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

**Meeting Date:** November 8, 2012

**Time:** 9:08 a.m. – 5:40 p.m.

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

**Attendees:**
Janis Salisbury (Board Chair)
Jess Gutierrez (Vice-Chair)
Toni Ellsworth
Dorothy Hudson
Joe Lovato
Alan Twombly
Dea Williams

**Guests:**
Jack Goldberg
Nancy Hubbard, OSTC
John Bell
Dale Marino, ORSEA
Susan Parks, OAIA

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

| ITEM | ACTION / DISCUSSION |
|---|---|
| Salisbury called the meeting to order at 9:08 a.m. | |
| Roll called | Board members present: Hudson, Twombly, Ellsworth, Gutierrez, Williams, Lovato, and Salisbury. |
| **Executive Session**<br>To discuss information exempt from public disclosure under ORS 673.730(3). Pursuant to 192.660(2)(f). This Executive Session is closed to members of the public. | |
| Executive Session 9:09 a.m. - 11:19 a.m. | |
| **Minutes** | |
| Approval of meeting minutes | There was a discussion about making corrections in the minutes. When inaccuracies occur they will be handled on a case-by-case basis.<br><br>**Motion:** Gutierrez made a motion to accept the September 20, 2012, Board meeting minutes as amended by the Board. Motion passed. Ayes: Ellsworth, Lovato, Salisbury, Williams, Hudson, Gutierrez, and Twombly.<br><br>**Motion:** Gutierrez made a motion to accept the October 23, 2012, Board teleconference meeting minutes as amended by the Board. Motion passed. Ayes: Williams, Twombly, Hudson, Gutierrez, Lovato, Salisbury, and Ellsworth.<br><br>Board meeting minutes are located on the Tax Board Web site at: http://www.oregon.gov/OBTP/pages/meeting_minutes.aspx |
| **Compliance Report** | |
| Reported by Monica J. Walker | Debra Ahls will not be included on the list for possible Board action today.<br><br>Complaints reported from January 1, 2012, through November 6, 2012.<br>*7 Cases reported on during Executive Session* |

| | |
|---|---|
| | *3 Cases needing Board action/vote*<br>**General statistics**<br>136 Total cases as follows:<br>20 Open investigations<br>7 Pending Investigations<br>11 Mediated<br>93 Closed<br><br>***Out of these totals:***<br>*22 Complaints which resulted in Board action taken*<br>*14 Complaints the Board has given an authorization to take action (if evidence is found)*<br>*6 Complaints in which licensees were educated into compliance*<br><br>**Waivers to be voted on**<br>*3 DC/RC Waivers needing Board action/vote*<br><br>**General counts/information on complaints:**<br>57 Unlicensed/unregistered activity<br>23 Advertising<br>23 Competency in services<br>22 Other entities<br>16 Return of records<br>13 DC/RC/supervision requirements<br>11 Fraudulent activity<br>5 Failure to notify of changes to information<br>5 Failure to file a return<br>2 Confidentiality<br>2 CE audit requirements<br>1 Signature requirements<br>0 Posting of fee schedules<br><br>***Settlement Agreement Update/Status***<br>The list is the same with the addition of Damon Mayer who is on a payment plan.<br><br>***Other Business***<br>Walker made field visits to Albany and included information for Board members to review.<br><br>The Business Practices Committee met, and Hudson will be reporting under waiver requests later in this Board meeting. |
| **Notices of Intent** | |
| Bumblebee Same Day Tax Service<br>Michael Rosenberg<br>Tigard, OR | **Motion:** Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Bumblebee Same Day Tax Service, LLC / Owner: Michael E. Rosenberg of Tigard, Oregon for:<br><br>One (1) violation of ORS 673.615(2) and OAR 800-025-0050(2), for allowing a tax preparer who has not had at least 240 hours and one (1) year's tax return preparation experience during the previous three (3) year period; prepare, advise or assist in the |

