

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

May 7, 2018  
9:00 a.m.

Members Present:

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

Chairman DeVold called the meeting to order.

I. Public Comment.

There was no public comment.

Director Anderson administered an oath to all meeting participants.

II. Consideration for Approval of the March 5, 2018 Nevada Tax Commission Meeting Minutes.

Commissioner Wren motioned to approve the Minutes of the March 5, 2018 Nevada Tax Commission Meeting. Commissioner Rigby 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) Basic Aerie #2672 Fraternal Order of Eagles
  - b) Chin Chin LLC
  - c) Project Lion LLC
  - d) Triple C Corporation
  - e) Victorian Mart Inc.
  - f) Waheed D. Zaman and Christina M. Zaman

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

- 1) Peach State Acquisition Corporation
- 2) OS Operations
- 3) Valley Health System LLC
- 4) Southern Nevada Welding

- 5) McLane/Suneast, Inc.
- C. Approval of Refund/Credit Request in Excess of \$250,000:
  - 1) PayPal, Inc.
- D. Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure (Sales/Use Tax):
  - 1) The Antigua Group, Inc.
  - 2) Covercraft Industries LLC
  - 3) Hank's Clothing for Men and Women, Inc.
  - 4) Heatlink Group Inc.
  - 5) HUR USA, Inc.
  - 6) Manduka LLC
  - 7) Mathews & Parlo Carpet Wholesalers
  - 8) Quick Ship Treasures, Inc.
  - 9) Renown Regional Medical Center
  - 10) Renown South Meadows Medical Center
  - 11) Ring Inc. (fka Bot Home Automation, Inc.)
  - 12) Schneider Electric IT USA, Inc.
  - 13) Tweezerman International, LLC
  - 14) VIP Cinema, LLC
  - 15) La Tavola LLC
- E. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (sales/use and/or modified business tax)
  - 1) Sunrise Coffee, LLC
- F. Consideration for Approval of the Recommended Settlement Agreements and Stipulations (civil penalties)
  - 1) Discount Cigarette II Smoke Shop

Chairman DeVold disclosed that he is the Vice Chairman of Board of Directors of the Renown Health Systems Corporation and recused himself from voting on items D. 9) Renown Regional Medical Center and D. 10) Renown South Meadows Medical Center.

Commissioner Brown disclosed that he serves on the Renown Business Board and recused himself from voting on items D. 9) Renown Regional Medical Center and D. 10) Renown South Meadows Medical Center.

Commissioner Rigby asked to pull items D. 9 and D. 10 from the Consent Calendar.

Commissioner Witt moved to approve the Consent Calendar as a whole, excluding items D. 9 and D. 10. Commissioner Kelesis seconds the motion. All in favor. Motion passes.

Commissioner Rigby made a motion to approve items D. 9) Renown Regional Medical Center and D. 10) Renown South Meadows Medical Center. Chairman DeVold and Commissioner Brown recused themselves from voting. Commissioner Kelesis seconds the motion. All in favor. Motion carries.

#### IV. DIVISION OF LOCAL GOVERNMENT SERVICES:

- A. Consideration for Approval and Adoption of the 2018 - 2019 Ratio Study (Pursuant to NRS 361.333).

Chuck Bailey, Supervisor – Locally Assessed Properties, presented the 2018 – 2019 study. He stated the counties studied were Clark County, Esmeralda County, Eureka County, Lincoln County, Mineral County and Storey County. The assessed values should be at 35 percent. The statute affords a

margin of error with respect to measures of central tendency and should fall between 32 and 36 percent. For the properties studied, the median ratios for all property classes was satisfactory with the exception noted in Mineral County.

Commissioner Wren asked Esmeralda County about the use of Marshall & Swift for appliances and floor coverings.

Ruth Lee, Esmeralda County Assessor, responded the floor coverings were discussed and we are using Marshall & Swift. As for appliances, we have always considered them personal property.

John Leuck, Local Government Services Appraiser, seconded what Ms. Lee said. It was an error with regard to the floor covering allowance.

Commissioner Rigby stated the errors are rampant with regard to Mineral County. It is going to take an entire re-appraisal of the entire system and every field needs updating to make it correct.

Kevin Chisum, appointed Mineral County Assessor, agreed that there needs to be a re-appraisal of the entire county. Our goal this year is to reappraise the town of Hawthorne which is 44 percent of our entire county.

Jerrie Tipton, Mineral County Commissioner, stated we understand this is a systemic issue. 3.4 percent of land is private and this is our tax base. Of the 3.4 percent, 1.5 percent has taxable infrastructure on it. We currently do not have the money to hire a Chief Appraiser.

Commissioner Wren asked about the availability of the Department to assist Mineral County.

