

# Oregon State Board of Tax Practitioners

## Board Meeting Minutes

**Meeting Date:** July 23, 2009

**Time:** 9:02 a.m. – 4:30 p.m.

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

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

**Guests:** Debra Neek, Jackson Hewitt  
 Nancy Hubbard, OSTC  
 Ruby Tollefson, Jackson Hewitt  
 John Bell

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

ITEM	ACTION / DISCUSSION
Twombly called the meeting to order at 9:02 a.m.	
Roll called.	Board members present: Hudson, Johnston, Ellsworth, VanAtta, Gutierrez, Salisbury, and Twombly. Twombly reminded attendees of Board meeting protocol.
Approval of meeting minutes.	<p><b>Motion:</b> VanAtta made a motion to accept the May 14, 2009 Board meeting minutes as reviewed.</p> <p>Motion passed. Ayes: Johnston, Ellsworth, Hudson, VanAtta, Gutierrez, Salisbury, and Twombly.</p> <p>Wagner noted that the Continuing Education Evaluation Report was changed to a chart for easier viewing.</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.	The most recent figures for June came out on Monday and were included in the BRIO financial report handouts. Wagner also included an Excel spreadsheet summarizing the biennium, not including “month 13.” The projected revenues were \$916,000 and the Board actually had \$1,182,265, a difference of \$266,265, of which the majority was due to one very large collection for a compliance case, as well as personal services savings. The projected expenses were \$983,000 and the actual expenses were \$988,923, a difference of \$5,923, pretty much where it should be. VanAtta provided a spreadsheet with similar information.
Legislative Activity	There will be a special session in February of 2010. There have been a number of state budget changes for the next biennium, but our budget was not changed. The

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	<p>Board is one hundred percent self-funded through licensing and registration fees as well as fines and penalties imposed. All state agencies, self-funded or not, will have management take furlough (unpaid) work days because they want to consider the state as one employer and treat all agencies the same.</p>
<p>Outreach and Communication</p>	<p>Wagner shared that he felt the best way to get the word out to the public about consumer protection is with a comprehensive communication plan. He would like to bring someone with experience from the outside to help. He considered using Intern Oregon, but the program has been discontinued because of the economy. Gutierrez confirmed that the Board has the funds to get a temp in to help for this.</p>
<p>Key Performance Measures (KPMs)</p>	<p>KPMs are a way to measure how the Board is performing in business, and they are part of the budget document that went to the Legislature. Typically these do not change. If they do, historical value is lost and it's harder to see how things progress over time. But this time they would like Wagner to work with DAS (Department of Administrative Services) to change some of the Board's measures. Measures considered:</p> <ul style="list-style-type: none"> <li>• Number of practitioner assisted tax returns per licensed practitioner – change</li> <li>• Continuing Education hours submitted – no change</li> <li>• Response time to complaints – no change</li> <li>• Number of consumer complaints handled per year – change</li> <li>• Percentage of customers rating satisfaction with Board – no change</li> <li>• Effective governance – no change</li> </ul> <p>Wagner would like there to be a measure of turn around time for renewals to get these out in a timely manner for our licensees. Gutierrez recommended that response to exam applications be looked at as well so that examinees can plan the day they will take the exam. Salisbury suggested that the priority of complaint cases be categorized as tier one, two and three.</p> <p>Wagner reported that for the month of April there were about 400 renewals processed within one day from the time they were received. In the month of May there were 798 renewals processed within three days. And in the month of June there were 865 processed within a week. 2,054 renewals were processed through the end of June.</p> <p>Wagner appreciated office staff for their work, and noted that it's been over a year since they have taken on their new roles. Ellsworth commended Dwyer for walking to the office during the snow to answer the Board's phones even when the city was shut down.</p>
<p>Senate Bill 880 Amnesty Program</p>	<p>The Oregon Department of Revenue's (DOR) tax amnesty bill passed. The amnesty period will be a seven week period (October 1<sup>st</sup> through November 19<sup>th</sup> of this year) to waive all penalties associated with filing of tax returns and half of the interest imposed. Wagner has asked the DOR communication team to get the word out where they can and when appropriate that if you pay someone to prepare your taxes, be sure they are licensed. Ellsworth asked Wagner if he knew if this had ever been done before, and "what are the expectations of people responding?" Wagner explained this hasn't been done before; they expect to bring in \$16.2 million for the 2009-2011 biennium. The IRS and DOR have a reciprocal agreement for sharing audit</p>

