

Oregon State Board of Tax Practitioners

Board Meeting Minutes

Meeting Date: January 10, 2013

Time: 9:08 a.m. – 3:10 p.m.

Location: Morrow Crane Building, Salem, Oregon

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

Guests: Linda Thomas
 Susan Parks, OAIA
 Dale Marino, ORSEA
 Michael Addington
 Ira Rosenberg
 Judith Wilkins, OATC
 Jack Goldberg

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

ITEM		ACTION / DISCUSSION
Salisbury called the meeting to order at 9:08 a.m.		
Roll called	Board members present: Hudson, Twombly, Gutierrez, Lovato, and Salisbury. Ellsworth delayed. Salisbury shared that Dea Williams resigned due to illness, and is no longer a Board member. There are several openings on the Board now.	
Executive Session		
<small>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.</small>		
Executive Session 9:10 a.m. - 10:15 a.m.		
Break 10:15 a.m. - 10:23 a.m.		
Executive Session 10:23 a.m. - 11:11 a.m.		
Break 11:11 a.m. - 11:20 a.m.		
Salisbury reconvened the Board meeting at 11:20 a.m.		
Minutes		
Approval of meeting minutes	Motion: Twombly made a motion to accept the November 8, 2012, Board meeting minutes as corrected. Motion passed. Ayes: Ellsworth, Lovato, Salisbury, Hudson, Gutierrez, and Twombly. Board meeting minutes are located on the Tax Board Web site at: http://www.oregon.gov/OBTP/Meeting_Minutes.shtml	
Compliance Report		
Reported by Monica J. Walker	2012 Year End Statistics Complaints reported from January 1, 2012, through December 31, 2012.	

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5 Cases reported on during Executive Session

3 Cases needing Board action/vote

General statistics

159 Total complaints as follows:

25 Open investigations

11 Pending Investigations

13 Mediated

110 Closed

Out of these totals

24 Complaints which resulted in Board action taken

15 Complaints the Board has given an authorization to take action (if evidence is found)

19 Complaints in which licensees were educated into compliance

Waivers to be voted on

3 DC/RC Waivers needing Board action/vote

General counts/information on complaints

64 Unlicensed/unregistered activity

37 Advertising

24 Other entities

23 Competency/Services

16 Return of records

14 DC/RC/supervision requirements

11 Fraudulent activity

5 Failure to notify of changes to information

5 Failure to file a return

2 Confidentiality

2 CE audit requirements

1 Signature requirements

0 Posting of fee schedules

2013 New Year Statistics

Complaints reported from January 1, 2013, through January 8, 2013.

