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October 20, 2017

The Honorable Colleen Takamura
Chair
Hawai'i Tax Review Commission
State of Hawai'i
c/o Rules Office
830 Punchbowl Street, Room 219
Honolulu, Hawai'i 96813

Dear Ms. Takamura:

RE: Whether Consideration of Tax and Revenue Adequacy Exceeds the
Hawai'i Tax Review Commission's Scope of Authority.

The Department of the Attorney General is in receipt of your letter dated October 4, 2017 seeking legal advice on "whether consideration of tax and revenue adequacy exceeds the Hawaii Tax Review Commission's (the "Commission") scope of authority under the Hawaii Constitution, and in HRS chapter 232E, and/or any other relevant authority." Your question stems from a September 30, 2017 letter from the Tax Foundation of Hawai'i (the "Tax Foundation") asserting that the Commission's consideration of "revenue adequacy" exceeds its constitutional and statutory authority.

For the reasons discussed herein, we do not believe that the Commission's consideration of "revenue adequacy" exceeds the Commission's constitutional and statutory authority.

It is our understanding from the Tax Foundation's letter that the Commission is currently conducting a study of the State's tax structure as provided for in article VII, section 3 of the Hawai'i Constitution and Hawaii Revised Statutes (HRS) chapter 232E. The letter states that in doing so, the Commission, with the assistance of its consultant, PFM Group, is considering the following three areas of tax and revenue policy:

- Who bears the burden of Hawaii's taxes (including how much is exported to visitors)?

- What are the most effective ways to reform Hawaii's taxes to make them less regressive?
- What are the best ways to generate more revenues through new and existing sources, and through improved compliance with Hawaii's tax laws?

It is only the last area above that the Tax Foundation has a problem with. Specifically, the Tax Foundation asserts, "we believe that consideration of revenue adequacy, which PFM Group has identified as a necessary component of this area, is beyond the scope of the Commission's mandate as expressed in the Hawaii Constitution and in HRS chapter 232E. Budget decisions are the province of the Hawaii Legislature, which takes the fiscal requests of the Executive and Judiciary branches of government and aligns them with available resources as forecasted by the Council on Revenues."

Article VII, section 3 of the Hawai'i Constitution requires the Commission to "submit to the legislature an evaluation of the State's tax structure, **recommended revenue and tax policy** and then dissolve." Haw. Const. art. XII, § 3 (2009 Repl.) (Emphasis added). Similarly, HRS section 232E-3 provides that the Commission "shall conduct a systematic review of the State's tax structure, using such standards as equity and efficiency" and "shall submit to the legislature an evaluation of the State's tax structure **and recommend revenue and tax policy**[" HRS § 232E-3 (2016 Cumm. Suppl.)

Further, Standing Committee Report No. 66 of the 1978 Constitutional Convention of Hawaii provides in pertinent part:

The function of the commission would be to evaluate the State's tax structure and submit recommendations on revenue and tax policy to the legislature.

The constitutional requirement for a tax review commission is determined to be necessary since neither the executive branch nor the legislature has reviewed the State's overall tax system against such standards of equity and efficiency. There has been no systematic review of the tax structure in more than two decades. The last major restructuring of taxes took place in 1965, and that change had the objective of producing additional revenues rather than achieving economic and social objectives. Other changes have been piecemeal in nature usually originating from the legislature and directed primarily to liberalization of the general excise tax. For its part, the executive branch has

limited its recommendation to house-keeping measures.

A periodic and independent assessment of the State's tax system would be useful to both branches of government as well as provide the public with a framework by which it can assess executive and legislative actions on taxation and revenue policy.

Standing Committee Rep. No. 66, Vol. I, Proceedings of the Constitutional Convention of 1978 at 662 (1978) (emphasis added).

The above legal authorities authorize, and indeed require, the Commission to undertake a comprehensive evaluation of the State's tax structure and to submit useful recommendations on revenue and tax policy to the Legislature. To this end, we advise that the revenue and tax policy considerations of what the best ways are for generating more revenues through new and existing sources, and through improved compliance with Hawaii's tax laws, are within the Commission's authority and necessary for it to make useful recommendations to the legislature.

Very truly yours,

Gary S. Suganuma
Deputy Attorney General

APPROVED:

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