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	information.
Senate Bill 690 Allows Sharing Complete Returns	DOR's bill will help the Board's investigations to have more details with complete returns as the cases proceed to court. This will go into effect on January 1, 2010. Gutierrez asked if information from previous returns would be included for this bill and was assured that it will. This will be a help in future compliance cases.
DAS Risk Assessment	Oregon State Treasury requires eliminating the credit card information from files to be compliant with credit card industry standards. Blacking out the numbers, cutting off the bottom of the page, or having the information on a separate page were three methods discussed.
OATC State Conference in Hood River	<p>Wagner attended as a panel member last June, and the question was asked "what happens when a licensee with a business passes away? What are the requirements of maintaining all the clients' records?" He felt that the Board has typically held the family to the same standard of a minimum of four years of record retention. An attorney in attendance said that this is not correct, and that the Board has no jurisdiction over the heirs. He stated that other boards go into the office and take control of the records. We need to have the correct statement to provide when asked. Some of the ideas the Board discussed concerning this were:</p> <ul style="list-style-type: none"> <li>• This concern has validity because of identity theft and what could happen.</li> <li>• Is there any follow up now when a business registration is closed with the Board?</li> <li>• The real question is whether the Board has any jurisdiction over anyone who is unlicensed.</li> <li>• The Department of Education and the Secretary of State (notary) have requirements to retrieve information in the event of a death.</li> </ul> <p>It was suggested to check with Circular 230 as a guide, ask Kelly Gabliks, and see what other board's policies are.</p>
Oregon Boards and Commissions	The Governor sent a recommendation to the legislative leadership to consider the elimination / consolidation / suspension of boards and commissions at the 2010 special session. It was suggested that the Tax Board be consolidated with The Board of Accountancy, and then the new entity be under the Department of Consumer and Business Services. The chances of this discussion being handled in February 2010 at the special session may be small.
IRS Tax Forum	Wagner attended the Tax Forum at the beginning of the month and got to speak personally with the man who was ultimately responsible for writing the GAO Report to the US Senate. Wagner requested that his own presentation be scheduled early on the last day to catch more attendees.
Board Meeting Break 10:00 a.m.-10:15 a.m.	
<b>Licensing Report</b>	
Reported by Marika Dwyer.	Dwyer provided a handout to illustrate the trend in licensing with a comparison report including last year's and current statistics. Not much was changed since the report was run three weeks ago, but there is a substantial increase in the number of consultants (221). This may possibly be due to keeping current with renewals this

