



# Oregon Board of Tax Practitioners

## Public Board Meeting Minutes

September 26, 2013

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*Mission: The Board of Tax Practitioners protects consumers by ensuring that Oregon tax professionals are competent and ethical in their professional activities.*

### **Board Members:**

Janis Salisbury, LTC, Chair  
Joe Lovato, LTC, Vice-Chair  
Michael Addington, LTC  
Nutan Arora, LTC  
Jess Gutierrez, LTC, *left at 2:50 p.m.*  
Dorothy Hudson, LTC

### **Board Staff:**

Bill McMillen, Executive Director  
Kelly Gabliks, Assistant Attorney General  
Monica J. Walker, Senior Compliance Specialist  
Jane Billings, Exam & Education Coordinator

### **Excused:**

Kinsey Miller, Public Member

### **Call to Order**

Chair Salisbury called the public session to order at 9:02 a.m. Roll call was completed. Chair Salisbury closed the public session at 9:05 a.m. to convene in Executive Session pursuant to ORS 192.660(2)(f). The Executive Session is closed to members of the public.

Chair Salisbury called the public session meeting back to order after conclusion of the Executive Session at 10:51 a.m.

### **Public Session**

#### **1. Compliance Report**

Ms. Walker provided the general compliance statistics for the year to date.

#### **Carol May Jones**

Ms. Jones is currently in a Chapter 7 Bankruptcy. Ms. Jones has a home that will go into foreclosure. The Board would only receive funds after all secured and unsecured debtors are paid. The Board is the fourth unsecured creditor listed on the Bankruptcy.

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Ms. Gabliks informed the Board that there is a current judgment registered against Ms. Jones. If Ms. Jones was to acquire real property in the future, the Board will have a claim against the real property.

**Tirsa G Fong-Guien (Villanueva)**

Ms. Fong-Guien had a previous settlement agreement with a payment plan of \$400 per month, Ms. Fong-Guien was behind in payments and was contacted by Ms. Walker. Ms. Fong-Guien explained that her financial ability has changed. Ms. Fong-Guien has completed an updated financial statement. The updated financial statement was reviewed, a revised payment plan was implemented. Ms. Fong-Guien is current with the revised payment plan.

**Daria A Nelson**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Daria A. Nelson of Redmond, Oregon for:

Seventeen (17) 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 \$ 1,000 per violation; and

One (1) violation of ORS 673.643(1) and OAR 801-025-0020(1), for failing to register a tax preparation business at \$ 500.

**VOTE:** 6 ayes

**Diana K Cotter**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Diana K. Cotter of Spray, Oregon for:

Eighteen (18) 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; and

Four (4) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation.

**VOTE:** 6 ayes

**Erika Gutierrez**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Erika Gutierrez of McMinnville, Oregon for:

One-Hundred Ten (110) 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;

Three (3) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$100 per violation; and

One (1) violation of ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$100.

**H & R Block**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Randy Shimek officer and representative for H & R Block of Salem, Oregon for:

Twenty Three (23) violations of ORS 673.643(1)(c) and OAR 800-025-0023(2), for failing to report changes in the mailing address, physical address, e-mail address or telephone number(s) of the tax preparation business at \$50 per violation.

**VOTE:** 6 ayes

**Marilyn Post**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Marilyn Post Designated Consultant for H & R Block of Salem, Oregon, pursuant to OAR 800-025-0040(2) for:

All violations of ORS 673.643(1)(c) and OAR 800-025-0023(2), for failing to report changes in the mailing address, physical address, e-mail address or telephone number(s) of the tax preparation business at \$50 per violation.

**VOTE:** 6 ayes

**Fastax, Inc. dba Jackson Hewitt Tax Service**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Calvin Phillips owner of Fastax, Inc, dba Jackson Hewitt Tax Service of Salem, Oregon for:

Two (2) violations of ORS 673.643 & 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 \$300 per violation.

**VOTE:** 6 ayes

**Q-Tax & Bookkeeping Service, Inc**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Quentin Stanhope owner of Q-Tax and Bookkeeping Service, Inc. of Lincoln City, Oregon for:

One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at \$5,000 and;

Seven (7) violations of ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$500 per violation.

**VOTE:** 5 ayes, 1 nay (Salisbury)

**AmaLee "Amy" Chambers**

**BOARD ACTION:** Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to AmaLee "Amy" Chambers of Lincoln City, Oregon for:

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 \$250 per violation; and

One (1) violation of ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services at \$50.

**VOTE:** 6 ayes

The public meeting was closed for luncheon and continuing education program.