General statistics

4 Total complaints as follows:

2 Open investigations

1 Pending Investigations

0 Mediated

1 Closed

General counts/information on complaints

2 CE audit requirements

1 Competency/Services

1 Other entity

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	<p>Settlement Agreement Update/Status No new accounts. <i>On payment plan with the Board: Albert Bentley, Damon Mayer, Daria Nelson, Fausta O. Garcia, Jamasa Sattler, Pamela Miles, Steven Townsend, and William Baumeister.</i></p> <p>Other Business Walker referenced information placed in the Board binders and provided an overview as well as opened a discussion on a Web site named “MyTaxAuction.com.”</p>
Comparison Report	Walker provided Board members with a 2011-2012 comparison report of compliance statistics.
Notices of Intent	
Vincent Dimone Bremerton, WA	<p>Motion: Gutierrez moved that, should Vincent P. Dimone of Bremerton, Washington fail to comply with the requirements of the 2012 preparer continuing education audit by 5:00 p.m. on February 8, 2013, the Board issue a Notice of Intent to revoke his preparer license #30592-P for violating the provisions of Oregon Revised Statute 673.655 and Oregon Administrative Rule 800-015-0015, as well as include in the Notice an Intent to Discipline and Right to Hearing for:</p> <p>One (1) violation of ORS 673.655 and OAR 800-015-0015 for failing to comply with continuing education requirements at \$300; and</p> <p>One (1) violation of ORS 673.705(1) for obtaining his tax preparer license by fraudulent means when he attested to having completed 30 hours of continuing education and failed to provide proof of completion at \$500.</p> <p>Motion passed. Ayes: Twombly, Hudson, Gutierrez, Lovato, Salisbury, and Ellsworth.</p>
Wei Zhong Happy Valley, OR	<p>Motion: Gutierrez moved that, should Wei Q. Zhong of Happy Valley, Oregon fail to comply with the requirements of the 2012 preparer continuing education audit by 5:00 p.m. on January 23, 2013, the Board issue a Notice of Intent to revoke his preparer license #32844-P for violating the provisions of Oregon Revised Statute 673.655 and Oregon Administrative Rule 800-015-0015, as well as include in the Notice an Intent to Discipline and Right to Hearing for:</p> <p>One (1) violation of ORS 673.655 and OAR 800-015-0015 for failing to comply with continuing education requirements at \$300; and</p> <p>One (1) violation of ORS 673.705(1) for obtaining his tax preparer license by fraudulent means when he attested to having completed 30 hours of continuing education and failed to provide proof of completion at \$500.</p> <p>Motion passed. Ayes: Twombly, Ellsworth, Hudson, Lovato, Gutierrez, and Salisbury.</p>
Debra Ahls Yamhill, OR	<p>Motion: Due to a serious medical condition, I move that the Board withdraw their motion to issue a Notice of Intent to Impose Discipline and Right To Hearing to Debra Ahls of Yamhill, Oregon for:</p>

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	<p>Three Hundred Twenty (320) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure at \$250 per violation;</p> <p>Four (4) violations of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business at \$100; and</p> <p>Six (6) violations of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$50 per violation.</p> <p>Motion passed. Ayes: Ellsworth, Lovato, Twombly, Salisbury, Gutierrez, and Hudson.</p>
<p>Question & Comment Forms</p>	
	<p>Motion: Twombly moved that the Board accept the changes and credit be given to the exam questions reviewed by the Board from the exam “Question & Comment” forms as discussed in Executive Session.</p> <p>Motion passed. Ayes: Lovato, Hudson, Twombly, Ellsworth, Gutierrez, and Salisbury.</p>
<p>Administrative Rules Review</p>	
<p>Rule Review facilitated by Monica J. Walker</p>	<p>Walker sent out a hearing report for Board members to review. There were a lot of comments and several people responded and got involved in the rulemaking process.</p> <p><i>The Board members response to rulemaking comments</i></p> <p>Proposal of having the EA exam requirement to have completed a minimum of 360 hours of work experience during two of the last five years.</p> <ul style="list-style-type: none"> • Karen Hawkins of Office of Professional Responsibility was concerned whether this violated the rules of preemption of federal law. Wagner feels that preemption is not violated because it looks at Oregon returns, and does not add further requirements to prepare federal returns in Oregon. • Gabliks advised the Chair not to share comments she received because there is a process and a deadline, and those not following the rulemaking process cannot be considered for comment. • Salisbury felt that in many cases it sounded like people misunderstood the purpose of the ruling. The purpose is consumer protection. More clarification will need to be done if the Board follows through on this. The Board is trying to avoid having an individual become an LTC without any or very little work experience. • The Petition Form allows for self employment, and is part of the rules. This subject would be a good topic for the Tax Board Bulletin newsletter. <p>Moving the unregistered business violation up on the Civil Penalty Matrix</p> <ul style="list-style-type: none"> • Salisbury noted the Board is not talking about how to prepare a return, but how to run a business.