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	<p>year as the position was filled. There were more initial licenses, and this could be due to the increase in number of people sitting for the preparers' exam. The number of businesses and branches overall remains the same.</p>
<p><b>Exam and Education Report</b></p>	
<p>Reported by Jane Billings.</p>	<p>Billings provided Board members with the complete exam statistics for 2008 and the monthly statistics for 2009. Plans are to have these figures posted to the Web this month. It was noted that there appears to have been a higher number of preparer applicants during December 2008. It was speculated that these increases may be due to job lay offs and higher unemployment rates. Another possible contributing factor may have been the article run in the Oregonian regarding a shortage of tax preparers in Oregon.</p> <p>Billings reported that "Instructor Pass Rate" letters were mailed out as directed by the Board at their last meeting. A few instructors called with questions, but on the whole seemed appreciative of the information. There was discussion on students passing the classes and not being prepared to take the state exam, including concern over instructors giving unmerited certificates of completion for the 80-hour course. The Board suggested that emphasis on the rules and policies be stressed to 80-hour course providers when course approval is given.</p> <p>Billings reported that the recent Board work session was successful, and thanked the volunteers for their participation. During the process they were able to create 76 new questions, including 19 new mini problems. Ten questions were deleted from the original pool, and four were moved to the consultant exam.</p> <p>On June 26, 2009 the volunteer test takers came to the Board office to take the newest versions of the consultant exam, based on 2008 tax law. The pass rates ranged from 60 to 77 percent. Each test taker met with the exam consultant to share their comments and concerns. The new consultant exam will be released on August 1, 2009. Test takers are scheduled to take the new version of the preparer exams on August 12, 2009.</p> <p>There are 33 people registered for the Instructors' Workshop so far. The proctor sites and the basic course sponsors are continuing to submit applications for renewal. Billings is hoping to go out and visit some of the proctor sites in the next month. There is concern that checking the allowable source documents for the open book preparers' exam isn't being done.</p>

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### Continuing Education Evaluations

Sponsor	Course Title	Hours Requested	Hours Approved	Comments
CCH	FAS 161: Disclosures about Derivative Instruments and Hedging Activities	2	Denied	Content Not Applicable
CCH	Quality Control Issues in an Audit and Accounting Practice	3	Denied	Content Not Applicable
CCH	Audit Sampling	2	Denied	Content Not Applicable
CCH	Analytical Procedures	3	Denied	Content Not Applicable
CCH	Personal Property Taxation Strategies	2	Denied	Content Not Applicable
CCH	Planning for Clients with Alzheimer's	2	Denied	Content Not Applicable
CCH	Sales and Use Tax: Exemptions	2	Denied	Content Not Applicable
CCH	Sales and Use Tax: Gov. Admin & Tax Comp.	2	Denied	Content Not Applicable
CCH	Sales and Use Tax: Reg. & Compliance	2	Denied	Content Not Applicable
CCH	Sales and Use Tax: Tax Dept. Management	4	Denied	Content Not Applicable
CCH	Sales and Use Tax: Tax Base	1	Denied	Content Not Applicable
CCH	Sampling Obj. in Sales and Use Tax	4	Denied	Content Not Applicable
CCH	Valuation of Real Estates	2	Denied	Content Not Applicable
Drake Software	Drake Software Intermediate Tax Course	3.5	3	Half Hours are not Approved
Drake Software	Drake Software Basic Corp. Tax Course	3	2	
Drake Software	Drake Software Basic S. Corp Tax Course	2.5	2	Half Hours are not Approved
Hera's Income Tax School	Amending Returns and Dealing with Audits (Topic 29)	3	2	
Hera's Income Tax School	Ethics Essay (Topic 30b)	2	Denied	

**Motion:** Johnston made a motion to accept the continuing education hours, excluding Hera's Income Tax School, as recommended by the Board reviewers. Motion passed. Ayes: Twombly, Hudson, Ellsworth, Gutierrez, Johnston, and Salisbury. Nays:

