

TAX REVIEW COMMISSION

**MINUTES OF THE SECOND MEETING OF THE
TAX REVIEW COMMISSION
HELD AT 830 PUNCHBOWL STREET
DEPARTMENT OF LABOR & INDUSTRIAL RELATIONS ROOMS 310-313
IN THE CITY & COUNTY OF HONOLULU
STATE OF HAWAII, ON THURSDAY, AUGUST 4, 2011 AT 8:30AM**

The Commissioners of the Tax Review Commission (TRC) met at the Department of Labor & Industrial Relations Conference Rooms, in the City and County of Honolulu, State of Hawaii, on Thursday, August 4, 2011.

Members Present: Randall Y. Iwase, Chair
Mitchell A. Imanaka, Vice-Chair
Roy A. Amemiya, Jr.
Peter S. Ho
Michael T. McEnerney
Darryl K. Nitta
Gregg M. Taketa

Staff: Donald Rousslang, Titin Sakata and Sondra Kaawa

Others: Fred Pablo, Director of Taxation
Denise Inouye, Department of Taxation
Mallory Fujitani, Department of Taxation
Hamid Jahanmir, Department of Taxation
Randall Nishiyama, Department of the Attorney General
Nandana Kalupahana, House Finance
Lowell Kalapa, Tax Foundation of Hawaii
Gladys Marrone, BIA Hawaii
Peter Fritz

CALL TO ORDER

TRC Chair Iwase called the meeting to order at 8:30AM.

APPROVE MINUTES FROM PREVIOUS MEETING

Chair Iwase addressed the first order of business on the agenda, which was the approval of minutes from the July 15, 2011 meeting. He first addressed the minutes from the regular meeting and said he hoped that all members had a chance to review, submit corrections or make

comments. No comments were made and Chair Iwase asked for a motion to approve the regular minutes.

It was moved by Mr. Amemiya and seconded by Mr. Taketa to approve the regular minutes of July 15, 2011. The motion carried unanimously.

Chair Iwase addressed the minutes of the executive session meeting of July 15, 2011. Chair Iwase said he hoped all members had a chance to review, submit corrections or make comments. No comments were made and Chair Iwase asked for a motion to approve the executive minutes.

It was moved by Mr. Amemiya and seconded by Mr. Nitta to approve the executive minutes of July 15, 2011. The motion carried unanimously.

COMMUNICATION TO THE COMMISSION

The Commission received the following correspondence/materials:

1. Mr. McEnerney provided an article titled "State Tax Policy-A Political Perspective" by David Brunori, the Urban Institute Press, Washington, D.C.
2. A letter dated August 3, 2011 from Karen Nakamura, Executive Vice President and Chief Executive Officer of the Building Industry Association of Hawaii (BIA), which requested the Commission to review the suspension of GET exemptions for payments to subcontractors made by ACT 105. The letter also said that BIA is working to collect data from its members on the impact of ACT 105.
3. A Memorandum to the Members of the Mortgage Foreclosure Task Force from Leslie H. Kondo, Executive Director and General Counsel of the Hawaii State Ethics Commission.

AVAILABLE RESOURCES

Chair Iwase said he had met with Director Pablo and staff to discuss the availability of DOTAX staff in providing support to TRC. Despite staff shortage, DOTAX assured its willingness to work with the TRC.

Chair Iwase suggested that the TRC include a summary of recommendations made by previous TRCs showing what was recommended by the TRC to the Legislature and what the Legislature has enacted. He said that Representative Choy had suggested that such an appendix would be helpful to the Legislature. DOTAX staff agrees to take on the task. However, Director Pablo said the TRC may incur some cost that is yet to be determined.

Chair Iwase recommended that the TRC consider the possibility of retaining someone with an economics background. He said Dr. Pham, former DOTAX Tax Research and Planning (TRP) Officer expressed interest in discussing this matter further. He said he was aware there were other applicants.