The public meeting was called back to order at 1:10 p.m. by Chair Salisbury

## **2. Licensing Report**

The Board members were provided with the licensing statistics in writing. There were no questions or comments.

Chair Salisbury reminded members of the public that attended the meeting that they would be able to speak during the public comment portion of the agenda. The Board does not engage in a conversation during public comment, however, they will consider the comment and possibly include the item on a future Board meeting. The Board has placed public comment forms in the lobby on the registration table.

## **3. Approval of July 11, 2013 Minutes**

**BOARD ACTION:** Moved by Ms. Hudson and carried to approve the Board minutes of July 11, 2013 as presented.

**VOTE:** 6 ayes

## **4. Administration Report**

Mr. McMillen provided the current budget and financial update. The revenue is down a slightly from the projected amounts. This is due to lower fines and penalties being collected. The expenditures are slightly over budget based on office furniture being purchased at the end of the previous biennium. The invoice was not received and paid until the current biennium.

The Legislatively approved budget books have been completed and submitted.

The office remodel is just about complete. Still waiting on a few pieces of furniture and rearrangement of current furniture. The office should be complete by the end of October.

Mr. Gutierrez asked about the budget process. Mr. McMillen explained that the budget has been approved and the Board is now assembling all the required documentation that is submitted as the budget document. Mr. Gutierrez asked if the monies for the public awareness campaign was included in the approved budget. Mr. McMillen did not

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have the line by line allotted information for the budget. Mr. Gutierrez indicated that this item had been removed from previous budget, but it is important to include. Mr. McMillen will look into this item and report at the November Board meeting.

Mr. McMillen indicated that he has now been with the agency for about 60 days. Mr. McMillen has begun to gain better knowledge of each staff member and the areas of each ones responsibilities. Mr. McMillen feels that the transition has been easier based on the strength of the staff members. Mr. McMillen and staff have begun discussions with NIC-USA regarding on-line licensing. The project is scheduled to be implemented in four stages. The goal is to have all applications, including payment, completed on-line through a secure website. A task that needs focused on is cross training. Each employee, including the executive director, should be able to help out another member of the agency. This agency will need to determine how it will fit into the national licensing requirement. The last item is the 2015-17 budget cycle will begin soon. The Board will need to start thinking about items that they may want changed which include statutory changes.

Mr. Gutierrez would like to see the monthly line item report regarding the income and expenditures to be provided with the budget/financial updates. Mr. McMillen will include this information in the future.

## **5. Rules Advisory Committee Report**

The Rules Advisory Committee (RAC) meeting took place on August 28, 2013. A report was provided to the Board members in their binders. The Board reviewed the recommendations and proposed changes from the RAC. Rules the Board will be proposing for amendment, are as follows:

800-010-0020 Confidential Information;  
800-010-0025 Integrity and Objectivity;  
800-010-0040 Identification;  
800-010-0041 Address and Telephone;  
800-010-0050 Advertising and Solicitation;  
800-015-0015 Continuing Education: Audit, Required Documentation and Sanctions;  
800-020-0025 Fees;  
800-020-0065 Displaying of Licenses;  
800-025-0020 Tax Preparation Business Registration;  
800-025-0040 Designated Consultants; and  
800-025-0060 Consultant in Residence.

Details on the proposed changes can be located on the Board's web site at:

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[http://www.oregon.gov/OBTP/Pages/oregon\\_administrative\\_rulemaking.aspx](http://www.oregon.gov/OBTP/Pages/oregon_administrative_rulemaking.aspx)

The rule summary is as follows:

Proposed amendments for a \$10 decrease in consultant, preparer and business registration fees is due to an unexpected revenue surplus. This rule is conditional upon the Board's ending balance remaining at a sufficient level to operate the agency. Should the Board's ending balance decrease below sufficient operating funds, the fees would revert to the fee structure currently being assessed.

Additional amendments/adoptions to the OARs, under which the Board operates, result from the Rules Advisory Committee, Assistant Attorney General and Board staff recommendations and are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies. In addition, the proposed amendments will provide better clarification to constituents as well as continue to conform to the current standards. The Rules Advisory Committee is comprised of Oregon licensed tax professionals and was established by the Board of Tax Practitioners for the purpose of reviewing the OARs governing tax practitioners in the State of Oregon. In addition, the establishment of the Rules Advisory Committee has provided an avenue for the Board to involve licensees in the rule making process.

The rulemaking hearing is scheduled for Monday, December 16, 2013, anyone may submit written comment's until 5:00 p.m., which will be the close of the public comment period.

**BOARD ACTION:** Moved by Ms. Hudson and carried to accept the proposed rule changes as they have been amended and present them for public comment.