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	<p>Consider a three month carryover of the CE requirement</p> <ul style="list-style-type: none"> • Concern was expressed over making record keeping more complicated • It was suggested that the Board go to a calendar year to be in sync with the federal program, and therefore this issue would be eliminated <p>Motion: Hudson moved that the Board accept all Oregon Administrative Rule changes excluding 800-020-0015(5) as reviewed.</p> <p>Motion passed. Ayes: Twombly, Ellsworth, Gutierrez, Salisbury, Hudson, and Lovato.</p> <p>Motion: Hudson moved that the Board accept the proposed changes to Oregon Administrative Rule 800-020-0015(5) as written.</p> <p>Motion passed. Ayes: Hudson, Salisbury, Lovato, Gutierrez, Ellsworth, and Twombly.</p>
Public Comment	
Dale Marino	<p>Marino compared how the Board seems concerned about the consumer protection from EAs based on rule changes, but not from the unlicensed volunteer tax preparers. He related an example of how the attitude by volunteers seemed a bit lackadaisical in his view.</p> <p>With regards to advertising, he compared his one line ad in the phone book with several larger franchise ads that had no license numbers included. He left the hardcopy of the phone book page with the Board to investigate.</p>
Lunch 12:11 p.m. – 12:45 p.m.	
Exam and Education Report	
Reported by Jane Billings	<p>Statistics reflecting the pass rates for the months of November and December were provided. Cumulative pass rates for the preparer, consultant and consultant-state-only exams included 2006 and 2007. The report now reflects the pass rates from 2006 to December 2012.</p> <p>The exam process ran more smoothly this year than last year. Every effort was made to make sure that exam applications were processed in a timely manner. Billings heard very few negative comments from proctor sites or applicants.</p> <p>A few proctor sites (mainly sites located down south) set up specific dates to accommodate as many applicants as possible. Staff made every effort to accommodate these individuals attempting to get their applications processed in time for them to take the exams at these sittings.</p> <p>The Board Administered Exam was held on Saturday, December 8, 2012, at Chemeketa Community College, and it went very well. A total of 147 applicants registered to attend. One person cancelled prior to the exam and 10 were no-shows. (total of 127 in 2011 - total of 157 in 2010) The exam seemed to have gone well, no major incidents and Billings has not heard any negative comments from the test takers, except that soft soled shoes would be appreciated. Thirteen volunteers assisted</p>

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along with Salisbury, Lovato, Walker, Garvey and Billings. A huge thank you was extended to the volunteers. Billings couldn't do it without their assistance. She is working with Chemeketa Community College to secure the site for the 2013 exam scheduled for Saturday, December 7, 2013.

Consultant CE Audit

Billings continues to monitor from the original list of names pulled for the consultant CE audit. There are six still showing "lapsed" status, and one that recently renewed and has been sent an audit notification. This person will have 30 days to comply with the audit.

Preparer CE Audit

There were 192 preparers selected for the CE audit. Initial letters were mailed out on October 26, 2012, and licensees were given until November 30, 2012 to respond. Of the original letters sent six individuals received second notices for failure to respond to the audit. Billings received responses from five. The final individual was discussed in Executive Session. There were 23 licensees pulled randomly for audit that had not renewed their licenses when the initial letters were mailed. The others that have not reactivated their licenses will be monitored and once they have reactivated their license they will be notified of their selection in the CE audit.

Billings related the discussion over the verbiage on the CE audit notices, and believes there needs to be more clarification. One letter gives the impression that if the licensee would like the option of giving up their license, that would be okay, and it is not. Attestation and compliance on the renewal needs to be true and accurate. This letter will be revised, and research will be done to find samples of how other boards handle this.

Billings did some research, pulling ten other board's exam pass rates. Some had a national exam with an open book jurisprudence exam. Some had several parts taken at different times, so it was hard to quantify. Most have national exams.

Salisbury reopened discussion on the preparers having an open book exam. Billings mentioned that 80-hour basic course instructors might be sent helpful hints, or another idea might be to reduce the number of publications used as source documents. The group considered going back to closed book exam.

Motion: Hudson moved that the Board change the preparer exam to no longer allow source documents other than the reference sheet and IRS glossary of foreign terms, effective the new testing year (September 1, 2013).

Motion passed. Ayes: Hudson, Lovato, Twombly, and Gutierrez.
Nays: Ellsworth, and Salisbury.

After more discussion on the subject...

