

NEVADA TAX COMMISSION MEETING  
MINUTES

October 4, 2021  
9:00 a.m.

Commissioners Present:

James DeVold, Chairman  
Tony Wren, Commissioner  
Craig Witt, Commissioner  
Sharon Byram, Commissioner  
Randy Brown, Commissioner  
Ann Bersi, Commissioner  
Francine Lipman, Commissioner

Commissioners Absent:

Harold Stanley Johnson, Commissioner

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

I. Public Comment.

There was no public comment.

Director Hughes administered an oath to all parties testifying.

II. Meeting Minutes:

A. Consideration for Approval of the August 16, 2021 Nevada Tax Commission Meeting Minutes.

Commissioner Brown made a motion to approve the minutes of the August 16, 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) Highway 95 Fuel & Food Inc.
- b) China Garden Spring Creek Inc.
- c) Facility Concession Services Inc.
- d) Juice Box LV LLC
- e) Mas We Three Inc.
- f) Sierra Elegance Photography LLC
- g) Thai Thai by Kamol LLC
- h) ACET LLC
- i) Inspire By Design LLC
- j) Hana Garden Inc.
- k) Darkshot Coffee LLC

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

- 1) Brake Business LLC
- 2) Bystronic Inc.
- 3) Caden Lane

- 4) Cutsforth Inc.
  - 5) Duke Manufacturing Company
  - 6) Green Light National LLC
  - 7) Impact XM Inc.
  - 8) Key Resin Company
  - 9) Medelita
  - 10) MET International
  - 11) Pinpros Inc.
  - 12) Progressive Business Publications
- C. Waiver of Penalty and/or Interest Pursuant to NRS 360.419 that exceeds \$10,000:
- 1) The Hertz Corporation
  - 2) MDC Restaurants LLC
  - 3) MMR Subway Inc.
  - 4) Takeda Pharmaceuticals America
- D. Department's Recommendation to the Commission for Approval of an Offer-In-Compromise pursuant to NRS 360.263:
- 1) Jonathan Snyder
  - 2) Timothy Gallock
  - 3) Jack Peron
  - 4) Teresa Bassett

Commissioner Witt pulled Item III. B. 6) Green Light National LLC for further discussion.

Item III. D. 1) Jonathan Snyder was continued to a future Nevada Tax Commission meeting.

Commissioner Brown made a motion to approve the Consent Calendar, excluding items III. B. 6) and III. D. 1). Commissioner Lipman seconded the motion. All in favor. Motion carries.

Item III. B. 6) Green Light National LLC: Commissioner Witt asked that the Department explain the taxable sales figures.

Jennifer Roebuck was present on behalf of the Department. Ms. Roebuck explained that there was a one-time situation where they did have a large sale.

Commissioner Witt made a motion to approve Item III. B. 6) Green Light National LLC. Commissioner Wren seconded the motion. All in favor. Motion carries.

IV. DIVISION OF LOCAL GOVERNMENT SERVICES:

- A. Taxpayer's Appeal of the Treasurer's Denial of Waiver of Penalty and/or Interest per NRS 361.4835 (Clark County):
- 1) ShuoJu Yu

Kevin Yu was present on behalf of ShuoJu Yu.

Echo Lim, translator with Transperfect, was present.

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

Commissioner Lipman made a motion to deny the appeal of ShuoJu Yu. Commissioner Bersi seconded the motion. All in favor. Motion carries.

B. Determination and Allocation of Certification of Centrally Assessed 2022-2023 Secured and 2021-2022 Unsecured Unitary Property Valuations and Assessments pursuant to NRS 361.320, NRS 361.321 and 361.323.

Sorin Popa, Supervisor - Centrally Assessed Properties, presented this matter on behalf of the Nevada Department of Taxation. Mr. Popa reported that after submitting the report, it was learned that the private ECDC Environmental Number 683, inadvertently reported incorrect mileage, which led to a change in the assessed value from \$32,143.84 to \$19,018.47, leading to a total assessed value change for car lines from \$4,321.425.09 to \$4,308.299.72. If the Commission would certify the new number, it could be processed promptly, otherwise, it will need to be handled administratively.

Jeffrey Mitchell, Deputy Executive Director, was present on behalf of the Nevada Department of Taxation. Deputy Director Mitchell explained that if the change is done administratively, it would need to be appealed to the State Board of Equalization in January.

Commissioner Brown disclosed that he is employed by a telecommunication company in Nevada. It is not centrally assessed, but this does affect the business like any other. Commissioner Brown stated that he will vote on this matter.

