

BOARD OF TAX PRACTITIONERS

BOARD MEETING

January 10, 2008
Morrow Crane Building
Salem, Oregon

MISSION: Protecting the Consumer by insuring Oregon Tax Practitioners are competent and ethical in their professional activities.

Pursuant to notice made by press release to newspapers of general and local circulation throughout the state, persons on the interested party list and members of the Tax Board; a meeting was held at the Morrow Crane Building, Salem, Oregon.

BOARD MEMBERS

Marilyn Johnston (Board Chair)
Donna Gilmour (Vice-Chair)
Toni Ellsworth
Jess Gutierrez
Alan Twombly
Merry VanAtta

GUESTS

Susan Parks, OAIA
Nancy Hubbard, OSTC
Rachel Nolin, BAM
Linda Thomas, Self
John S. Bell, Self
Jim Hintz, H & R Block
Dorothy Hudson (will be confirmed in February, 2008)
Kelly M. Gabliks, Assistant Attorney General

STAFF

Duane M Hunter, Executive Director
Karla Siclait, Senior Compliance Investigator
Monica J. Walker, Exam & Education Coordinator
Sandi Kessler, Licensing Specialist
Meagan Cobb, Office Specialist

Tape 1 - Side 1

Roll Call:

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

Johnston introduced the new Board member, Dorothy Hudson, who will be confirmed in the middle of February.

Roll called. Board members present: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Approval of Minutes

The Board reviewed the minutes from the October 26, 2007 board meeting.

Motion: Gilmour made a motion to approve the October 26, 2007 board meeting minutes as reviewed by the Board. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Hunter introduced Rachel Nolin, the Agency's analyst from the Budget and Management (BAM) division of the Department of Administrative Services (DAS).

Johnston reminded board members and the public of the board meeting protocol.

Board meeting minutes are located on the Agency website at:
http://www.oregon.gov/OTPB/Meeting_Minutes.shtml

Licensing Report

Licensing Report

Kessler reported that there has been an increase in Licensed Consultants and Preparers. There has been a drop in initial preparer applications; however, she has been receiving between fifteen (15) and twenty (20) retake exam applications per day, which should bring an increase in the numbers for January. She stated that there are 131 branch registrations on hold, but she will be processing them before the end of the week. There is also a significant difference in the numbers shown for closed businesses, and retired/deceased preparers and consultants due to a change in the process of pulling the reports.

Administration Report

Budget Report

Hunter handed out the BRIO and forecast reports to the Board. He explained the purpose of each report to the newer board members. He stated that after the last board meeting he tracked expenses from 2005 – 2007 to find the most accurate expenses, because the numbers shown on the forecast report after November on the 2007 – 2009 forecast report are estimated forecast numbers. The 2005 – 2007 expenses were created by the previous Executive Director, and give a clearer picture of actual expenses of the Agency. They do not show salary and benefit increases for agency staff that have happened during the current biennium.

Hunter is currently working on a report for DAS explaining how the Agency is going to pay for the salary increases at this time. Hunter pointed out that the current revenue is not what was originally forecasted in the Adopted Legislative Budget, due to the fact that the fee increase was not approved.

Hunter reported that there has been one bid at \$12,000 for the SQL serve program needed to upgrade the Agency's database to include the compliance program. Helion has entered the only bid for the upgrade at this time.

He pointed out that the agency was able to purchase new computers and monitors due to some savings created from having a vacant position.

Hunter handed out the forecast for revenues with and without the fee increase and pointed out the differences in the numbers.

VanAtta requested a copy of the Adopted Legislative Budget for the board members.

DAS has requested a report explaining how the agency is going to run if the fee increase does not go through and is still over the allotted budget for this six month period.

Hunter pointed out that building rent for the agency went up slightly due to increased costs for a new conference room upstairs. There will also be additional costs incurred by a routine agency audit required when a change of Executive Director is implemented.

Hunter stated that he has spoken to Nancy Goss-Duran regarding new board member, Dorothy Hudson. Goss-Duran has indicated that confirmation will occur by phone, and will likely be in early February. Hudson should be confirmed by February 15, 2008.

Hunter told the Board that the Agency would be sending a thank you letter to all persons who expressed interest in becoming a board member.