**VOTE:** 6 ayes

Jess Gutierrez left the meeting at 2:50 p.m.

## **6. Exam and Education Report**

Ms. Billings provide the exam statistics for July and August 2013. The members were provided with the pass rate percentages from 2009 to August 2013. Ms. Billings had a conversation with Mr. Tyler, a new instructor for the 80-hour basic course, who suggested that the Board create an 80-hour basic course curriculum. Mr. Tyler suggested that a course manual, video, study aides that would provide greater detail for the course besides the course outline. Ms. Salisbury indicated that the project would be great undertaking. Mr. Tyler is has begun networking with

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other instructors and his students to begin building some of the information suggested for the course curriculum. Ms. Billings provided the members with the current course outline. The course outline will be included in a future Board meeting.

Five volunteers came to the Board office and tested the preparer's exam. There were a few minor flaws that with the exam. Barb Jenkins, the exam consultant, and Ms. Billings were able to correct the flaws. The exam has been released and the proctor sites have been finalized.

Instructors of the 80-hour basic course have been received and approved. The instructor packets were emailed to instructors.

Continuing Education (CE) for consultants is almost complete. Six licensees had to be contacted a second time because they did not submit the proof of completion certificates by the deadline. The Board has received all but one (1) response to the CE audit.

A member from the OATC contacted the Board and wanted to set-up a table at the exam site to provide information to the examinees about the association. Ms. Billings told her the exam is not the appropriate setting. Ms. Billings asked the Board if they would be interested in sending a brochure or flyer, which is provided by the association, with the letter to individuals who had passed the exam. Board members do not believe this is appropriate at this time. The associations could purchase a list of new licensees.

Instructor workshop went well. Received positive comments on the suggestions that were received regarding homework skills and testing taking that could be provided to students.

## **7. Waiver Requests**

Ellie Kim

**BOARD ACTION:** Moved by Mrs. Hudson to accept the Designated Consultant waiver request for Ellie Kim of Happy Valley, Oregon through October 15, 2013, per the Business Practice Committee's temporary approval issued on August 8, 2013.

**VOTE:** 5 ayes, 2 excused (Gutierrez, Miller)

## **8. Public Comment**

Dale Marino asked to speak on unlicensed tax returns. Mr. Marino is concerned with individual tax returns that are prepared by unlicensed volunteers through AARP, VITA or volunteer agencies that are subsidized by the IRS. These individuals do not have a license with OBTP. They are not trained properly, they are not supervised properly, they

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have no background check, they have no accountability when they make a mistake, and they are not identified on the tax return that they have prepared. Oregon consumers go to these individuals and think that their tax return will be prepared professional, but they do not know that the return is being prepared by someone who is not trained properly, not experienced. These people are preparing tax returns, giving tax advice and assisting in tax preparation. These consumers think that the tax returns that are prepared are the same except for the price, theirs is for free. They are lucky to have 25 hours of training in a year. As a tax professional, we all know there is no easy tax return anymore. I have seen the dumbest mistake on the easiest return. If someone has very little training, I think it is a problem for the Oregon consumer. We have to have at least 80 hours of training and take a test to become an LTP, they have 25 hours. No accountability for mistakes. The National Society of Accountants is proposing to IRS that these volunteers be required to obtain a PTIN number. This would provide a way to track the returns that are completed by a particular volunteer. Mr. Marino gave a few examples of issues that he has experienced or heard of regarding volunteer preparers. Mr. Marino is very concerned that the Oregon consumers are not being protected by the Board. The Board should consider expanding the authority to grow the number of licensees. The Board seems to be more concerned with the inexperienced EA than the unlicensed volunteer tax preparer. I ask the Board to request the legislature to expand the authority of the Board to include unlicensed volunteer tax preparers. One more thing, a few years ago, I asked Ron Wagner if OATC could have a table at the Board administered exam and he did say yes at that time.

Kathy Roberts would like to comment on unpaid tax returns. I volunteered for AARP one year, at that time it was EZ and 1040. According to AARP, you were not allowed to do rentals or schedules C. If someone came needing those type of services, we would tell them they needed to go to a licensed tax professional.

Chair Salisbury indicated that the Board would convene to executive session at 3:30 p.m. pursuant to ORS 192.660(2)(f). The next Board meeting is scheduled November 7, 2013 at the Board office in Salem, Oregon. Public session should begin around 11:00 a.m. The Executive Session is closed to members of the public.

## **9. Adjournment**

Chair Salisbury called the public session meeting back to order after conclusion of the Executive Session at 4:41 p.m.

The meeting adjourned at 4:42 p.m.