Commissioner Byram made a motion to approve the certification of centrally assessed 2022-2023 secured and 2021-2022 unsecured unitary property valuations and assessments pursuant to NRS 361.320, NRS 361.321 and 361.323, with the correction noted by Mr. Popa. Commissioner Bersi seconded the motion. All in favor. Motion carries.

C. Review and Consideration to Amend Previously Adopted Bulletin 211 – 2022-2023 Agricultural Land Values and Open Space Property Procedures to include tables relating to the valuation of open-space golf course land and improvements.

Cheryl Erskine, Coordinator - Assessment Standards for Local Government Services, presented this matter on behalf of the Nevada Department of Taxation. She stated that this addendum is prepared in accordance with NRS 361A.225 and is being presented now due to the Consumer Price Index Table published by the Bureau of Labor Statistics not being updated until after July of this year.

Commissioner Byram made a motion to amend the previously adopted Bulletin 211 for the 2022-2023 agricultural land values and open space property procedures to include tables relating to the valuation of open space golf course land and improvements. Commissioner Wren seconded the motion. All in favor. Motion carries.

V. COMPLIANCE DIVISION:

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

- 1) Shafik Brown

Paul Connaghan was present on behalf of Shafik Brown.

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

Commissioner Byram waived any objection to the representation by Mr. Connaghan and moved to uphold the denial of the Offer-In-Compromise of Shafik Brown. Commissioner Wren seconded the motion. All in favor. Motion carries.

Commissioner Brown stated that he concurred with the Department's recommendation and that he supports the Department in pursuing a responsible person designation against Mr. Brown, as well as revoking the seller permits of all associated businesses that are operating today.

- B. Approval of Refund/Credit Request in Excess of \$250,000:
  - 1) National Union Fire Insurance Company of Pittsburgh PA

Jodie Tonkin, Tax Program Supervisor, was present on behalf of the Department.

Commissioner Lipman made a motion to approve the refund of National Union Fire Insurance Company of Pittsburgh PA. Commissioner Byram seconded the motion. All in favor. Motion carries.

- 2) Markel Insurance Company

Jodie Tonkin, Tax Program Supervisor, was present on behalf of the Department.

Commissioner Lipman made a motion to approve the refund of Markel Insurance Company. Commissioner Bersi seconded the motion. All in favor. Motion carries.

- 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) The Folded Flag Foundation

Michael Cabrera, Esq., was present on behalf of The Folded Flag Foundation.

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

Chairman DeVold asked Deputy Attorney General Nichols if she is in agreement that this matter is very close to being granted with the addition of a couple of pieces of documentation that is needed from Folded Flag.

Ms. Nichols agreed and stated the Department did deny this matter because of lack of information. The Department would like to see something showing that they are actually providing charitable services in Nevada. In the documents that have been supplied, there is nothing showing that they are providing anything charitable in Nevada currently.

Mr. Cabrera stated there was quite a bit of information provided. An IRS Form 990 was provided which demonstrates a lot of the questions that the Department had, and a list of expenditures which are being made in Nevada. Mr. Cabrera stated that in his view, there is enough before the Commission to outright approve this. If the Commission's preference is to remand this back to the Department, we will provide whatever information that the Department needs. We have been asking what is needed over the last few months and we have not received a response.

Commissioner Brown made a motion to remand the matter back to the Nevada Department of Taxation. Commissioner Lipman seconded the motion. All in favor. Motion carries.

- D. Taxpayer's Appeal of Administrative Law Judge's Decision pursuant to NRS 360.245 and NAC 360.175:
  - 1) Westco Distribution LLC

Richard Schonfeld, Esq., and Nour Bitar, Corporate Representative, were present on behalf of Westco Distribution LLC. Mr. Schonfeld mentioned, that at the administrative hearing, the Department acknowledged and the investigator testified that the basis for the seizure was that the appellant, Westco Distribution LLC, was allegedly using a company called TForce Logistics as an unlicensed logistics company. And therefore, the OTP was subject to seizure. Ultimately, the Department is seeking to destroy that property. Under Nevada Revised Statute 370.547, a logistics company is expressly defined, and the definition of a logistics company is a company that is authorized by a wholesaler of OTP to quote, "Temporarily store, fulfill orders for and coordinate the transport or delivery of OTP." The evidence only supported the temporarily store and not the other requirements necessary to find that TForce Logistics was in fact a logistics company related to the services being provided to Westco distribution. Not only is there insufficient evidence in the record to support the findings that TForce acted as a logistics company, there's insufficient authority under the law to seize and destroy the property under NRS 370.575, but it also boils down to a violation of the Eighth Amendment to the United States Constitution which prohibits excessive fines and penalties.

