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May 17, 2011

Mr. Donald Rousslang
Rules Office
Department of Taxation
State of Hawaii
830 Punchbowl Street, Room 219
Honolulu, Hawaii 96813

Re: Tax Review Commission

Dear Mr. Rousslang:

You orally requested our advice regarding whether the date for submission to the Legislature of the report required of the Tax Review Commission can be extended.

The inquiry is prompted by the fact that by the time the Tax Review Commission ("Commission") was to begin its work in July 2010, only two members had been nominated and confirmed to the 7-member Commission, so the Commission lacked a quorum to do any business. I understand from you that a third member was to have been confirmed by the Legislature this session and that the Governor intends to make interim appointments for the balance of the members of the Commission.

Brief Answer

We believe that any extension of time to permit the Commission to complete its work would have to be given by the legislature through an amendment to Hawaii Revised Statutes chapter 232E.

Background

Article VII, section 3 of the State Constitution provides that a tax review commission shall be constituted every five years beginning in 1980. Article VII, section 3 states in full:

There shall be a tax review commission, which shall be appointed as provided by law on or before July 1, 1980, and every five years thereafter.

The commission shall submit to the legislature an evaluation of the State's tax structure, recommend revenue and tax policy and then dissolve.

This constitutional provision is implemented in Hawaii Revised Statutes "HRS") chapter 232E. Section 232E-1 provides that the Commission shall consist of seven members appointed by the governor with the advice and consent of the Senate. It also provides that the Commission may enter into contracts with consultants necessary to perform its duties.

Section 232E-2, HRS, provides that the commission shall be appointed on or before July 1, 1980 and a new commission shall be appointed on or before July 1 every five years thereafter. It also provides that the commission shall dissolve upon the adjournment sine die of the legislature to which it submits the evaluation and recommendation required by section 232E-3.

Section 232E-3, HRS, requires the commission to submit its evaluation of the State's tax structure and recommend revenue and tax policy thirty days prior to the convening of the second regular session of the legislature after the members of the commission have been appointed.

Discussion

Pursuant to the constitutional provisions and HRS chapter 232E, the Commission was to have been constituted in 2010 and to have begun meeting beginning July 1, 2010. Its report to the legislature is due by December 2011. However, by July 1, 2010, only two members had been appointed and confirmed. Hence, as of July 1, 2010, the Commission did not have a quorum and could not meet and could not act.

Something similar occurred in the 1980s. In 1981 the then-constituted commission had only 17 months to submit its report and had been given no funding for the necessary studies. When the legislature declined to give the commission extra time and necessary recourses, the members resigned. In 1983 the Legislature took up legislation to constitute a tax review commission, provide resources and to extend the time it had to accomplish its work.

Consequently, we believe that the current Commission, once it has a quorum to validly conduct business, needs to request that legislation be enacted extending its life. The Commission should seek to have the legislation introduced and passed at a special session of the legislature if appropriate and if one is convened; otherwise it would have to request that the legislation, which would be introduced in the 2012 regular session, have a retroactive effective date, say, July 1, 2011.

We would recommend that the proposed legislation include wording as follows:

"§232E-3 Duties. The commission shall conduct a systematic review of the State's tax structure, using such standards as equity and efficiency. Thirty days prior to the convening of the second regular session of the legislature after the members of the commission have been appointed, the commission shall submit to the legislature an

evaluation of the State's tax structure and recommend revenue and tax policy, except that for the commission appointed on or before July 1, 1980, or the replacement commission intended to function prior to the appointment of a new commission on or before July 1, 1985, the commission shall submit the required evaluation and recommendations to the legislature thirty days prior to the convening of the regular session of 1985[-]; and provided further that for the commission appointed on or before July 1, 2010, or the successor commission intended to function prior to the appointment of a new commission on or before July 1, 2015, the commission shall submit the required evaluation and recommendations to the legislature thirty days prior to the convening of the regular session of 2012."

Please let us know if you have additional questions.

Very truly yours,



Diane Erickson
Deputy Attorney General

APPROVED:



DAVID M. LOUIE
Attorney General