Oregon Board of Tax Practitioners

Public Board Meeting Minutes
January 9, 2014

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
Jess Gutierrez, LTC
Dorothy Hudson, LTC
Kinsey Miller, Public Member

Board Staff:

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

Excused:

Nutan Arora, LTC

Guests:

Mamie Carter, JacksonHewitt
Beverley Diercks, OATC
Nancy Hubbard, OSTC
Dale Marino, ORSEA
Calvin Phillips
Linda Thomas
Merry VanAtta, OAIA

1. CALL TO ORDER

Chair Salisbury called the public session to order at 9:05 a.m. Roll call was completed. Chair Salisbury closed the public session at 9:07 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 11:13 a.m.

2. Amendments to proposed agenda

There are no amendments to the proposed agenda.

4. Public Session

A. Approval of Board Minutes

i. September 26, 2013

Ms. Shepherd indicated that the staff questions for clarification needed to be removed from the minutes.

BOARD ACTION: Minutes are approved as printed.

ii. October 23, 2013

BOARD ACTION: Minutes are approved as printed.

iii. November 7, 2013

BOARD ACTION: Minutes are approved as printed.

5. Compliance Report

a. Status Update

Ms. Walker provided the general compliance statistics for the 2013 calendar year. The Board received 164 total complaints. Of those cases, the Board has:
16 Open investigations
11 Pending Investigations
17 Mediated
120 Closed

b. Year-to-date / Comparison Statistics

Ms. Walker provided the 2012/2013 comparison statistics. The Board members did not have any comments regarding the statistics.

Ms. Walker provided the members with a copy of a coupon that was received from a check cashing company which was offering clients of a specific tax business a discounted fee if the individual went there to have his or her income tax refund check cashed. Ms. Walker asked if the Board thought this advertisement would require that the business license of the tax business be included on the advertisement because the business was mentioned. The Board concluded that the tax business is not advertising on the coupon, so the business license is not required.

Ms. Walker reported that Mr. John Kwak had successfully completed the Consultant State Only exam and obtained his Consultant License before the waiver request approval for ITT Financial Services Inc expired. Mr. Kwak is listed as the designated consultant and resident consultant for ITT Financial Services Inc.

c. Succession Plan/Custodian of Record Policy

The Tax Board Bulletin included an article regarding succession planning/custodian of record policy. The Board has received written comments on the policy. Mr. Gutierrez and Ms. Hudson commented that the policy seems outside the

scope of regulating tax professionals. When a professional has completed the clients' return, the original documents are returned with the copy of the tax return. Mr. Addington would like the policy to be stated as a suggestion because identity theft is growing rapidly. The information contained in the succession plan is good advice for anyone who has a business or is in a profession where personal information is maintained regarding the client.

The members came to the understanding that this information would be available to licensees as guidance only.

d. Disciplinary Cases Votes(s)

Breana L Franklin
Medford, Oregon

BOARD ACTION: Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Revoke the Preparer License of Breana L. Franklin (License #32696-P) 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) as well as include in the Notice, an Intent to Discipline and Right to Hearing for:

Fourteen (14) violations of ORS 673.700(3) & OAR 800-010-0017(2) for negligence by engaging in detrimental conduct to the client at $3,000 per violation;

Fourteen (14) violations of ORS 673.705(6) & OAR 800-010-0025(7) for engaging in fraudulent, deceptive or dishonest conduct relating to the licensee's professional practice at $5,000 per violation; and

Fourteen (14) violations of ORS 673.705(7) and OAR 800-010-0025(8) for violating a position of trust at $5,000 per violation.

VOTE: 6 ayes

Dana M. Kilthau
Prineville, Oregon

BOARD ACTION: Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Dana M. Kilthau, owner of M & J Specialty Services for:

Twenty-six (26) 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 $500 per violation;

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; and

Three (3) 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 $100 per violation.

VOTE: 6 ayes

Josie S Calderon
Redmond, Oregon

Mr. Addington declared a direct conflict of interest. Mr. Addington will/did not participate in the discussion on this matter.

BOARD ACTION: Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Josie S. Calderon, owner of Beyond the Cascades Realty LLC for:

Two (2) violation(s) 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 $2,500 per violation; and

Two (2) violation(s) of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business at $100 per violation.

VOTE: 5 ayes, 1 abstain (Addington)

Steven H. Wacker
Clackamas, Oregon

BOARD ACTION: Moved by Mr. Gutierrez and carried that the Board issue a Notice of Intent to Impose Discipline and Right to Hearing to Steven H. Wacker of Clackamas, Oregon for:

Twenty-two (22) violation(s) 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 $2,500 per violation; and

Two (2) violation(s) 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

6. Rulemaking Report

Walker reported that no one attended the Rule Making Hearing in person. However; the Board had received written comments during the comment period.

The points of the rule changes are as followed:

- OAR 800-010-0040(3) Identification – Requires licensees to provide a copy of depreciation schedules to the client in addition to a complete set of the tax returns and accompanying forms and schedules.
- OAR 800-010-0041 Address & Telephone – Adds non-licensed business owners to the address and telephone filing requirements. Requires that changes to information be submitted to the board office in writing.
- OAR 800-010-0050(5)(c) Advertising and Solicitation – Changes to the forms and schedules required on a basic fee schedule: Rename – Form 8812 to Schedule 8812, Delete 40 S, Add 40N and 40P
- OAR 800-020-0025 Fess – The Board implemented a $10 decrease in consultant, preparer and business registration fees due to an unexpected revenue surplus.
- OAR 800-025-0040(7) & (8) Designated Consultants – Requires that both the tax preparation business and designated consultant notify the Board in writing within 15 business days of any change in status of the designated consultant.
- OAR 800-025-0060 (7) & (8) Consultant in Residence - Requires that both the tax preparation business and resident consultant notify the Board in writing within 15 business days of any change in status of the designated consultant

BOARD ACTION: Moved by Ms. Hudson and carried that the Board adopt the proposed rules as revised.

