

# Oregon State Board of Tax Practitioners Board Meeting Minutes

**Meeting Date:** May 14, 2009

**Time:** 9:08 a.m. – 3:52 p.m.

**Location:** Morrow Crane Building, Salem, Oregon

**Attendees:** Marilyn Johnston (Board Chair)  
 Alan Twombly (Vice-Chair)  
 Merry VanAtta  
 Toni Ellsworth  
 Jess Gutierrez  
 Dorothy Hudson  
 Janis Salisbury

**Guests:** Susan Parks, OAIA  
 Judith Wilkins, OATC

**Staff:** Ron Wagner, Executive Director  
 Monica J. Walker, Senior Comp Specialist/Investigator  
 Jane Billings, Exam & Education Coordinator  
 Marika Dwyer, Licensing Specialist

ITEM	ACTION / DISCUSSION
Johnston called the meeting to order at 9:08 a.m.	
Roll called.	Board members present: Johnston, Twombly, Ellsworth, Hudson, VanAtta, Gutierrez and Salisbury. Johnston reminded attendees of Board meeting protocol.
Approval of meeting minutes.	<p><b>Motion:</b> VanAtta made a motion to accept the following Board meeting minutes with corrections as reviewed:</p> <ul style="list-style-type: none"> <li>• January 8, 2009</li> <li>• January 29, 2009</li> <li>• April 9, 2009</li> </ul> <p>Motion passed. Ayes: Salisbury, Gutierrez, Hudson, Twombly, Johnston, Ellsworth, and VanAtta.</p> <p>Board meeting minutes are located on the Tax Board Web site at:  <a href="http://www.oregon.gov/OTPB/Meeting_Minutes.shtml">http://www.oregon.gov/OTPB/Meeting_Minutes.shtml</a></p>
<b>Administration Report</b>	
Budget reported by Ron Wagner.	<p>BRIO reporting through March shows lower revenues as expected for the last couple of months. \$581,519 was the current ending balance. Wagner has projected \$700,000 by the end of the biennium. This is high due to one penalty assessment and the personal services savings throughout the current biennium.</p> <p>In January of odd numbered years the Board is required to provide an ending balance report to the Department of Administrative Services (DAS). Senator Boquist requested a copy which Wagner sent him. There is little chance that the legislators can take part of that ending balance and apply it to the general fund. Wagner suggested reviewing the fee structures again, and Gutierrez reminded the Board that</p>

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	<p>money should be earmarked for compliance staff or public awareness.</p>
<p>Outreach and Communication</p>	<p>Wagner sent out an e-mail to Board members regarding a feature story on the home page of the Oregon Web site. This feature story ran for two one-week intervals. February 26–March 6, 2009, and April 3–April 10, 2009. In addition, there are three weeks reserved for 2010 to use this Web avenue as a resource.</p> <p>The Board revised the consumer protection brochures and printed in both English and Spanish. We provided copies to all Department of Revenue (DOR) field offices and the Salem and Portland IRS offices. It was suggested to distribute next year in January when W-2s are mailed and people pick up tax forms. Wagner will also coordinate with DOR to see if we can include the brochures in their mailings to post offices and libraries. We also created a consumer alert flyer for community bulletin boards to remind taxpayers that anyone who prepares tax returns for a fee must be licensed. This information is already included in the Oregon tax booklets. Wagner will work with DOR to see if the information can be placed in a more easily seen spot in the booklets. Wagner also worked with Tony Green, media relations, Department of Justice, to issue a press release.</p>
<p>Compliance</p>	<p>Wagner and Walker did 20 to 30 friendly field visits. The visits check such things as having the license and registration posted in public view, locking up and shredding confidential material, and generally meeting the requirements of the rules. It is good for the Board to have a presence, and for people to know that there will be spot checks. Gutierrez suggested noting this in the Tax Board Bulletin newsletter as well as informing the tax consultants' organizations.</p>
<p>Legislative Activity</p>	<p><b>Senate Bill 172</b>, the legislative concept to expand the Board's jurisdiction to include those who prepare corporate, partnership, and trust/estate returns, went to hearing in late January. Johnston and Twombly testified at the Senate committee hearing, and it was well received. But there were many questions at the House committee hearing, and although the bill got 80 percent of the way there, it appears there aren't enough votes for it to pass.</p> <p><b>Senate Bill 690</b>, submitted by DOR, can benefit our investigations by not limiting the amount of information they can share. We would receive copies of complete returns.</p> <p><b>Senate Bill 865</b> regarding jurisdiction over the bookkeeping industry did not make it out of committee.</p> <p><b>Senate Bill 873</b> to eliminate or reduce various boards and commissions' budgets, thus reducing the Tax Board's budget by 17 percent didn't even get a hearing.</p> <p><b>House Bill 3104</b> requiring agencies to add a question regarding receipt of information about veteran's benefits has not gone to the floor yet.</p> <p><b>House Bill 3163</b>. Its first draft took all issues regarding refund anticipation loans (RALs) and moved them over to the Department of Consumer and Business Services (DCBS). Licensees who offer RALs would be required to file for a license annually with DCBS. This is an area where the consumer can be hurt with interest rates and exorbitant fees. A later version of the bill left jurisdiction of the RALs with the Board</p>