Jeff Mitchell, Deputy Director, responded the Department has always provided informal guidance. When it comes to more formal assistance, there can be a more formal request made to the Department. The cost would be charged to Mineral County, but we would provide certified appraisers.

Michelle Shafe, Clark County Assessor, has reviewed the Ratio Study and has no objection.

Jana Seddon, Storey County Assessor, has no objection to the Ratio Study.

Commissioner Brown made a motion to Adopt the 2018 - 2019 Ratio Study. Commissioner Kelesis seconds the motion. All in favor. Motion carries.

B. Discussion and Consideration for Approval for the 2019-2020 Personal Property Manual as authorized under NRS 361.227 and NAC 361.1365

Jeff Mitchell, Deputy Director, stated the Department held a workshop on April 2, 2018. There were normal changes that occur when property appreciates and depreciates, along with two small changes. On page 14, specific examples were added to the category of computerized equipment, including cash management systems. On page 40 an example of an electric vehicle charging station was added.

Commissioner Brown disclosed that the manual includes personal property relative to telecommunications. Commissioner Brown stated he is an employee of AT&T. This manual will not affect AT&T different than any other telecommunications provider.

Commissioner Rigby moved to approve the 2019-2020 Personal Property Manual as presented. Commissioner Witt seconds the motion. All in favor. Motion carries.

C. Discussion and Consideration for Approval of the 2019 – 2020 Improvement Factor Study (Pursuant to NRS 361.261(2))

William Chuck Bailey, Supervisor – Locally Assessed Properties, presented the 2019 – 2020 Improvement Factor Study. For this current study and proven factors, we had no assessors who did not either approve of the factor or that do not re-cost.

Commissioner Wren asked how many counties do not re-cost.

Mr. Bailey responded. The last time he checked the numbers there were five rural counties who still use or apply the improvement factors. The other 12 counties are re-costing each year.

Commissioner Rigby asked if the improvement factor is also used by the State for centrally assessed properties and mines.

Mr. Bailey stated it is used for mining property that the State does assess.

Commissioner Brown made a motion to approve the 2019-2020 Improvement Factor Study. Commissioner Wren seconds the motion. All in favor. Motion carries.

D. Review and Consideration for Adoption of Bulletin 208, 2019 - 2020 Agricultural Land Values and Open Space Property Procedures as authorized under NRS 361A.140 and NRS 361.325(1)(b)

William Chuck Bailey, Supervisor – Locally Assessed Properties, was present on behalf of the Department. An income stream is developed from information obtained from an annual survey of agriculture producers of alfalfa hay and pasture throughout the State. The response rate for the survey in 2017 was approximately 25 percent.

Commissioner Witt asked about marijuana being added to the report.

Jeff Mitchell, Deputy Director, responded marijuana is not included at this time.

Commissioner Witt made a motion to adopt Bulletin 208, 2019-2020 Agricultural Land Values and Open Space Property Procedures. Commissioner Rigby seconds the motion. All in favor. Motion carries.

E. Review and Consideration of Approval on the Renewal of the Residential Construction Tax – Churchill County School District

Kelly Langley, Budget Analyst III, was present on behalf of the Department of Taxation.

Commissioner Rigby asked when this tax was initially enacted and was it intended to sunset.

Ms. Langley stated it started in 2006 for Churchill County specifically. At that time the tax would be \$900 per residential construction. They were allowed up to \$1600 and cannot exceed that amount. It is based on population. They are allowed to renew every four years, unless their population exceeds 55,000. At this time the county's population is just under 24,000 or 25,000.

Commissioner Wren asked if there are any other counties utilizing this tax.

Ms. Langley stated we have five counties that utilize this right now.

Commissioner Brown made a motion to approve the renewal of the residential construction tax for Churchill County School District. Commissioner Wren 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) Michael and Suzane Sisco

Kathy Fey, Revenue Officer III, was present on behalf of the Department of Taxation.

Suzane Sisco, Taxpayer, was present.

Commissioner Rigby made a motion to approve the offer-in-compromise of Michael and Suzane Sisco. Commissioner Witt seconds the motion. Commissioner Wren - No. Commissioner Lipman - No. Chairman DeVold - No. Motion carries by majority.

2) Robert Calvert

Megan Pistoresi, Revenue Officer III, was present on behalf of the Department of Taxation.

Robert Calvert, Taxpayer, was present on the telephone.

Chairman DeVold disclosed that he has purchased items from the Taxpayer and the Taxpayer was a customer of his when he was at the bank. Chairman DeVold recused himself from voting.

Commissioner Wren motioned to approve the offer-in-compromise of Robert Calvert. Commissioner Rigby seconds the motion. Chairman DeVold abstained from voting. All in favor. Motion carries.

3) Claudia Perez

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

Claudia Perez, Taxpayer, was present.

