

NEVADA TAX COMMISSION MEETING
MINUTES

August 16, 2021
9:00 a.m.

Members Present:

Jim DeVolld, Chairman
Francine Lipman, Commissioner
Ann Bersi, Commissioner
Randy Brown, Commissioner
H. Stanley Johnson, Commissioner
Tony Wren, Commissioner
Sharon Byram, Commissioner
Craig Witt, Commissioner

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

I. Public Comment:

Neil Jones provided both oral and written public comment. A copy of Mr. Jones's statement is attached hereto.

Shellie Hughes, Chief Deputy Executive Director, administered an oath to all parties testifying.

II. MEETING MINUTES:

- A. Consideration for Approval of the June 25, 2021 Nevada Tax Commission Meeting Minutes.

Commissioner Brown made a motion to approve the meeting minutes of the June 25, 2021, Nevada Tax Commission meeting. Commissioner Witt 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) Sig City Operating Company LLC
 - b) Oli-K LLC
 - c) YJS Inc.
 - d) HB Longley LLC

B. Waiver of Penalty and Interest Pursuant to a Request on a Voluntary Disclosure (Sales/Use Tax, Modified Business Tax and/or Commerce Tax):

- 1) Adobe Systems Inc.
- 2) AMF Automation Technologies LLC
- 3) Avista Technologies Inc.
- 4) CF Vegas Owner One LLC
- 5) Dame Products
- 6) FoodState Inc.
- 7) Hello Molly Pty Ltd.
- 8) Little Bipsy LLC
- 9) Loon LLC
- 10) Merle Norman Cosmetics Inc.
- 11) Paxton Access Inc.

- 12) Phenix Technologies Inc.
 - 13) Selfridges Retail Limited
 - 14) Shelterlogic Corporation
 - 15) Sunset Imports Inc.
 - 16) The Retrofit Source
 - 17) Torn Ranch LLC
 - 18) Vega Americas Inc.
 - 19) SmartCap LLC
 - 20) Tekscan Inc.
- C. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:
- 1) Jaylee Fence dba Park Pro Playgrounds
 - 2) Office Depot Inc.
 - 3) Wyndham Vacation Ownership
 - 4) Nevada Organic Remedies LLC (Retail Marijuana Tax)
 - 5) Nevada Organic Remedies LLC (Wholesale Marijuana Tax)
- D. 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) Howard Hughes Company LLC (NTC 20-102)
- E. Consideration for 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) Suite 160 Inc.
- F. Department’s Recommendation to the Commission for Approval of an Offer-In-Compromise pursuant to NRS 360.263:
- 1) Quirino Reynaga-Campos
 - 2) Pablo Reynaga
 - 3) Raquel Navarro
 - 4) Rosemary Savage
 - 5) Stephen Monceau
 - 6) Arnold Hyler
 - 7) Eleen Rivera
 - 8) Vincente Perez
 - 9) Essam Naim
 - 10) John Shewalter
 - 11) Kurtis Johnson
- G. Consideration for approval of payment of refunds in accordance with the Nevada Supreme Court’s Decision in The Legislature of the state of Nevada, et al. v. The Hon. James A. Settelmeyer, et al., Case No. 81924, affirming the final decision and judgment of the First Judicial District Court issued in Case No. 19 OC 00127 1B.

Commissioner Wren pulled Item III. D. 1) Howard Hughes Company LLC and Item III. G. for further discussion.

Commissioner Witt made a motion to approve the consent calendar, minus items III D. 1) and III. G. Commissioner Byram seconded the motion. All in favor. Motion carries.

Item III. D. 1) Howard Hughes Company LLC:

Commissioner Wren stated that he would prefer that this matter be heard before the Commission instead of being on the consent calendar. Commissioner Wren stated that he is concerned that a precedent will be set regarding remainder and new parcels.

Commissioner Brown stated he reached the same conclusion as Commissioner Wren regarding the remainder parcels.

Commissioner Byram shared concern that there were regulatory workshops, and again we are without a bright-line test and with uncertainty.

Jeffrey Mitchell, Deputy Executive Director, was present on behalf of the Nevada Department of Taxation.

