. All in favor. Motion carries.

B. Adoption of proposed Temporary Regulation relating to authorizing the Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D. LCB File No. T002-17

Deonne Contine, Executive Director of the Department of Taxation, presented LCB File No. T002-17. Question 2 was adopted by the voters. This regulation allows for an early start retail marijuana program with sales expected around July 1, 2017. The early start program will allow existing marijuana establishments that are in good standing and licensed and regulated by the Division of Public and Behavioral Health to apply for a temporary retail marijuana establishment license. The application deadline is May 31, 2017.

Public Comment:
Amanda Connor commented on behalf of the Nevada Cannabis Coalition (NCC). The members of NCC hold over 40 medical marijuana licenses and own approximately 40 percent of the dispensaries in the state. The NCC is in support of the proposed temporary regulation.

Riana Durrett, Executive Director to the Nevada Dispensary Association, stated the Nevada Dispensary Association represents over 80 percent of the medical marijuana dispensaries throughout the state. We support the adoption of the temporary regulations as written. The Association also supports the decision to allow medical marijuana establishments to apply for distribution licenses while the Department continues to gauge whether there are sufficient distributors licensed under Chapter 369 to fill the demand.

Jim Hartman stated there is an issue with the notice of today’s agenda. There is no mention of the early start program or marijuana. The agenda is not clear or complete. California and Nevada legalized recreational marijuana on the same day. California intends to take the entire year to begin their first sale. Nevada is getting into the business by July 1, 2017. Massachusetts is extending the period to July 1, 2018 because they say it is a complicated issue. The agenda for the January 23, 2017 meeting agenda had a note “The Executive Director will make a presentation regarding the implementation of Question 2”. There were no motions made. There have been no approvals of an early start program. It has not been discussed by the Commission. Going forward with this is premature.

Marla McDade Williams, with Strategies 360, asked if it is appropriate to submit an amendment.

Chairman DeVolld suggested there have been many amendments submitted and it would be difficult to accept an amendment at this time.

Sam McMullen, a representative of the Independent Alcohol Distributors of Nevada, stated he has submitted draft amendments and they should be accepted. Mr. McMullen stated there were procedural defects with regard to alcohol licensed distributors to be the first distributors for marijuana distribution. This issue of the initiative gave an exclusive right for alcohol distributors to be marijuana distributors. There will be approximately 300 marijuana
establishments. The Department sent a letter to the alcohol distributors on November 18, 2016 asking to express interest and they did. The first thing they received was on March 16, 2017, and it was the draft regulations. This does not look like it will be at all similar to the three tier alcohol system. An early start program was never decided on by the Commission.

Will Adler, with the Sierra Cannabis Coalition, agreed with Ms. Durrett’s comments. We are ready in Nevada. We have the best laboratory testing standards, mandatory tracking, and mandatory laboratory testing for safety and security. Actually, Nevada is taking longer than Colorado. Nevada is ready. We have done a long well thought out medical program which has made this early adoption of recreational possible.

Bill McGrath, with McDonald Carano and representing several wholesale liquor licensees, pointed out on the first page in the initiative it says the people of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol. That’s what the people voted on. It is unfortunate that the Department of Taxation did not listen to the wholesalers as they did the medical marijuana establishments. As a convenient alternative, the Department opened up licensing to medical marijuana establishments. We believe there will be ample liquor wholesale dealers who will have applied and the liquor wholesalers will be able to transport marijuana. There will be no reason to open the door to eliminate the tiered status that the people declared should be the law.

Jesse Wadhams, with Fennemore Craig and representing Blackbird Logistics, commended the Department on the draft regulations. Mr. Wadhams expressed concern with the proposed amendment from IADON because it removes the stated goal of Question 2 to have a license and background checked marijuana distributor. By simply saying that a marijuana distributor is granted a license because they may hold a 369 license in another entity, the state may not have an updated background check on the individuals moving marijuana. Question 2 does not propose a three-tier system as the alcohol distribution model entails.

Grace Crosley, with Nevadans for Informed Marijuana Regulation, stated there is no urgency in rolling out retail sales. There is still a thriving black market in Colorado and in other states. There is a significant price differential between medical and recreational. In the first six months of recreational legalization in Colorado, the state took in $21.5 million dollars less in tax revenue than was expected. As long as medical marijuana is cheaper and home grown, there will be a black market. Nevada is worried that California will roll out retail sales first and get all of the tax dollars. The Department of Taxation is responsible for the public’s health and safety, unfortunately this is not the Department of Taxation’s expertise. The permanent regulations that are being developed by the Task Force are industry oriented. I counted one-third of the working group members are from the industry. There is legislation pending that would prohibit local governments from making any rules relating to production, potency, appearance, packaging, labeling, or advertising. We need strong regulations from the Department. The regulations leave out the protection of non-users and prevention of normalization. It is well established in the scientific community that using marijuana is harmful to your health. We don’t want to commercialize or normalize it. We have failed to adopt some of the advertising regulations that are enforced in other states.