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	<p>of Tax Practitioners. The bill would have practitioners indicate on their annual renewal that they would offer RALs, rather than need to file a separate annual license for offering RALs. Unfortunately this bill has died. The Board can work with Representative Holvey to strengthen the rule or create legislative concepts for the next session ('09-'11).</p> <p><b>Senate Bill 5546</b>, our budget bill, has passed both chambers and will go to the Governor's office to be signed next. (<b>Note:</b> The Board's Budget was signed by the Governor on 05/26/09.</p>
Ethics Issue	<p>Wagner stated that he received an inquiry from a licensee and agreed that he would bring this issue to the Board. When a consultant is preparing a return and the client has gambling winnings, is it a violation of ethics if a practitioner does not require the taxpayer to get statements of gambling winnings and losses from the casino? Members felt this is an audit issue, but may want to consider including an article in the newsletter.</p>
Office Efficiencies	<p>Board office now has a fax/copy/scanning machine and forms design software. Our temp employee is now on standby as needed to meet our goal of completing renewals within a week of receiving them. The complaints database will be done by the end of the biennium and is now in the testing phase.</p>
Reconfirmation of Board Members	<p>Board members Toni Ellsworth and Dorothy Hudson have both been reconfirmed by the Senate. Merry VanAtta's term will end on the 31<sup>st</sup> of this month. There has been a notice sent out asking for interest in becoming a Board member. Twombly's term ends in September, and Wagner is working on his reconfirmation. New Board member appointments will be postponed until the fall, so VanAtta has volunteered to stay on until there can be a replacement made. Ellsworth shared about State Board member training. The next class will be September 15<sup>th</sup> and is recommended as a good refresher for the group.</p>
CAFR Gold Star Award	<p>The Tax Board received the State Controller's Gold Star Certificate for providing accurate and complete fiscal year end information in a timely manner. It's nice to be recognized for the hard work that Suzanne Primm does.</p>
E-File	<p>Wagner received a call from Karen Gregory, the Deputy Director from the DOR, talking about an e-file mandate, particularly because of the budget woes. DOR provided a fiscal impact statement to the legislators saying that if all preparers who prepared more than 50 returns a year used e-file, DOR would have saved \$336,000 in agency processing costs, if this mandate had been in place. Wagner will get more information from DOR about how this might affect licensees.</p>
<p>Board Meeting Break 10:37 a.m.-10:55 a.m.</p>	
<p><b>Exam and Education Report</b></p>	
Reported by Jane Billings.	<p>The number of applications for taking exams has gone down considerably, allowing time to concentrate on item writing committees and the Instructors' Workshop preparation. The building at Chemeketa has been reserved for the Board administered exam on December 12, 2009. The renewals for the 80-hour basic course have been sent out to sponsors. Billings is working on updating statistics on the Web site.</p>

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The Board members were provided copies of the instructor pass rates. Staff will take action on instructors with low pass rates if instructed to do so by the Board. The rule allowing the Board to take action is OAR 800-015-005. The group discussed how colleges and sponsors meet Oregon Administrative Rule (OAR) requirements and how to handle poor pass rates. It was suggested that the Board send a letter to instructors with a pass rate of 60 percent or below expressing concern and suggesting they attend the Instructors' Workshop. For instructors with excellent pass rates, the Board will send a kudos letter and information about the upcoming Instructors' Workshop. The sponsors will receive a copy of the pass rates as well.