| | |
|---|---|
| | preparation of tax returns without the immediate, onsite supervision of more experienced personnel at $1,000;<br><br>Three (3) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change at $100 per violation; and<br><br>Three (3) violations of ORS 673.643 and OAR 800-025-0060(7), for failing to notify of changes to the status of its Resident Consultant(s) within 15 business days of the change at $100 per violation.<br><br>Motion passed. Ayes: Williams, Twombly, Ellsworth, Hudson, Lovato, Gutierrez, and Salisbury. |
| Jill Armstrong<br>Bend, OR | **Motion:** Gutierrez moved that the Board authorize the issuance of a Notice of Intent to Impose Discipline and Right To Hearing to Jill Armstrong of Bend, Oregon for:<br><br>All violations of ORS 673.615(1), found for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at up to $5,000 per violation; and<br><br>All violations of ORS 673.643(1) and OAR 800-025-0020(1), found for failing to register a tax preparation business at $100 per violation.<br><br>Motion passed. Ayes: Ellsworth, Lovato, Twombly, Salisbury, Williams, Gutierrez, and Hudson. |
| Robert Dooley<br>Cove, OR | **Motion**: Gutierrez moved that the Board issue a Notice of Intent to Impose Discipline and Right To Hearing to Robert G. Dooley of Cove, Oregon for:<br><br>One (1) violation of ORS 673.705(1), for obtaining or attempting to obtain his initial tax preparer license by fraudulent representation at $500; and<br><br>One (1) violation of ORS 673.700(7) and OAR 800-010-0042, for failure to respond in writing to communications from the Board within 15 business days at $500.<br><br>Motion passed. Ayes: Lovato, Hudson, Twombly, Williams, Gutierrez, and Salisbury. Nays: Ellsworth. |
| **Administrative Rulemaking Update** | |
| Rule Review facilitated by Monica Walker | The Board reviewed and discussed proposed rule changes suggested by staff and the 2012 Rules Advisory Committee. Wagner proposed that the AG comments and changes be included with those reviewed by the Committee. |
| **Lunch 12:00 p.m.** | Salisbury reconvened the Board meeting at 12:37 p.m. |
| **Administrative Rules (continued)** | |
| | Highlights of suggestions for proposed rule changes included:<br><br>• Board of Education should not be removed from rules<br>• Requiring EAs to have at least 360 hours of work experience in at least two (2) of the last five (5) years to qualify for the consultant-state-only exam |

| | |
|---|---|
| | • Restricting instructors coming from other states<br>• Changes to wording in CE rules, number of attendees for training, PTIN on certificates<br>• Requiring instructors to complete or teach the basic 80-hour tax course<br>• Knowledge vs. work experience with regard to consultant exams and EAs<br>• Consider reducing fees to licensees to bring the ending balance down<br>• Considering a calendar year renewal schedule<br>• Possibly allowing one designated consultant for two businesses at a time to avoid waivers<br><br>**Motion:** Hudson moved to approve the changes to the proposed Oregon Administrative Rules and submit them for public comment. Motion passed. Ayes: Ellsworth, Gutierrez, Salisbury, Hudson, and Lovato. Nays: Twombly and Williams. |
| Break 2:30 p.m.- 2:44 p.m. | |
| **Licensing Statistics** | |
| Reported by Marika Dwyer | Generally licensee numbers are dropping due to many preparers choosing to be inactive, and several are still in lapsed status. There are less new businesses and a few more branches. |
| **Public Comment** | |
| Jack Goldberg | Goldberg has served on two Rules Advisory Committees and thanked the Board and staff for the work involved. He was encouraged by hearing the Board's review process and "let's listen to what the Committee is saying" so often. He recommended a couple of grammatical changes. |
| Dale Marino | Marino has added to his letter regarding unlicensed volunteer tax preparers with comments from other tax professionals from the internet. His concern was over extremely low accuracy rates, mistakes not counted where a receipt was asked for, and whether volunteer staff are paid (meals and mileage) and doing returns as well. Marino also asked about volunteer pass rates and was told it was "100%," which meant to him that they took the exam over and over until they passed it. Is this IRS certified? He is concerned about volunteer accountability and protecting Oregonians. |
| John Bell | Bell provided the Board members with a handout showing a return that a VITA tax preparer did with errors relating to earned income credit. He also gave another example where he sent the return to Los Angeles, and the civil penalty was rescinded. There is no name just a number of the office in the city where the return was processed. He mentioned that the volunteer centers have a donation box. He proposed that volunteers get a free examination on Oregon law. |
| **Administration Report** | |
| Budget reported by Ron Wagner | The projected revenue for the biennium July 1, 2011, through September 30, 2012, is $677,000. The actual revenue through September 2011 was $688,915. Our actual revenue is $11,915 more than the projected revenue. The projected expenses for the biennium through September 2012 were $702,000. The actual expenses through September 2011 are $659,973. Our actual expenses are $42,027 less than the |