Mary Ann Weidner, with the Clark County Assessor's Office was present.

Commissioner Lipman made a motion to approve the Administrative Law Judge's recommended decision. Commissioner Bersi seconded the motion. Roll Call vote: Commissioner Brown – Nay; Commissioner Lipman – Aye; Commissioner Bersi – Aye; Commissioner Johnson – Aye; Commissioner Witt – Aye; Commissioner Wren – Nay; Commissioner Byram – Nay; Chairman DeVold – Aye. Motion carries.

Item III. G. Consideration for approval of payment of refunds in accordance with the Nevada Supreme Court's Decision in The Legislature of the State of Nevada, et al. v. The Hon. James A. Settelmeyer, et al., Case No. 81924, affirming the final decision and judgment of the First Judicial District Court issued in Case No. 19 OC 00127 1B:

Commissioner Wren made a motion to approve the payment of refunds in accordance with the Nevada Supreme Court Decision. Commissioner Lipman seconded the motion. Commissioner Brown recused himself from this matter. All in favor. Motion carries.

IV. DIVISION OF LOCAL GOVERNMENT SERVICES:

- A. Department's Recommendation to Not Accept Jurisdiction of Appeal Filed According to NRS 361.4734
 - 1) Kimberly A. Levine

Jeffrey Mitchell, Deputy Executive Director, was present on behalf of the Nevada Department of Taxation.

Kimberly Levine was present and requested that an extension be granted so that she could retain counsel.

Chairman DeVold asked that Mr. Mitchell assist Ms. Levine in finding the correct jurisdiction. Mr. Mitchell agreed and stated that he believes the correct jurisdiction would be the City of Las Vegas.

Commissioner Brown made a motion to approve the Department's recommendation not to accept jurisdiction. Commissioner Lipman seconded the motion. All in favor. Motion carries.

- B. Consideration for Approval of a Reappointment to the Appraiser Certification Board:
 - 1) Sorin Popa

Jeffrey Mitchell, Deputy Executive Director, and Sorin Popa, Supervisor – Centrally Assessed Property, were present.

Commissioner Wren made a motion to approve the reappointment of Sorin Popa to the Appraiser Certification Board. Commissioner Byram seconded the motion and stated that Mr. Popa is great to work with and is very good at what he does. All in favor. Motion carries. Commissioner Lipman thanked Mr. Popa for his service.

V. COMPLIANCE DIVISION:

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

1) Jose Iglesias

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

Jose Iglesias was present.

Commissioner Lipman made a motion to approve the denial of the offer-in-compromise of Jose Iglesias. Commissioner Bersi seconded the motion. All in favor. Motion carries.

2) Allan Silberstang

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

Suzanne Warren, Esq. was present on behalf of Allan Silberstang. Ms. Warren stated that this is debt from Gambler's Trading Company, not Mr. Silberstang, and the Department has not made a responsible person determination.

Commissioner Byram made a motion to approve the denial of the offer-in-compromise of Allan Silberstang. Commissioner Brown seconded the motion. All in favor. Motion carries.

3) Juan Orozco-Gutierrez

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

Juan Orozco-Gutierrez was present on the telephone.

Commissioner Lipman made a motion to approve the denial the offer-in-compromise of Juan Orozco-Gutierrez. Commissioner Witt seconded the motion. All in favor. Motion carries.

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

1) Adidas America Inc.

Jennifer Roebuck was present on behalf of the Nevada Department of Taxation.

Commissioner Wren made a motion to approve the refund of Adidas America Inc. Commissioner Byram seconded the motion. All in favor. Motion carries.

2) Desert Research Institute

Jennifer Roebuck was present on behalf of the Nevada Department of Taxation.

Commissioner Brown asked for additional information pertaining to how DRI is involved in producing the National Finals Rodeo.

Ms. Roebuck stated there are multiple locations under the Desert Research Institute, including the UNLV Thomas and Mack Center and Sam Boyd Stadium.

Commissioner Lipman made a motion to approve the refund for Desert Research Institute. Commissioner Bersi seconded the motion. Commissioner Brown disclosed that his son is a student worker employed by NSHE and abstained from voting. Commissioner Lipman disclosed that she is employed by NSHE. Commissioner Lipman withdrew her motion and abstained from voting. Commissioner Bersi made a motion to approve the refund of Desert Research Institute. Commissioner Witt seconded the motion. All in favor. Motion carries.