The initial item writing committee workshops that were held in April went very well. There were 20 participants who created approximately 26 new questions, 20 of which the Board accepted. The Board created an additional 20 questions. The preparer item writing committee is scheduled for June 3<sup>rd</sup> and 4<sup>th</sup>, 2009. Exam test takers have been recruited. Barbara Jenkins is on contract as the Board's exam consultant.

### Continuing Education Evaluations

Sponsor	Course Title	Hours Requested	Hours Approved	Comments	Reviewer
CCH	Multistate Corporate Income Tax: Sales Factor		Denied	Unable to locate online to evaluate	Johnston
CCH	"3 Others on Sales and Use Taxes"		Denied	Content Not Applicable	Johnston
Pacific NW Tax School	Self Employment Income	6	4	Insufficient Number of Questions	Twombly
Professional Education Services	Tax Implications of the 2009 Stimulus Bill	4	3		Gutierrez
Gleim Publications	Income Tax Update	4	3		Gutierrez
Gleim Publications	Tax Practice Before the IRS	4	3		Gutierrez
Western CPE	Benefits & Employee Compensation	4	3		Gutierrez
Western CPE	American Recovery & Reinvestment Act of 2009	4	3		Gutierrez
Western CPE	Tax Planning for Investors (DVD)	6	4		Gutierrez
Western CPE	IRA Distribution Planning (DVD)	8	6		Gutierrez
Western CPE	Mathematics of Wealth Transfer Planning (DVD)	8	6		Gutierrez
Western CPE	Post Mortem Estate Planning (DVD)	6	4		Gutierrez

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### Continuing Education Evaluations (continued)

Sponsor	Course Title	Hours Requested	Hours Approved	Comments	Reviewer
A+ Tax Educators	Introduction to C & S Corporations	35	20		Gutierrez
Bisk Education	"20 courses"		Denied	Did not meet the OAR requirements	Hudson
Bisk Education	Disaster Tax Consideration	3	1		Hudson
Bisk Education	Form 1120S: General Consideration	5	2		Hudson
Western CPE	Tax Consequences of Interest and Debt	3	2		Salisbury
Western CPE	How to Plan for Retirement	3	Denied	Not related to personal income tax	Salisbury

**Motion:** Twombly made a motion to accept the continuing education hours as recommended by the Board reviewers. Motion passed. Ayes: Salisbury, Gutierrez, Twombly, Ellsworth, Hudson, and Johnston. Nays: VanAtta.

### Lunch 12:10 p.m.

Johnston reconvened the Board meeting at 12:57 p.m.

### Item Writing Committee Work Sessions / Board Meeting Dates

**Date Changes** **Motion:** VanAtta made a motion to change the Board meeting and work session dates from July 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 2009 to July 21<sup>st</sup>, 22<sup>nd</sup>, and 23<sup>rd</sup>, 2009. Motion passed. Ayes: Salisbury, Gutierrez, Hudson, Ellsworth, VanAtta, Twombly, and Johnston.

### Instructors' Workshop

The draft agenda for the Workshop was distributed. Billings thanked Hudson and Salisbury for their help in organizing the event, which is scheduled for the Clackamas Community College Wilsonville Training Center on August 4, 2009. Lunch is not provided. Billings shared the highlights and costs with the Board. Two hours of continuing education (CE) are approved. The Board suggested providing handouts for attendees to take away from each presentation. Future workshops were discussed.

**Motion:** Twombly made a motion to adopt the agenda and grant two hours of CE. Motion passed. Ayes: VanAtta, Hudson, Ellsworth, Gutierrez, Salisbury, Twombly, and Johnston.

### Waiver Requests

**Resident Consultant Requirement Waiver for Jackson Hewitt, Sherwood, OR** **Motion:** Gutierrez moved that the Board deny the waiver. Motion passed. Ayes: VanAtta, Ellsworth, Salisbury, Gutierrez, Hudson, Twombly, and Johnston.