He reminded the Board that representatives from the Government Office of Accountability will be at the Agency on January 30, 2008. They have also contacted various associations for appointments.

Hunter has been invited to Washington D.C. on February 18, 2008 to be on a panel discussion with the IRS Oversight Committee on national licensing.

Hunter informed Gutierrez and Hudson that Legislative training will not take place until September 2008.

He reminded the Board of quorum and committee meeting protocol.

Hunter is going to be issuing proposed legislation to change statutes regarding personal income taxation. He is looking into the future of national licensing, which include focus on corporate and payroll taxes. At this time, the rules revolve specifically around personal

income taxes, and Hunter wants to make licensees responsible in preparation of all business returns. This would allow the Agency to assist consumers with complaints over payroll or corporate returns. The Board had a lengthy discussion regarding the proposed changes.

Motion: Gilmour made a motion to direct the Executive Director to submit a legislative concept allowing the Board to create a new statute covering incompetence, negligence, integrity, and objectivity for all licensees in relationship to the preparation of all business returns.

Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Johnston recessed the meeting for a break at 10:44 a.m.

Johnston reconvened the meeting at 10:58 a.m.

Proposed Rulemaking Hearing Report & Final Board Review

2007 Overhaul – Hearing held 12/21/07

Walker provided a detailed report of the December 21, 2007 rulemaking hearing, regarding the proposed rule changes.

The Board entered into a detailed and thorough discussion of the proposed changes and reviewed comments made during the public comment period.

Johnston recessed the meeting for a break at 11:58 a.m.

Tape 1 - Side 2

Johnston reconvened the meeting at 12:09 p.m.

800-010-0017- Incompetence & Negligence

Motion: Gilmour made a motion to accept the proposed changes to OAR 800-010-0017. Motion passed. Ayes: Johnston, Gilmour, Ellsworth and Twombly. Nays: VanAtta, Gutierrez.

800-015-0010 – Continuing Education

Motion: Gilmour made a motion to accept the proposed changes to OAR 800-015-0010. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Rulemaking – All Other Proposed Changes

Motion: Twombly made a motion to accept all other proposed changes discussed. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Johnston called the meeting into Executive Session at 12:33 p.m. 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.

Tape 2 - Side 1

Johnston called the meeting out of Executive Session at 2:30 p.m.

Compliance Report

Update on Notices

Patricia A. Olson ~ Fraudulent Representation (Consultant) ~ McMinnville

Twombly moved that the Board enter into a Settlement Agreement and Stipulated Final Order with **Patricia A. Olson** of McMinnville, Oregon in the amount of \$275 for one (1) violation of ORS 673.705(1), for obtaining or attempting to obtain a license as a tax consultant or tax preparer by fraudulent representation. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

June Savage-Duke ~ Practicing while Unlicensed ~ White City

Twombly moved that the Board enter into a Settlement Agreement and Stipulated Final Order with **June Savage-Duke** of White City, Oregon in the amount of \$200 for forty-six (46) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Candace L. Tiller ~ Practicing while Unlicensed ~ Burns

Twombly moved that the Board enter into a Settlement Agreement and Stipulated Final Order with **Candace L. Tiller** of Burns, Oregon in the amount of \$100 for one (1) violation of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Wendy M. Jones ~ Failure to Register Tax Preparation Business ~ Sunriver

Twombly moved that the Board enter into a Settlement Agreement and Stipulated Final Order with **Wendy M. Jones** of Sunriver, Oregon in the amount of \$100 for one (1) violation of OAR 800-025-0020 for failing to register a tax preparation business and legal costs in the amount of \$1,309. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

RECOMMENDATION IS TO ISSUE A PROPOSED NOTICE FOR THE FOLLOWING:

John S. Bell ~ Advertising / Incompetence & Negligence / Integrity & Objectivity / Accountability / Prohibited Acts / Consider Suspending License (Consultant) ~ Beaverton