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	<p>VanAtta.</p> <p><b>Motion:</b> Johnston made a motion to accept the continuing education hours as discussed by the Board for Hera's Income Tax School. Motion passed. Ayes: Hudson, Gutierrez, Johnston, Salisbury and Twombly. Nays: VanAtta, Ellsworth.</p>
Board Meeting Break 11:24 a.m.-11:40 a.m.	
<b>RC / DC Waiver Requests</b>	
Resident / Designated Consultant Waiver for Eileen Sautner, Newberg, OR	<p>Two businesses in the same location, with one consultant reviewing the returns for both businesses, Jackson Hewitt Tax Service and Sautner &amp; Associates, Inc.</p> <p><b>Motion:</b> Gutierrez moved that the Board accept the waiver for Eileen Sautner to be the Designated/Resident Consultant for both Jackson Hewitt and Sautner &amp; Assoc., with a five year expiration date. Motion passed. Ayes: Salisbury, VanAtta, Hudson, Gutierrez, Ellsworth, Johnston, and Twombly.</p>
<b>Other Business</b>	
Tax Board Bulletin	<p>VanAtta complimented Dwyer and all contributors to the Tax Board Bulletin on the excellent June newsletter. The timing of publication is difficult due to consultant renewals occurring at the same time, so she suggested moving the publication date to July 31<sup>st</sup> and the issue in October to November 30<sup>th</sup>. Salisbury felt that things sent out in December get lost, so suggested November 15<sup>th</sup>.</p>
Long Term Goals	<p>VanAtta would like to see the Board adopt a long term goal of legislative concept for 2011 of changing "shall" incur in addition to any other penalty... to "may" into the statutes under civil penalties (673.735 subsection 1, page 14). This will give more flexibility, as "shall" makes it mandatory, and "may" makes it more discretionary. Walker believed an AG opinion has already been asked concerning this issue and recommended asking Gabliks' legal opinion regarding this issue.</p> <p>Johnston suggested that the Board work in advance with the legislators on supported concepts. It was also recommended to work with the associations' legislative person to back up the Board and have licensees e-mail legislators for support as well.</p>
Licensee Lists to include E-mails	<p>Gutierrez urged that in this computer age licensee lists include e-mail information. Other Board members agreed because so much information is distributed this way, including the Tax Board Bulletin newsletter. The Board generally agreed that it would be fine to let licensees sign up for making e-mail addresses available to tax schools and tax organizations, but that the default response on forms should be NO—do not give my e-mail address out to interested parties. Having this information posted on the Web site opens it up to worldwide access, as we have found with physical address information, where there are personal safety issues for some licensees.</p>
Instructors' Workshop	<p>Billings verified which Board members would attend the Instructors' Workshop; five of the seven will attend.</p>
Outreach Licensee Luncheon	<p>The outreach luncheon will be held on 09/23/09 at the Holiday Inn, 1249 Tapadera Avenue, Ontario, OR 97914. The number is (541) 889-8621. (11:30 a.m.-1:30 p.m.)</p>

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Break for Lunch 12:04 p.m.	
<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>	
Executive Session 12:44 p.m.-3:54 p.m. Twombly reconvened the Board meeting at 4:01 p.m.	
<b>Compliance Waiver Requests</b>	
Leroy Pittman, Gresham, OR	Not voted on pending further research.
Darrell Wagner, Canby, OR	<b>Motion:</b> Gutierrez moved that the Board grant the waiver and renew his license. Motion passed. Ayes: Hudson, Gutierrez, Johnston, Twombly, Salisbury, and VanAtta. Nays: Ellsworth.
David Stauffer, Portland, OR	<b>Motion:</b> Gutierrez moved that the Board issue David Stauffer an initial LPT license, unless further investigation indicates that his CPA or Oregon State Bar license was revoked for dishonesty, fraud or deception, in which case Gutierrez moves that his request for initial licensure be denied. Motion passed. Ayes: Salisbury, Twombly, Gutierrez, Johnston, VanAtta, and Hudson. Nays: Ellsworth.
<b>Settlement Agreements and Stipulated Final Orders</b>	
Emanuel Etuks, Vancouver, WA	<b>Motion:</b> Salisbury moved that the Board enter into a Settlement Agreement and Stipulated Final Order with Emanuel Etuks of Vancouver, Washington in the amount of \$200 for one (1) violation of ORS 673.643(1) and OAR 800-025-0020 for failing to register a tax preparation business. Motion passed. Ayes: VanAtta, Hudson, Johnston, Salisbury, Gutierrez, Ellsworth, and Twombly.
<b>Finals Orders by Default</b>	
Bryan C. Kellar, Portland, OR	<b>Motion:</b> Salisbury moved that the Board issue a Final Order by Default to Bryan C. Kellar of Portland, Oregon in the amount of \$5,000 for one (1) violation of 673.700(3)(7) and OAR 800-010-0017, 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 as well as legal costs assessed. Motion passed. Ayes: Twombly, Hudson, Ellsworth, Gutierrez, VanAtta, Johnston, and Salisbury.
Damon L. Mayer, Harbor, OR	<b>Motion:</b> Salisbury moved that the Board issue a Final Order by Default to Damon L. Mayer of Harbor, Oregon in the amount of \$35,000 for:  Four (4) violations of ORS 673.615(1); preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration in Oregon or for Oregon residents without being licensed or exempt from licensure;  One (1) violation of the Code of Professional Conduct - ORS 673.700(7) and OAR 800-010-0042; failing to respond to the Board's request for information within 21 days of the request;  Two (2) violations of ORS 673.690(1) and OAR 800-025-0070(3); failing to maintain copies of personal income tax returns;  One (1) violation of the Code of Professional Conduct - ORS 673.700(7) and OAR 800-010-0025(6); failing to make available or return within a reasonable time to the