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<p>Unnamed Licensee Compliance Questions Waiver</p>	<p>Walker will send letter of denial and will request further information. The Board questioned why he didn't receive his fees in a timely manner and why he didn't ever get his CPA license reinstated? Is he eligible for reinstatement of his CPA license?</p> <p><b>Motion:</b> Gutierrez moved that the Board deny the waiver. Motion passed. Ayes: Hudson, Salisbury, VanAtta, Ellsworth, Twombly, Gutierrez, and Johnston.</p>
<p><b>Licensing Report</b></p>	
<p>Statistics reported by Marika Dwyer.</p>	<p>The numbers for consultants and business registrations will catch up to last year's figures as renewals come in. There appears to be an increase in licensees choosing to be inactive. There were close to 400 renewals processed in April, and 350 at the time of May 13<sup>th</sup>.</p>
<p><b>Executive Session</b>  <small>To discuss information exempt from public disclosure under ORS 673.730(4). Pursuant to 192.660(2)(f). This Executive Session is closed to members of the public.</small></p>	
<p>Executive Session 1:30 p.m.-3:30 p.m.</p>	
<p><b>Compliance Report</b></p>	
	<p><b>Motion:</b> VanAtta moved that the Board accept the \$100 settlement offer from John Bell. Motion passed. Ayes: Ellsworth, Salisbury, Hudson, Gutierrez, VanAtta, Twombly, and Johnston.</p> <p><b>Motion:</b> VanAtta moved that the Board authorize the issuance of a Notice of Intent to Impose Disciplinary Action and Right to Hearing to the maximum civil penalty for violations found against Francis Dan Wilson. Motion passed. Ayes: VanAtta, Ellsworth, Salisbury, Hudson, Gutierrez, Twombly, and Johnston.</p> <p><b>Motion:</b> VanAtta moved that the Board issue a Notice of Intent to Impose Disciplinary Action and Right to Hearing to seek the maximum of civil penalties for violations of unlicensed activity, retention of records, incompetency, negligence, and return of records against Damon Mayer. Motion passed. Ayes: Twombly, Salisbury, Ellsworth, Gutierrez, Hudson, VanAtta, and Johnston.</p> <p><b>Motion:</b> VanAtta moved that the Board accept the settlement agreement and stipulated final order from Jackson Hewitt for fraudulent advertising in the amount of \$5,000. Motion passed. Ayes: Hudson, VanAtta, Gutierrez, Ellsworth, Salisbury, Twombly, and Johnston.</p>
<p><b>Other Business</b></p>	
<p>Newsletter Topics</p>	<p>Johnston informed the Board that each member needs to turn in an article to Dwyer by June 15<sup>th</sup> so that the newsletter can be finalized by the end of June.</p> <p>The articles assigned:</p> <ul style="list-style-type: none"> <li>• Johnston – year-to-date on the Board, and goodbye as Chair</li> <li>• VanAtta – an article about retiring</li> <li>• Salisbury – an overview about education and concerns about the open book exam for preparers</li> <li>• Twombly – the concept of bringing in supervision of corporate preparers and how it might interplay with the progression of national licensing</li> </ul>

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	<ul style="list-style-type: none"> <li>• Hudson – the importance of a good interview</li> <li>• Gutierrez – public awareness.</li> <li>• Billings – Instructors’ Workshop and message from the Exam &amp; Education Coordinator</li> <li>• Walker – Message from the Compliance desk</li> <li>• Ellsworth – preparer advertising and availability</li> <li>• Wagner – Message from the Executive Director</li> <li>• Dwyer – Message from the Licensing Specialist</li> </ul>
Election of Chair and Vice Chair	<p><b>Motion:</b> VanAtta nominated Alan Twombly for Board Chair for the next fiscal year. Motion passed. Ayes: Salisbury, VanAtta, Hudson, Gutierrez, Ellsworth, Twombly, and Johnston.</p> <p><b>Motion:</b> Twombly nominated Dorothy Hudson for Vice Chair for the next fiscal year. Motion passed. Ayes: Twombly, Ellsworth, Hudson, VanAtta, Gutierrez, Salisbury, and Johnston.</p>
<b>Adjournment</b>	
Johnston adjourned the Board meeting at 3.52 p.m.	

**Next meeting:**

July 23, 2009

Morrow Crane Building, Salem, Oregon