Twombly moved that the Board issue a cease and desist order against **John S. Bell** of Beaverton, Oregon ordering him to cease and desist due to being in violation of OAR 800-010-0030(1), allowing persons to practice in the business' name who are not currently licensed with the Board, and OAR 800-010-0050(2) for advertising or soliciting clients in a

false, fraudulent, deceptive or misleading manner; for violation of OAR 800-010-0017(1) for engaging in conduct which evidenced a lack of ability or fitness to perform his professional function; for violation of OAR 800-010-0025(7) for engaging in fraudulent deceptive or dishonest conduct relating to the licensee's profession; for violation of OAR 800-010-0025(8) for violating a position of trust, including positions of trust outside the licensee's profession; for violation of OAR 800-010-0030(1) for permitting a registered business to allow a person to practice in the name of the business who is not licensed as a tax consultant or tax preparer or as described under ORS 673.610; for violation of ORS 673.705(6) for engaging in dishonesty, fraud or deception relating to the preparation of personal income tax returns, and impose a civil penalty to a maximum of \$28,000 for his actions. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Jose L. Monteblanco – Advertising / Disciplinary Action; Grounds / Prohibited Acts Consider to Deny Licensure (Unlicensed) ~ Beaverton

Twombly moved that the Board issue a cease and desist order against **Jose L. Monteblanco** of Beaverton, Oregon ordering him to cease and desist due to being in violation of ORS 763.615(1) practicing while unlicensed and for violation of OAR 800-010-0050 for advertising or soliciting clients in a false, fraudulent, deceptive or misleading manner; for violation of ORS 673.700(7) the Board may refuse to issue or renew a tax consultant or tax preparer license, or may suspend or revoke a tax consultant or tax preparer license, or may reprimand any person licensed as a tax consultant or tax preparer for violation of the code of professional conduct prescribed by the Board; for violation of 673.700(10) for cancellation, revocation or refusal to renew by any state or federal agency, or entry of a consent order, stipulated agreement or judgment related to a business's authority to conduct operations related to the practice of law, certified public accountancy, public accountancy or other services, on the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment involved the conduct or action of the licensee or applicant and were related to income tax preparation or involved dishonesty, fraud or deception; for violation of ORS 673.705(2) for representing that he is licensed as a tax consultant or tax preparer if the person is not so licensed; and violation of 673.705(5) for falsely impersonating a licensee under ORS 673.605 and 673.640 and impose a civil penalty to a maximum of \$22,000 for his actions. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Elroy A. Ashmore, Jr ~ Return of Records (Consultant) ~ Portland

Twombly moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to **Elroy A. Ashmore, Jr.** of Portland, Oregon for one (1) violation of OAR 800-010-0025(6) for failing upon written request by a client, to make available or return within a reasonable amount of time to the client, personal papers or source material in the manner furnished to the licensee by the client. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Damon L. Mayer – Unlicensed Activity – Salem

Twombly moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to **Damon L. Mayer** of Salem, Oregon for seven (7) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

RECOMMENDATION IS TO ISSUE A FINAL ORDER BY DEFAULT FOR THE FOLLOWING:

Bryan C. Kellar ~ Fraudulent Representation & Negligence Incompetence / Code of Professional Conduct ~ Portland

Twombly moved that the Board issue a Final Order by Default to **Bryan C. Kellar** of Portland, Oregon in the amount of \$2,500 for one (1) violation of ORS 673.705(2), for representing that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed, and one (1) violation of 673.700(3)(7), for negligence or incompetence in a tax consultant or tax preparer practice and for violation of the code of professional conduct prescribed by the Board. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Emanuel Etuks ~ Fraudulent Representation ~ Vancouver WA

Twombly moved that the Board issue a Final Order by Default to **Emanuel Etuks** of Vancouver, Washington in the amount of \$4,000 for one (1) violation of ORS 673.705(2), for representing that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Kathy A Fawcett – Unlicensed Activity – Salem

Twombly moved that the Board issue a Final Order to **Kathy A. Fawcett** of Salem, Oregon in the amount of \$12,500 for five (5) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Darla Jean Sisco – Unlicensed Activity – Jefferson

Twombly moved that the Board issue a Final Order to **Darla Jean Sisco** of Jefferson, Oregon in the amount of \$15,000 for three (3) violations of ORS 673.615, preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly

WAIVER REQUEST - FELONY CONVICTION

Application for licensure – Judith M. Gallop

Motion: Twombly made a motion to deny licensure to **Judith M. Gallop** due to a history of felony conviction and forgery. Motion passed. Ayes: VanAtta, Gilmour, Johnston, Ellsworth, Gutierrez and Twombly.