3) Rocky Mountain Hospital and Medical Service Inc.

Brandon Mackie was present on behalf of the Nevada Department of Taxation.

Commissioner Byram made a motion to approve the refund of Rocky Mountain Hospital and Medical Service Inc. Commissioner Brown seconded 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) IPurchase Online d/b/a Vape Society Supplies

Hillary Bunker, Supervising Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. Ms. Bunker stated this stems from a seizure that the Department of Taxation performed on March 25, 2021. Despite being advised on numerous occasions to obtain the proper tobacco licensing, they failed to do so and continued to operate both purchasing and selling vapor products for approximately fifteen (15) months without obtaining licensing, paying taxes or submitting returns.

Will Gonzalez, Esq., was present on behalf of IPurchase Online dba Vape Society Supplies. Mr. Gonzalez stated he does not dispute the facts that Ms. Bunker mentioned. Mr. Gonzalez stated they believe that the seizure order was erroneous and contrary to the public policy of the state as the seizure order was the equivalent of giving a death penalty for the level of offense. IPurchase's business was destroyed and dozens of Nevadans lost jobs. They paid the applicable fees, had city licensure and were otherwise a properly tax-paying business. It is not unreasonable to assume that if they had timely applied for the state OTP license, they would have been awarded the license.

Commissioner Witt made a motion to uphold the Administrative Law Judge's decision. Commissioner Bersi seconded the motion. All in favor. Motion carries. Commissioner Brown commented that the taxpayer was not fully honest with the Department on several occasions.

2) Flexground Nevada, LLC

Andrew Glendon and Mr. Corey Hague were present on behalf of Flexground Nevada, LLC. Mr. Glendon stated Play It Safe is an equipment retailer that was registered with the Department of Taxation as a retailer. They delivered equipment into Nevada, which pursuant to the regulations, means that the sales of that equipment were placed in Nevada. Play It Safe had a local salesperson that resided in Nevada. The terms of the sales at issue were all negotiated in Nevada. The taxpayer was not charged Sales Tax by the retailer on the purchase of its equipment from Play It Safe. The Department is trying to charge the taxpayer Use Tax on these equipment purchases. This is improper

because Use Tax is applicable to out-of-state purchases of equipment or materials that are then stored, used or consumed in Nevada. The Use Tax is not applicable to in-state transactions.

Natasha Gebrael, Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. The Department moves for this Commission to uphold the ALJ's decision in its entirety for three reasons. The first reason is that under Nevada law, it was Flexground that bore the ultimate responsibility to pay this tax on these nine transactions. Second, even if this Commission would consider whether or not Play It Safe was or was not a Nevada company during the hearing, Flexground failed to establish that Play It Safe was a Nevada company and had sufficient nexus so that the Department can go after them for these transactions. And thirdly, Flexground is not entitled to a waiver of penalties and interest because it did not exercise ordinary care in determining the taxability of these transactions.

Commissioner Lipman suggested that the penalty and interest be removed. Commissioner Witt made a motion to uphold the Administrative Law Judge's decision. Commissioner Bersi seconded the motion. Commissioner Brown and Commissioner Lipman vote – No. Motion carries.

- D. 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) Stagecoach Bingo

The Petition for Reconsideration submitted by Stagecoach Bingo was withdrawn.

- 2) Miss Rodeo America

Jessica Prunty, Esq., Kiki Shumway, President, and Jeana Linton, Executive Director, were present on behalf of Miss Rodeo America. Ms. Prunty stated Miss Rodeo America's primary purpose is to promote western culture and heritage and to educate the public on topics of ranching, farming, agriculture, and the sport of rodeo. Governor Sisolak recognized their deep ties with the state of Nevada, and Governor Sandoval, on numerous occasions, has acknowledged their educational purposes. The Department denied the exemption request on two grounds: allegedly they are not operating in the state and that they are not using this property in furtherance of its purposes that it purchases here in the state of Nevada. Miss Rodeo America conducts its primary business here in Nevada. Annually, they hold a mid-year meeting in Las Vegas. They have a taxpayer identification number assigned by the Nevada Department of Taxation. They collect, remit and submit sales tax from sales of its gift shop. Similar to Miss Rodeo America, the Reno Rodeo puts on a one-week event, has similar corporate purposes, performances, corporate sponsors, charges an entrance fee. The Taxpayer Bill of Rights mandates that similarly situated taxpayers be treated the same.