Hillary Bunker, Supervising Senior Deputy Attorney General, was present on behalf of the Nevada Department of Taxation. At the original hearing, the Department presented evidence of a long-established relationship between Westco's owner and employees of TForce Logistics where there were over 100 transactions of cross docking OTP shipments. The Department has also continuously argued that even if Westco's contention was that TForce logistics was simply acting as a storage facility, Westco is not permitted to use a secondary unlicensed location for their wholesale business. Westco's argument that TForce Logistics was not acting as a logistics company under NRS 370 is attempting to draw away attention from a central issue. It is illegal under NRS Chapter 370 for Westco to store OTP at a secondary unlicensed location. The Department respectfully requests that the Commission uphold the final decision issued by the hearing officer on July 14th.

Damon Hernandez was present on behalf of the Nevada Department of Taxation. Mr. Hernandez added that when he interviewed the warehouse manager, he specifically said that this was done on a cash basis. He also confirmed that there were no records of the transactions.

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

- E. Discussion and possible approval of Tax Bulletin 21-0001 regarding the shipment of Liquor directly to Nevada residents and statutory changes brought by Senate Bill 307 (2021).

Shellie Hughes, Executive Director, presented Tax Bulletin 21-0001 to the Commission. With passage of Senate Bill 307 during the 81st Legislative Session, as of July 1st, 2021, a supplier can only directly ship 12 cases or less of wine to Nevada residents per year for personal or household use. The bill removed the word "liquor" from the statutory language and replaced it with wine. The bulletin also defines a designated agent and indicates that a supplier can designate an agent to sell its products to importers into Nevada. The agent must be registered with the Department as a supplier. There has not been any opposition to this tax bulletin. Director Hughes asked that the Commission approve and adopt Tax Bulletin 21-0001.

Jo Lynn Smith, Tax Manager for the Nevada Department of Taxation, was present on behalf of the Department.

Commissioner Brown disclosed that his relative is in the liquor wholesale business in Nevada. Commissioner Brown abstained from voting on this matter.

Correction on Page 2. The word “Pursuant” is spelled incorrectly.

Commissioner Lipman made a motion to approve Tax Bulletin 21-0001. Commissioner Byram 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).C
- B. 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.

Shellie Hughes, Executive Director for the Nevada Department of Taxation:

Director Hughes introduced Sarah Glazner as the new management analyst over the executive review section. George Hritz retired from this position in June. This position oversees the hearing process, and you may occasionally see her testifying on appeals for late hearing requests.

As an update on the MBT refunds, you may recall at the beginning of this process, the Department estimated that approximately \$80.3 million in refund checks would be sent out to 37,000 taxpayer accounts. Currently, we have issued \$52.4 million refund checks to approximately 27,000 accounts. This leaves approximately \$27.9 million remaining to be sent to approximately 10,000 accounts. For these remaining accounts, taxation staff will continue to work on ensuring the completeness of taxpayer records and obtaining valid addresses. As these records are updated, refund checks will be issued on a monthly basis during the weeks of October 11th, November 15th, and December 13th. The Department is anticipating getting most of these refunds out by the end of the year. We are asking taxpayers to call our call center if a refund is expected and has not been received to date.

Another matter that was recently brought to our attention is our compliance with the Streamlined Sales and Use Tax Agreement. Nevada was recently found to be out of compliance with this agreement due to Senate Bill 440 which provides a sales tax holiday for National Guard members. The Streamlined Governing Board is meeting this week for final action, and I will keep the Commission updated on the governing board's decision and how Nevada will be moving forward to correct this issue.

At the last Commission meeting, there were several questions regarding the refund of Live Entertainment Tax to the Desert Research Institute. Several governmental entities are included as one entity with a single Nevada taxpayer identification number. Desert Research Institute is not registered for the Live Entertainment Tax but is listed as the main entity on this account. All of the entities on this account are in our system by location number. Desert Research Institute is one of the entities listed as location number 002, and as a result of its Modified Business Tax registration, Desert Research Institute also became the main entity of the account as location 000. The credit refund requests for the Live Entertainment Tax were actually submitted for location 004, which is the Sam Boyd Stadium and location 005, which is UNLV Thomas and Mack Center. These are the entities that will be receiving the refund not Desert Research Institute.

And lastly, this week is staff appreciation week at the Department. The Department could not do what we do without each and every one of our staff members, and I want to thank everyone for their hard work and dedication. The Department has awesome staff, and I want to make sure they are recognized here today.

Chairman DeVold and Commissioner Lipman thanked the Department's staff.

VIII. Next Meeting Date: December 6, 2021

IX. Public Comment.

There was no public comment.

X. Items for Future Agendas.

No items for future agendas were discussed.

XI. Meeting adjourned at 11:01 a.m.