Motion: Twombly moved that the Board revote and allow Pub. 17, 17 ½, and the instructions for 40, 40N, 1040, and the IRS Pub. 850 English Foreign Language Glossary of Words and Phrases effective September 1, 2013.

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	Motion passed. Ayes: Salisbury, Gutierrez, Twombly, and Ellsworth. Nays: Hudson and Lovato.
Administration Report	
Budget reported by Ron Wagner	<p>The projected revenue for the biennium July 1, 2011 through November 30, 2012 is \$793,000. The actual revenue through November 2012 was \$794,320. Our actual revenue is \$1,320 more than the projected revenue. The projected expenses for the biennium through November 2012 were \$784,000. The actual expenses through November 2012 are \$741,784. Our actual expenses are \$42,216 less than the projected expenses.</p> <p>Wagner has been looking for ways to decrease our ending balance, to avoid another “sweep” of the Board’s funds. For an example, a \$10 reduction in the licensing fees over a biennium would be about \$80,000 reduction. This would require a rule change.</p> <p>Wagner has received the agency’s Governor’s Balanced Budget from the accountant. He hasn’t heard of any big changes or adjustments that would impact the Board’s budget.</p> <p>Online registration request with NIC was submitted in September, and now Wagner has a meeting scheduled for February 1, 2013, to discuss the proposals. He would like them to complete tasks in stages. GL Solutions also contacted Wagner and he has been happy to listen to their proposals.</p> <p>There are four of seven positions that need to be filled; three regular positions and the public member. Lovato will need to submit a new interest form to continue as a Board member. With a list of 12 interested licensees, and a generic list of people interested in serving on boards or commissions, the Governor’s office should be able to fill them by the next Board meeting.</p>
Break 2:07 p.m. – 2:30 p.m.	
Licensing Statistics	
Statistics reported by Marika Garvey	The numbers in the Board books reflect figures collected for December 2012, and show active licensee numbers are down. There is a decrease in initial preparers, and an increase in lapsed preparers. Businesses are holding steady with a few less closures and some more new branches. Looks like there is a bit of an increase in retired preparers and consultants too.
Waiver Requests	
	The Business Practices Committee gave temporary approval of these waiver requests.
Deanna Morehead Medford, OR	<p>Motion: Hudson moved to accept the Designated Consultant waiver request for Deanna M. Morehead of Medford, Oregon through May 31, 2013, per the Business Practice Committee’s temporary approval issued on January 7, 2013.</p> <p>Motion passed. Ayes: Twombly, Gutierrez, Ellsworth, Hudson, Salisbury, and Lovato.</p>
Mary Lessard	Motion: Hudson moved to accept the Designated Consultant waiver request for Mary

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Milwaukie, OR	L. Lessard of Milwaukie, Oregon through May 31, 2013, per the Business Practice Committee's temporary approval issued on December 20, 2012. Motion passed. Ayes: Hudson, Lovato, Ellsworth, Salisbury, Twombly, and Gutierrez.
Teresa Noe Gresham, OR	Motion: Hudson moved to accept the Designated Consultant waiver request for Teresa L. Noe of Gresham, Oregon through May 31, 2013, per the Business Practice Committee's temporary approval issued on December 20, 2012. Motion failed. Nays: Lovato, Hudson, Gutierrez, Salisbury, Ellsworth, and Twombly.
Public Comment	
Judith Wilkins	Wilkins doesn't believe the Board needs to go to the Legislature to get a fee change.
Other Business	
Committee Assignments	Salisbury suggested some adjustments to the Committees because of Board member vacancies. Twombly said he would be available for conference calls and votes through tax season. Lovato will be the Chair of the Exam & Education Committee, and Ellsworth will be part of the Complaint Committee.
Fee Reduction	Wagner confirmed that the fees will not need to be changed by statute, only by rule.
Outreach Meeting	Wilsonville Holiday Inn is being considered for the Outreach meeting in September.
Instructor Workshop	Recommendation was given to have it in Salem.
Adjournment	Salisbury adjourned the Board meeting at 3:10 p.m.

Next meeting:

May 9, 2013

Morrow Crane Building, Salem, Oregon