| | |
|---|---|
| | projected expenses.<br><br>Wagner reported that there haven't been any excessive expenditures, but that the AG costs of two cases going to hearing will increase the total by a fair amount during the next couple of months. For the rest of the biennium our actual expenses compared to our actual revenues will be about $100,000 apart. We will have to watch the figures to make any changes to the fee structure in the administrative rule process next year.<br><br>The lease on our building expired at the end of August and the tenants have made requests for extensions and improvements.<br><br>Ellsworth's term expired 6 months ago, and she has agreed to continue to serve on the Board until a replacement has been named. Wagner met with Scott Nelson, policy advisor, from the Governor's office, and discussed the issues of online registration for boards, and NIC working on the request. Wagner will continue to "hammer" NIC, but if they look unable to deliver, we will have to get permission to look elsewhere to get it done.<br><br>The budget bill is just waiting for legislative session to come into swing. Wagner will let Salisbury know the date to attend the Ways and Means Committee hearing about the Board's budget. The one piece of legislation is to exempt from licensure the employees of attorneys.<br><br>The Board's new logo is now ready for use. Wagner asked if licensees could use the Board's logo on their materials. Gabliks cautioned that use of the Board's logo should be protected and only used by the Board because others using it may represent that information is coming from our Board.<br><br>The exam applications are now available online as fillable PDFs. Staff is hoping this will help with legibility and data input.<br><br>Wagner met with Rob Justice of CASH Oregon and volunteer preparers. He feels that it's important that the associations take leadership in issues. This is the avenue to have some influence over those who do volunteer tax preparation. There is interest in partnering to get assistance from the licensing community to review returns, refer clients that have returns beyond the scope of volunteers, and allow volunteers to attend continuing education offered by the associations. Salisbury took time educating Board members regarding who the volunteers are, and there was a long discussion about how to impact consumer protection in this area. |
| **Exam and Education Report** | |
| Reported by<br>Jane Billings | Exam statistics for September and October were reported. The yearly comparison report indicates the pass rate is continuing to decline.<br><br>Billings asked about when examinees ask questions or dispute an answer who or how many Board members should be involved. All members of the Exam & Education Committee, Williams, Twombly, and Salisbury, can be consulted to answer questions if necessary.<br><br>Consultant CE audit – as reported previously, audit letters were mailed on July 31st to |

| | |
|---|---|
| | 209 consultants. Licensees had up to September 1st to respond. On September 6-14 2nd notices were mailed out to those individuals that had not responded. Licensees that received 2nd notices had until October 6th to respond. Thirteen have complied. One came back undeliverable, the address was verified correct and the audit notice was re-mailed on October 29, 2012, allowing them until November 29, 2012 to comply.<br><br>Preparer CE audit – Final count for the preparer audit is 192. Preparers were randomly selected and audit letters were mailed out on October 26, 2012 to 153 licensees. The additional 39 will receive audit letters when and if they renew their licenses.<br><br>Billings reminded members that the Board Administered Exam will be on December 8, 2012. She is recruiting volunteers to proctor this exam.<br><br>The Exam & Education Committee met on November 10, 2012, and covered a number of topics. A report by the Committee Chair follows. |
| **Exam & Education Committee** | |
| Reported by<br>Dea Williams | A major focus of the Committee is "why are we having such poor pass rates?" It was concluded that the exam is not too difficult, but concerns ranging from having a review class or basic course for consultants, to preparers spending too much time looking things up because it is an open book test were discussed. There was discussion about having the consultant exam be an open book test. The Committee did not support this. The Committee felt that with the experience requirement, consultant examinees may be working, but not enjoying the full spectrum that an 80-hour basic course can give. It was suggested that the Board work with the associations in training on *how to study to pass this exam*. Wagner felt that there wasn't a big enough market to sustain several consultant review classes.<br><br>Other suggestions included encouraging tax businesses to provide more mentoring. The Committee will be reviewing other boards to see what their entry level pass rates are. Another idea the Committee considered was sending subject categories and study options/resources to people applying to take the consultant exam.<br><br>A two-part consultant exam, as previously held in the past, was revisited. It could be used to know where a person's weak subject areas are. Hudson feels that the preparer's exam will need to be revised after the RTRP test is in place, and that the Board should consider offering a state-only preparer exam then.<br><br>Wagner recollected after hours of discussion in the Committee, that the consultant exam is doing what it was intended to do: keeping people who can't pass from having a business on their own, and working without supervision.<br><br>Another Exam & Education Committee meeting will be scheduled to evaluate instructors who are having a pass rate issue. |