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	<p>client, personal papers or source material in the manner furnished to the licensee by the client; and Legal costs assessed.</p> <p>Motion passed. Ayes: Gutierrez, Ellsworth, VanAtta, Twombly, Hudson, Salisbury, and Johnston.</p>
<b>Notices of Intent</b>	
Douglas A. Everson, Dallas, OR	<p><b>Motion:</b> Salisbury moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Douglas A. Everson Sr. of Dallas, Oregon for:</p> <p>896 violations of ORS 673.615(1), preparing, advising, or assisting in the preparation of personal income tax returns in Oregon or for Oregon residents for valuable consideration without being licensed or exempt from licensure at \$250 per violation;</p> <p>896 violations of ORS 673.705(2) for representing as licensed when not at \$250 per violation and</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1)(a &amp; b) for failing to register his tax preparation business at \$100.</p> <p>Motion passed. Ayes: Gutierrez, Ellsworth, Hudson, Twombly, Johnston, and VanAtta. Nays: Salisbury.</p>
F. Daniel Wilson, Cottage Grove, OR	<p><b>Motion:</b> Salisbury moved that the Board authorize the issuance of a Notice of Intent to Revoke the Preparer License of Francis Daniel Wilson (License #70147-P) and Right to Hearing for repeated violations of the provisions of Oregon Revised Statute 673.605 through 673.740 and the Oregon Administrative Rules adopted thereunder pursuant to 673.700(1)(7) and 673.735(1).</p> <p>Motion passed. Ayes: Johnston, Salisbury, Gutierrez, Ellsworth, Hudson, VanAtta, and Twombly.</p>
<b>Public Comment</b>	
John Bell	<p>With regard to the IRS national licensing process, Oregon model, Bell had some comments related to the 2011 legislative session (SB 172, SB 865, and HB 3163). He would like the Board to begin getting to know and work with legislators now. Half of the tax consultants in Oregon are also licensed as enrolled agents, so he believes there would not need to be a separate licensing program. He would like to have bookkeeping included in the responsibility of the Tax Board and certified with the ABA (Accredited Business Accountant). Now is the time to have open houses or talks with the associations to get them more involved. He thinks the Board should help get the message out to help the associations' membership.</p>
<b>Compliance Database</b>	
Monica J. Walker	<p>The compliance database testing has been finalized, and Walker is starting to utilize the new database system. It will be great to be able to track status and history electronically rather than on paper.</p>
<b>Adjournment</b>	
Twombly adjourned the Board meeting at 4:30 p.m.	

# **Oregon State Board of Tax Practitioners Board Meeting Minutes**

**Next meeting:** September 23, 2009  
Holiday Inn, Ontario, Oregon