Commissioner Rigby motioned to approve the offer-in-compromise of Claudia Perez. Commissioner Witt seconds the motion. All in favor. Motion carries.

4) Pamela S. Roybal

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

Pamela S. Roybal, Taxpayer, was present.

Commissioner Brown moved to approve the offer-in-compromise of Pamela S. Roybal. Second by Commissioner Witt. All in favor. Motion carries.

5) Paul Anderson

Leticia Baltazar, Revenue Officer III, was present on behalf of the Department of Taxation.

The Taxpayer was not present.

Commissioner Rigby moved to deny the offer-in-compromise of Paul Anderson. Commissioner Brown seconds the motion. All those in favor of denying the offer-in-compromise: Commissioner Wren - Yes; Commissioner Brown - Yes; Commissioner Rigby - Yes. Chairman DeVold - Yes. Commissioner Kelesis - No; Commissioner Lipman - No; Commissioner Bersi - No. Motion carries.

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

1) David Nicol

Sue Kessner, Revenue Officer III, and Megan Pistorosi, Revenue Officer III, were present on behalf of the Department of Taxation.

David Nicol, Taxpayer, was present.

Commissioner Rigby disclosed that she was contacted directly by Mr. Nicol multiple times. She forwarded any messages to the Chairman immediately and stated this does not sway her position.

Commissioner Lipman moved to uphold the denial of the offer in compromise of David Nicol.  
Commissioner Witt seconds. Commissioner Rigby - No. Commissioner Bersi - No. Motion carries by majority vote.

2) Stephen M. Lubawy

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

Stephen M. Lubawy, Taxpayer, was present.

Commissioner Wren disclosed he knows the Taxpayer's brother, Matt Lubawy, but does not believe there is a conflict.

Commissioner Witt moved to uphold the denial of the offer-in-compromise of Stephen M. Lubawy.  
Commissioner Rigby seconds the motion with the caveat that something more reasonable and workable be suggested. All in favor. Motion carries.

C. Taxpayer's Appeal of Administrative Law Judge's Decision pursuant to NRS NRS 372.145 and NAC 360.175:

1) El Tumi Restaurant

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

Raul Contreras is present on behalf of his parents, Susana and Jesus Contreras.

Commissioner Witt made a motion to uphold the decision of the Administrative Law Judge. Commissioner Rigby seconds the motion. All in favor. Motion carries.

2) Jack Rabbit Investments LLC

The Taxpayer and the Attorney General's Office stipulated to continue the hearing to the next Tax Commission meeting date.

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

1) Pahrump Valley Auto Plaza, LLC

John Sande IV, Esq. of Argentum Law appeared on behalf of Pahrump Valley Auto Plaza, LLC. Mr. Sande stated the relevant statute in this case is NAC 372.460. The appeal is regarding sales tax on repairs for motor vehicles. The question before the Commission is regarding the scope of the warranty and what repairs are conducted in conformance with the warranty and what are not. A manufacturer may issue a letter extending a warranty period on a defective part. This is not a goodwill repair.

David Pope, Senior Deputy Attorney General, appeared on behalf of the Department of Taxation. Mr. Pope stated the repairs at issue are not warranty repairs. Warranty repairs and warranties themselves are defined as "repairs covered by the limited warranty sold with the vehicle." In this case, the Department offered evidence that showed these limited warranties were all expired at the time the repairs were made and there is no evidence that the warranties were extended. The regulation is intended to work with the limited manufacturer's warranty, not an extended warranty or a separate program.

John Gibbons, General Manager, was appeared on behalf of Pahrump Valley Auto Plaza LLC. Mr. Gibbons stated a special coverage warranty repair is submitted to General Motors the same way a warranty repair is submitted during the 3-year and 36,000 mile warranty.

Commissioner Rigby made a motion to overturn the Administrative Law Judge's decision. Commissioner Brown seconds the motion. Roll Call Vote: Commissioner Kelesis – Yes; Commissioner Brown – Yes; Commissioner Rigby – Yes; Commissioner Witt – Yes; Commissioner Wren – Yes; Commissioner Lipman – No; Commissioner Bersi – No. Motion carries by majority.

E. Department's Appeal of Administrative Law Judge's Decision pursuant to NRS 370:

1) Smoking Hot LLC dba Discount Cigarettes #3

Hillary Bunker, Senior Supervising Deputy Attorney General, appeared on behalf of the Department. In January 2017, the Department seized two cigarette rolling machines and over 8,000 rolled cigarettes from the Taxpayer's retail location. Because the Taxpayer was operating without the proper licensing, no taxes were paid on the cigarettes and these products are not on the state's tobacco directory. In March 2017, the hearing officer ruled the seizure was proper because the Department was required to seize contraband tobacco products. In February 2018, the hearing officer overturned her earlier ruling, ordered the Department to return the untaxed product and dismissed the excise tax deficiency.