VOTE: 6 ayes

Examination review

BOARD ACTION: Moved by Mr. Lovato and carried that the Board accept the changes to the exam from the question and comment forms as discussed in Executive Session.

VOTE: 6 ayes

7. Administrative Report

a. Board member succession planning

This is the last scheduled meeting for Mr. Gutierrez. The Governor's office has three (3) current applications that are being reviewed. Ms. Salisbury's current term ends June 30, 2014. Ms. Salisbury has not committed to a third term reappointment.

b. November and YTD financial report

Mr. McMillen provided the current budget and financial update. The current revenue is lower than the projected budget. The expenditures are also lower than the projected budget. The Board members appreciated the report being produced with the allocated budget information included.

c. Website and NIC online transaction project

There are meetings scheduled the week of January 13, 2014, with NIC regarding the online application. Mr. McMillen has begun discussion with the Department of Administrative Service (DAS) to determine what would be required for Board's database to be moved to a DAS server. Having the database on a DAS server will increase the security of the date that is in the database as well as increase the performance of the database. The main issue is that the database will need to become an internal table driven database rather than a data driven database. Mr. McMillen will continue to update the Board on this project.

d. 2013-2015 and 2015-2017 business planning

Mr. McMillen encouraged Board members to be thinking of the items that may need to be included in the next budget. The Board will want to begin developing the legislative concepts for the 2015-17 budget process at the May 8, 2014 meeting.

e. Staff position and descriptions review and evaluations

Mr. McMillen announced that he will be scheduling time with each staff member to review the position description compared to the duties that are being performed. Mr. McMillen wants to ensure that he and the staff members have a clear understanding of the expectations of the assigned duties for each position. Once there is an understanding of the duties, Mr. McMillen will provide each staff member with an annual performance evaluation.

The job rotation between Ms. Shepherd and Ms. Garvey is scheduled to expire at the end of April 2014.

8. Public Comment

Nancy Hubbard asked how a licensee will obtain the succession planning policy. The licensees will need to access the document to ensure they are in compliance.

Mamie Carter provided clarification that Jackson Hewitt is not the advertiser for the Rapid Cash Coupons. The coupon is provided to the client after the tax return has been completed.

Dale Marino emailed the Board the *Treasury Inspector General for Tax Administration* dated September 16, 2013. The information was emailed to the members and hard copied for this meeting. Mr. Marino provided some of the statistics that were in the report. The individual who are preparing tax returns as a volunteer with very little training are doing a disservice to Oregonians based on the rate of error.

9. Licensing Report

Ms. Shepherd provided the licensee statistics for November and December 2013. The report includes the 2012 information for comparison. The report is attached and made a permanent part of these minutes. Ms. Shepherd reported that she attempted to provide a listing of new licensee's from the Boards database, but was unsuccessful. Ms. Shepherd will obtain assistance from the Board's database contractor to ensure that the listing is available for the May 2014 meeting.

Ms. Shepherd indicated that the report should include the reactivation statistics. Also, Ms. Shepherd suggested that the Board review the procedure and administrative rules regarding the reactivation of a license. Ms. Hudson requested that this information be included on the May Board meeting agenda.

10. Exam and Education Report

a. Examination & Education

Ms. Billings provided the examination statistics for November and December 2013. The members also received the overall statistic comparison from 2009-13. The data reflects a decrease in the number of exams being administered as well as the pass rate.

b. Board Administered Exam

The Board Administered Exam was held on Saturday, December 7, 2013, at Chemeketa Community College. Based on the weather conditions, many individuals were required to reschedule the exam. Chemeketa Community College had closed the campus for the

day and reported this information to the media; however, the building rentals are completed through a third party who did allow the test to be administered. Board staff have begun compiling ideas to ensure the information can be provided to examinees in the future by changing the main message on the Board's voicemail and having updated information on the Board's website.

Board members collaborated on ideas that could help promote the profession. The Board does not want the statistics of the profession to continue to decrease. A few of the ideas that were mentioned are:

- Board members to promote licensure
- Board to attend job fairs
- Prepare a letter sized flyer to place on bulletin boards in Employment offices

c. CE Audit Report

Ms. Billings is working on the consultant audit.

Ms. Billings sent an audit letter to 104 preparers. Of those, 96 are complete, five (5) will require additional information and three (3) have not responded. Ms. Billings will be sending a second request to those three individuals.

11. Waiver Requests

No waiver requests were received.

12. Public Comment

There are no public comments at this time

Other

Ms. Salisbury and Mr. McMillen met with Representative Bill Kennemer to discuss OAR 800-020-0015(5). Both reported that the meeting went well and that Rep. Kennemer seemed receptive of the Board position regarding the rule.

The Board does have concerns regarding the statistics provided regarding the volunteers who are providing tax preparation services through a volunteer organization. Based on the written data, it appears that there are volunteers who are completing returns that they do not have the knowledge to complete. At this time, the Board is charged with overseeing individuals who are compensated for assisting with individual income tax

returns. Mr. McMillen suggested that this may be a discussion for the May Board meeting which could become a legislative concept for the 2015-17 legislative session.

Ms. Salisbury requested that the Board send an email blast to all licensees asking for ideas that would improve the Boards authority to protect consumers in Oregon when having individual income taxes completed for compensation. This would be a valuable topic for each association to discuss with its leadership.

13. Adjournment

The meeting adjourned at 3:00 p.m. The next meeting is scheduled May 8, 2014 at the board office in Salem, Oregon.