Compliance Update

Siclait provided the compliance update as follows:

- Seventeen (17) Opened Complaints to date.
- Four (4) open complaints since the October 26, 2007 board meeting.
 - Two(2) Unlicensed Activity
 - Two (2) Advertising
- Six (6) complaints mediated
 - Three (3) Return of Records
 - One (1) Fraud / Deception
 - Three (3) Errors
- Ten (10) complaints closed since the October 26, 2007 board meeting.

Hearing Requests

Carol M. Jones of Lowell, Oregon was issued a Notice of Intent to Impose Discipline and Right To Hearing on December 20, 2007 for unlicensed activity. She submitted a request for hearing on January 9, 2008. Siclait will report on the hearing at the next board meeting.

WAIVER REQUESTS

Margaret A. Atchison is requesting to be the Designated Consultant for a business she recently purchased (Advantax) from Carol Zettle. Margaret is requesting a waiver to keep the name Advantax for three years while she trains a qualified individual to be the designated consultant of the office. She has had many personal issues arise over the past few months and needs to keep both her businesses separate.

Motion: VanAtta made a motion to accept the waiver for Margaret A. Atchison through May 31, 2008, effective immediately. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Rebecca Brown is requesting to be the Designated & Resident Consultant for Wanda G. Smith who is applying for her preparer license and business registration.

Motion: VanAtta made a motion to deny the waiver for the Designated & Resident Consultant requested by Rebecca Brown. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Judd S. Conway is requesting to be the Designated Consultant for a franchise of Liberty Tax Service recently purchased by Joy Jones an unlicensed owner. Judd is currently the

Designated Consultant for Marreel Tax Service dba Liberty Tax Service. Both businesses are in the process of merging. He is requesting to be the Designated Consultant for both Liberty Tax Service businesses for one tax season.

Motion: VanAtta made a motion to approve the waiver for Judd S. Conway to allow him to be the Designated Consultant for both businesses through May 31, 2008. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Public Comment

Susan Parks - OAIA

Susan Parks commented that her association would like to know why the public comment period for the proposed rule changes was twenty-one (21) days instead of thirty (30), and asked where they would be able to find that information.

Johnston recessed the meeting for a break at 2:55 p.m.

Johnston reconvened the meeting at 3:02 p.m.

Exam & Education Report

Examination Update

Walker gave a PowerPoint presentation on the months of October through December, as well as the 2007 yearly statistics.

Board Administered Exam - Update & Report

Walker reported on the statistics for the December 8, 2007 Board Administered Exam that was held at Winema Place in Salem, Oregon.

Proctor Site Updates

Walker stated that Linn Benton Community College has been administering exams and is now on contract with the agency. She has gained both the Brookings campus of Southwestern Community College, and Rogue Community College in Grants Pass. Both sites are on contract and have started administering exams.

Continuing Education

Reports to Board

- One (1) pending review - CCH Inc – Twenty (20) courses
- One (1) pending review – Drake Software – One (1) course.

2008 Instructors Workshop

The Board had a brainstorming session on the upcoming Instructors Workshop.

Johnston recessed the meeting for a break at 3:50 p.m.

Johnston reconvened the meeting at 4:00 p.m.

Examination Question & Comment Review

Johnston called the meeting into Executive Session at 4:00 p.m. 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.

Johnston called the meeting out of Executive Session at 6:14 p.m.

Motion: VanAtta made a motion to accept examination questions credited as discussed during executive session. Motion passed. Ayes: Johnston, VanAtta, Gilmour, Ellsworth, Twombly, and Gutierrez.

Johnston recessed the meeting for a break at 6:16 p.m.

Executive Director Performance Review

Johnston called the meeting into Executive Session at 6:16 p.m. to discuss information exempt from public disclosure – performance review of Executive Director - under ORS 673.730(2)(i) pursuant to 192.660(2)(f). This Executive Session is closed to members of the public.

Johnston called the meeting out of Executive Session at 7:41 p.m.

The Board will be compiling an Executive Director Performance Review to file with the performance evaluation documentation.

Adjournment

Johnston adjourned the board meeting at 7:41 p.m.