Karen Sarioul appeared on behalf of the Taxpayer. The Taxpayer did have a rolling machine business. We contacted the City of Henderson, State of Nevada and the federal government. The city said we were fine to move forward as long as we had a federal license. The company never received notification that we were operating without a license. We were then shut down by the State.

Commissioner Rigby moved to uphold the Administrative Law Judge's decision and limit it to the specific facts of this case and not as a precedence to allow others to have 13 months to comply. Commissioner Bersi seconds. All in favor. Commissioner Witt had exited the room and was not present during the vote. Motion carries.

F. Consideration for Adoption of Permanent Regulations pursuant to NRS 372.725:

1) Adoption of revised permanent regulation relating to sales and use tax; adopting provisions governing the application of sales and use tax to amounts charged for an order for the delivery of a basket, box or other arrangement containing food that is prepared for immediate consumption; and providing other matters properly relating thereto. LCB File No. R038-17

Shellie Hughes, Chief Deputy Executive Director, appeared on behalf of the Department of Taxation. LCB File No. R038-17 will amend NRS 372.230.

Hugh Goodwin with the Law Firm of DLA Piper in Palo Alto, California appeared on behalf of Edible Arrangements. The existing rule imposes the tax on the party that is delivering the goods. Orders may be taken by franchises in Nebraska for delivery in Nevada. A Nevada franchisee delivers the product and under the current rule they are responsible for paying the tax. In most cases they have no idea what the sales price was so, it is difficult to be accurate with respect to reporting the tax. With regard to the removal of the word "edible," the word "edible" becomes so commonly used from state to state, it could infringe on the ability to use the trademark. Nevada is the first state that we have confronted and we plan to confront other states. When this regulation was adopted in 1968, there were no edible food bouquet businesses. This puts us on equal footing as far as compliance with the floral industry.

Commissioner Lipman mentioned that edible marijuana is now legal in Nevada. Because of this change, Commissioner Lipman asked if this would include an edible marijuana bouquet.

Shellie Hughes replied this particular regulation is specific to food bouquets. If an issue with edible marijuana bouquets comes up, we will need to address it at that time.

There was no public comment on LCB File No. R038-17.

Commissioner Lipman made a motion to adopt LCB File No. R038-17. Commissioner Bersi seconds the motion. Commissioner Witt votes No. Motion carries by majority vote.

Commissioner Brown exited the meeting at 12:35 p.m.

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 is forwarding press releases, population estimates, and other information to the Commission and will continue to do so going forward.

With regard to late submissions of Nevada Tax Commission meeting materials, Director Anderson has sent out a directive to Department team.

In discussions with all but one of the commissioners, we thought it would be a good idea to have a training item on the agenda. Today we will be going through the Department's audit process.

B. Briefing from Jennifer Crandell, Deputy Attorney General, regarding public records update.

Jennifer Crandell stated the Nevada Supreme Court recently ruled on the Comstock case regarding public records and the use of personal devices. The case is in connection to communications made by a public entity on a personal device being considered a public record and discoverable. Communications to Ms. Crandell would be a public record, but privileged information.

C. For Information Only: Presentation on Audit Process.

Paulina Oliver, Deputy Director over Compliance - The Department has 43 auditors that report to nine audit supervisors who report to three audit managers and one tax manager over audit. We have one auditor in each of the following states: New York, Illinois, Texas, Florida, and two auditors in California. Due to lack of office space, starting in 2017, we allowed auditors to work from their home. The supervisors still work in the district offices. Our audit penetration is one percent of available accounts. From January 1 through March 31, we performed 1,965 audits with a total assessment of \$28,871,242. Of the accounts audited, about 12 percent were no changes, and 20 percent that were billed are petitioned or appealed. Most of these were resolved through the redetermination phase on which the taxpayer submits additional documentation. If it is not resolved through the redetermination process, it must then go to an administrative hearing with an administrative law judge.

David Pope, Senior Deputy Attorney General, asked how many times an audit case is reviewed before it is approved by a supervisor.

Paulina Oliver replied they are reviewed two times by a supervising auditor and then approved by a supervisor. If the case goes to hearing, a Deputy Attorney General is then assigned to the case.

Dena Smith, Chief Administrative Law Judge, introduced herself and stated she was present to answer any questions that may lap over into the hearing realm. Ms. Smith stated she will be giving a presentation to the Commission in the future.

VIII. Next Meeting Date: June 25, 2018

IX. Public Comment.  
There was no public comment.

X. Items for Future Agendas.  
No items were discussed.

XI. Meeting adjourned at 1:50 p.m.