| **Business Practices Committee** | |
|---|---|
| Reported by<br>Dorothy Hudson | The Committee reviewed the rules in place and decided that there were no changes necessary to make good decisions on the waivers. Walker will change the letter to eliminate the sentence so that people don't think it's an ongoing permanent option that mentions a second waiver. The waiver application form will be updated to show whether it's a resident or designated consultant waiver request, and a staff note with a check box will be added in the text so that the Committee will know what is being asked for.<br><br>The Committee felt there needed to be a little more time taken in analyzing the waivers because the Board has traditionally just approved them. They went over a few scenarios and applied the rules to see different outcomes.<br><br>Waiver approvals must meet the rule requirement of being unusual and extenuating circumstances. |
| **Waiver Requests** | |
| John Banks<br>Dallasport, WA | **Motion:** Hudson moved to deny the Resident Consultant waiver requested by John Banks of Dallasport, Washington.<br><br>Motion passed. Ayes: Hudson, Salisbury, Lovato, Gutierrez, Ellsworth, Williams, and Twombly. |
| Bumblebee Same Day Tax Service, Inc.<br>David Smith<br>West Linn, OR | **Motion:** Hudson moved to deny the Resident Consultant waiver requested by David Smith of West Linn, Oregon.<br><br>Motion passed. Ayes: Gutierrez, Salisbury, Hudson, Twombly, Williams, Ellsworth, and Lovato. |
| Mildred "Millie" Jackson<br>Portland, OR | **Motion:** Hudson moved to deny the Designated Consultant waiver requested by Mildred Jackson of Portland, Oregon.<br><br>Motion passed. Ayes: Hudson, Lovato, Twombly, Ellsworth, Williams, and Gutierrez. Nays: Salisbury. |
| **Annual Calendar** | |
| | The next Board meeting will be January 10, 2013, in Salem. May 7-8 will be the work sessions for the consultant exam, and Board meeting will be on the 9th. July 9-10 we will have the work sessions for the preparer exam, and then the Board meeting on the 11th. September 26th will be the Board outreach meeting in Portland. The next two Board meetings will be held on November 7, 2013 and January 9, 2014. The Board administered exam will be on December 7, 2013. The Instructors Workshop will be on August 14th. |

| | |
|---|---|
| January 10, 2013 | Board Meeting |
| May 7-8, 2013 | Exam Work Sessions |
| May 9, 2013 | Board Meeting |
| July 9-10, 2013 | Exam Work Sessions |
| July 11, 2013 | Board Meeting |
| August 14, 2013 | Instructors Workshop |
| September 26, 2013 | Outreach Meeting/Licensee Luncheon |

| | | | |
|---|---|---|---|
| | | November 7, 2013 | Board Meeting |
| | | December 7, 2013 | Board Administered Examination |
| | | January 9, 2014 | Board Meeting |
| **Other Business** | | | |
| Updated Roster | Salisbury made some adjustments to the committee assignments and distributed them to Board members. | | |
| **Adjournment** | Salisbury adjourned the regular session at 5:07 p.m. | | |
| **Executive Session** To discuss information exempt from public disclosure under ORS 673.730(3). Pursuant to 192.660(2)(i). This Executive Session is closed to members of the public. | | | |
| Executive Session 5:13 p.m.- 5:40 p.m. | | | |

**Next meeting:**
January 10, 2013
Morrow Crane Building, Salem, Oregon