Commissioner Byram asked the state to compare/contrast Miss Rodeo America and the Reno Rodeo Association. We want to be consistent in applications of exemption.

Andrea Nichols, Senior Deputy Attorney General, and Charlene Bernardo, Tax Program Supervisor, were present on behalf of the Nevada Department of Taxation. Ms. Nichols stated she could not comment on another taxpayer, and she is not familiar with the application of the Reno Rodeo Association. Ms. Nichols stated that she is guessing that the Reno Rodeo Association is strictly a Nevada corporation, and Miss Rodeo America is a Colorado corporation that organizes events all over the country. She mentioned that Miss Rodeo America must show their primary purpose as either charitable or educational. They applied as charitable, but they are kind of wiggling in their brief. Ms. Nichols stated she does not see their primary purpose as providing charitable services in the state of Nevada.

Commissioner Witt commented that he attended the Reno Rodeo and observed the current representative of Miss Rodeo America not only does an excellent job at the rodeo of representing her

organization, but she also did a great job of ushering critters – cows mostly, out of the rodeo arena. There is only 1.3 percent of Americans now involved in agriculture. In Section 1 on Page 63 of the brief, it states three times “This corporation shall be organized and operated exclusively for charitable and educational purposes.” It also says “This corporation shall hold its primary purpose to be promoting the western culture and way of life by educating the general public on topics including ranching and farming heritage, the agriculture industry and the sport of rodeo.”

Commissioner Lipman stated that she does see a distinction between the Reno Rodeo Association and Miss Rodeo America. One is a local Nevada entity that is promoting agricultural activities and rodeo in Northern Nevada, and Miss Rodeo is a national organization that happens to have its annual event in Las Vegas.

Commissioner Brown stated these are apples and aardvarks in comparison. The Reno Rodeo Foundation is made up of local Nevadans who serve on the board and volunteer.

Commissioner Lipman made a motion to deny the Petition of Reconsideration of Miss Rodeo America. Commissioner Brown seconded the motion. Commissioner Witt voted - No. 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).

The commissioners had no questions.

VII. BRIEFING:

- A. Briefing to/from the Commission and the Executive Director. (for discussion only)

Shellie Hughes, Chief Deputy Executive Director, for Melanie Young, Executive Director: Director Young's last day with the Department as Executive Director is August 20th. She is transitioning to the Governor's Finance Office as budget administrator. She wanted me to let you know that she found it an honor and privilege to work with every one of you. She also wanted to share with you how proud she is of Department staff and how hard they work every day. These past two and a half years, we have faced many challenges. Our credibility was questioned over the cannabis licensing, and we have faced an unprecedented global pandemic. Being an essential agency where our work is critical to support government service, our staff have worked through the ever-changing environment knowing the value and work they perform. Even though we faced many challenges, we still performed and improved the services to our taxpayers such as implementing credit cards and offering tax amnesty. Director Young wanted to take this moment to recognize the hardworking employees of the Department and to tell you that this agency is the best in the state.

Secondly, Director Young also has a briefing for you on the Modified Business Tax refunds. The number of taxpayers affected by the Supreme Court decision is 37,113. The total amount refunded taxpayers are estimated to be \$80.3 million dollars, which includes taxes and interest due to the taxpayers. Since the Supreme Court decision on May 13th, the Department has been working on the refund plan, developing solutions and meeting with stakeholders which includes the Treasurer and Controller's offices. To date, the Department has absorbed the costs and provided resources for planning and development of the solution for initiating the refund checks. The Department has taken the following steps to initiate the refunds. We sent notices to taxpayers requesting that they update their addresses and ensure their tax records are complete, we provided a press release requesting taxpayers to contact the Department and we utilized social media to get information out to taxpayers. We extended our call center hours for a two-week period to allow for taxpayers who needed the