George Kelesis asked about the Nevada Press Association’s concern regarding confidentiality. The marijuana is flush with cash due to the banking system, how are they
Director Contine stated with regard to the confidentiality concern, if a license is issued it would be posted on the Department’s website. Alcohol and Tobacco licenses can be viewed on the Department’s website. With regard to the cash situation, they pay their taxes in cash. There are additional considerations in the budget. The inventory is put into a tracking system that tracks the product from seed to sale.

Commissioner Kelesi asked how we reconcile federal law for the distributors.

Director Contine stated there is concern there wouldn’t be people to apply for these licenses because they wouldn’t want to jeopardize their federal licensing. I don’t know the answer, but I am trying to anticipate what could possibly happen and prepare for that in the regulations.

Commissioner Sheets asked if a licensee will have any appeal rights in the event of a suspension or revocation.

Director Contine stated there would be an appeal process and we would follow the process that we have. It would be reviewed by a hearing officer and be subject to review by the Commission.

Commissioner Lipman asked about the recent change to the language with regard to the application process and the Department having the discretion to reopen the application period for up to five days.

Director Contine stated that one issue was that current entities that are not quite ready for the May 31, 2017 deadline. There was significant concern in the workshops and through public comment that a whole group would not be ready for the deadline and is being excluded. We have attempted to deal with the issue with the five additional days.

Commissioner Lipman mentioned the civil penalties for not having a marijuana establishment license.

Director Contine stated that if someone is operating without a license, we would probably shut them down and assess the $35,000 fine. If they were operating and we didn’t know about it, there are other issues that would need to be addressed.

Commissioner Marvel asked Director Contine to review the issues involved with respect to the alcohol distributor licensing.

Director Contine stated it is uncertain what would happen to the alcohol distributor’s federal licenses. By allowing others to apply, it is ensuring that we have licensed people ready to facilitate the market, which is required by the initiative.

Commissioner Witt. God bless America. The people have voted. The Department has done a great job. Mr. Witt stated he is confused why a crop isn’t under the Department of
Agriculture. The food industry can learn some things from the marijuana industry. Commissioner Witt stated he is not sure we are ready to adopt these regulations. Health and safety is what is important.

Chairman DeVolld asked Jennifer Crandell about the clarity of the the agenda item.

Jennifer Crandell stated she is comfortable with the agenda.

Chairman DeVolld asked Mr. McMullen and Mr. McGrath how many of the workshops and meetings they attended.

Sam McMullen stated he began attending after he was engaged on March 28, 2017. Members have attended a number of the meetings. It was on March 28th after March 16th that we found out there was interest.

Bill McGrath stated he was first contacted on April 9th. Mr. McGrath stated he participated in one of the Task Force meetings. Clients participated in the working group meetings. They all received a letter dated November 18, 2016 from the Department. Every one of them contacted the Department and they were all told we will get back to you, don’t worry about it, and you will be put you on the mailing list. The first mailing they received was the new proposed regulations declaring there weren’t enough liquor distributors to serve the marijuana market. We have written a letter. They have now changed to a later determination.

Chairman DeVolld asked if there is concern about losing federal distributor licenses.

Mr. McGrath stated there is no dispute that everyone in the Nevada medical marijuana industry is flaunting federal law. The Department has singled out the alcohol distributors and would like for each individual alcohol distributor to acknowledge there is an issue with federal law. There is a 5th amendment issue. This is only required by the alcohol distributors.

Chairman DeVolld stated there may be more to lose by the alcohol distributors. As a banker, there is a reason for the cash only business.

Sam McMullen stated they are willing to apply and they understand the risks. It is your obligation to find a way to fulfill the voters’ feelings and intent. It is your job to set this thing up so it has the maximum amount of regulation, independence, reliability and integrity. More time should be taken to implement the voter’s intent. It puts marijuana interest in all three layers of the system. That is not what they chose to do nor does anybody think it is good policy.

Director Contine stated we fundamentally disagree with Mr. McMullen. There is a provision for us to make a determination. There is recognition that there could be some problems. If we don’t adopt the regulations, we will not have a program, and we will not have the revenue that’s included in the Governor’s budget. This process and these regulations balance the interest in the revenue coming in, the interest in the industry operating, and the interest in maintaining public health and public safety by borrowing heavily from those provisions in
the medical marijuana program. Director Contine asked that the Commission adopt the regulations.


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).

VIII. BRIEFING:

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

Director Contine provided a legislative update to the Commission. Ms. Contine stated there is a provision to add a ten percent tax and move the medical program to the Department of Taxation. We won’t have our budget closing until May 17, 2017. We will know more about where the taxes should be and where the programs will be in the next couple of weeks.

IX. Next Meeting Date: June 26, 2017

X. Public Comment.

No public comment.

XI. Items for Future Agendas.

No items discussed.

XII. Meeting adjourned at 2:02 p.m.