ability to communicate outside of normal business hours. We assigned revenue officers to reach out to taxpayers who may have invalid addresses or other taxpayer issues that would prevent the Department from issuing the refund checks. It is estimated there are 15,000 taxpayers who need intervention of Department staff to accurately process the refund amounts. We sent the first date of file to Wells Fargo for printing of the refund checks. With this first file, 22,621 taxpayers will receive refunds in the amount of \$30.6 million dollars. The Department will continue to process the remaining refunds as taxpayers respond to the Department's inquiries to ensure the completeness of their taxpayer records and verify that we have valid addresses. We will be doing taxpayer outreach to be able to process the remaining refunds as quickly as possible. We are asking that any taxpayer who has not received their refund checks in the next few weeks to reach out to the Department to discuss any outstanding items that may be needed to issue their refunds. Additionally, the Department has a team of employees who are working through each taxpayer account to validate the credit so we can process the remaining refunds. It is estimated that this will be an ongoing process, and the checks will be distributed on a monthly basis during the weeks of September 13th, October 11th, November 15th, and December 13th. After the end of that period, the Department will evaluate how many refunds are remaining and when the refunds will be completed.

At the previous Tax Commission meeting, Chairman DeVold asked us to look into the volume of insurance premium tax refunds and a potential solution. To summarize, the Department automatically applies credits received from the Division of Industrial Relations. However, these credits can be used in multiple years. Therefore, we are looking for a system solution to no longer automatically apply the credits, but to have the taxpayer take the credit on their tax returns. Jo Lynn Smith is available for questions.

VIII. Next Meeting Date: October 4, 2021

IX. Public Comment

There was no public comment.

X. Items for Future Agendas. (for discussion only)

Chairman DeVold asked that Shellie Hughes, Chief Deputy Executive Director, provide information relating to how the Desert Research Institute is involved with live entertainment events in connection to Item V. B. 2).

XI. Meeting adjourned at 12:18 p.m.

PUBLIC COMMENT FOR AUGUST 16, 2021 TAX COMMISSION MEETING

I ask that this statement be included in the minutes of this meeting.

My public comment is a follow up to my public comment at the June 25, 2021 Tax Commission meeting regarding the apparently deceptive financial practices of Nye County and the Town of Belmont, which, with the full knowledge and backing of Nye County defrauds the government, and its citizens, of tax revenues. The invented Town of Belmont is not a legitimate governmental entity or local government.

This commission is the head of the Department of Taxation and is designed to supervise the overall administration and operations of the Department of Taxation. This commission has the statutory authority to make decisions to ensure that the application of taxes is done consistently among taxpayers and among various taxes.

In 1991 the Legislature of Nevada enacted a "Taxpayers' Bill of Rights" (NRS 360.291) which laid out the rights and responsibilities of taxpayers. This statute mandated that the Department of Taxation adopt regulations to carry out the provisions of the statute. The statute (NRS 360.293) established provisions for how and when the Department shall respond to written requests from taxpayers.

Nowhere in the statutes of this state are there provisions for imaginary entities to be landowners or considered as being tax-exempt. But, it appears that fictitious entities have more rights in being protected and to avoid paying taxes than the taxpayers of this state do in trying to get these phantom entities to abide by the established laws and have the persons associated with them held accountable and responsible for their actions.

In the nearly 15 months since these issues were first brought to the attention of the Department of Taxation in an email to Mr. Jeffrey Mitchell on May 19, 2020, no responses to any written requests have been forthcoming from the Department.

It has been over a year and a half since I sat before the Tax Commission at your January 27, 2020 meeting, to publicly voice taxpayer concerns to the commission regarding other questionable financial practices of Nye County. Again, nothing comes of these stated concerns to the Department.

I have submitted a petition for an advisory opinion from the Department, which is attached to my previously submitted written public comments for this meeting.

I look forward to the prompt written responses from the Department, Tax Commission and Committee on Local Government Finance to these submitted written requests and the courtesy, fairness, and common-sense treatment of concerns of a taxpayer as are mandated by statute.

Respectfully,

Neal Jones