Ms. Sakata of DOTAX informed TRC members that there were three people that submitted applications to provide professional services. The solicitation is no longer available on the SPO website but submittals received after July 29, 2011 will be reviewed and selected as needed. The names of the applicants are:

1. Valley Economics Associates, Inc. (Sean Alley, PhD, JD and Antonio Avlos, PhD)
2. William F. Fox, PhD
3. James Mak, PhD

LEGISLATIVE PROPOSAL TO EXTEND THE LIFE OF THE COMMISSION AND REQUEST FOR ADDITIONAL FUNDING

Chair Iwase said that he spoke with House Speaker Calvin Say, Senate President Shan Tsutsui and Governor Neil Abercrombie regarding the mission of the TRC and the opportunity it is being given despite the economic dip and regarding how the State of Hawaii's current tax system performed in the "Great Recession". He said the TRC needs to delve deeper than prior TRC's, to look at the system that we have and develop recommendations for a tax structure for Hawaii for the twenty-first century. Chair Iwase also discussed the need to extend the TRC's deadline from December, 2012 to December, 2013 and opined that additional funding would be needed to give the TRC the ability to complete a comprehensive study and present its final report to the Legislature.

Chair Iwase asked Director Pablo to draft legislation to extend the TRC deadline for filing its report to December, 2013 and to request an additional \$200,000 for their budget so that they could retain an individual or entity with a great deal of experience and stature to complete a comprehensive study that will be something the Legislature will look at. No objections were raised by TRC members.

Mr. Ho fully supported using this mechanism to move towards a 21st century tax policy. However, he said one challenge would be to create consensus amongst the committee and the broader constituent base on exactly what Hawaii needs in terms of a big picture economic policy for the 21st century, and that will be another challenge on both resource availability and time that the TRC should give thought to.

Chair Iwase reiterated that additional funding from the Legislature would be necessary to enable the TRC to hire staff and retain services from an individual or entity that can do the type of comprehensive study the TRC is proposing to do. TRC should have a clearer objective so that

the proposed legislative bill can justify why they are asking to be extended for one year and for the additional funding. The current TRC does not want to mirror previous reports.

DISCUSSION OF REPORTS/STUDIES TO BE PRODUCED BY THE COMMISSION

Mr. Taketa agreed, however he said that as a starting point, there needs to be an update to the adequacy of Hawaii's tax structure in light of the recent economic downturn. For the previous Commissions, DOTAX did the report. Chair Iwase reminded members that Director Pablo and DOTAX staff are willing to undertake the task of Appendix A and Appendix I in the report of the 2005-2007 TRC with cost. Mr. Taketa stated that for anything beyond these appendices, the TRC and DOTAX should come to some kind of agreement. Mr. Taketa agreed with Mr. Ho that there needs to be consensus amongst TRC members on the basic fundamentals and common philosophy, and that there was a need to narrow down the study due to limited resources. Mr. Imanaka raised the concern that the TRC will rely heavily on DOTAX for information and for the provision of certain services and wanted to know if there was an anticipated scope or anticipated services to be provided to the TRC by DOTAX

Director Pablo responded that he and Acting TRP Officer, Don Rousslang will be reviewing past commission's support that DOTAX provided. However, with less staff now any support services DOTAX provides may incur costs. He assured the TRC that Appendix A and Appendix I of the report of the previous TRC will be done by DOTAX, and that the Department would provide continued assistance. He said that when DOTAX knows what the TRC proposes, DOTAX can then discuss with TRC what kind of support services it can provide.

Mr. McEnerney thought what was being discussed were good ideas to pursue. However, he felt that the TRC's charge is to review the state tax structure, not to create a new tax structure. He asked if the TRC was going to request additional funding, was there a need to expand on what the TRC's charge will be as well?

Chair Iwase explained that the reason for Appendix A as described to him by the previous TRC Chair was to meet the TRC's charge and anything beyond that, if the TRC finds the tax system to be inadequate, the TRC could move forward with recommendations. This is why the TRC has been discussing a 21st century tax structure as a means to move forward. The article provided by Mr. McEnerney to the TRC discussed the adequacy of revenues for now and into the future, the question of fairness, simplicity, administration of the tax code and the issue of not having the tax code too complex. He said that Appendix A will help the TRC minimally meet its charge and that going beyond that will also help meet its charge. He said the Legislature doesn't want the TRC to just look at the housekeeping and say everything is in place.

Currently, there are issues at the legislative level regarding the Internet. Congress recently introduced The Main Street Fairness Act that deals with streamline sales tax for which there is a recommendation in the previous TRC report that the current TRC may want to review. DOTAX is trying to address the definition of nexus.

Mr. McEnerney said he is in favor of going forward with this great idea, but felt the TRC has to look beyond Hawaii as a source for recommendations and assistance. He said these studies are being done at major universities around the United States. He said he is also concerned about going forward with this idea, that TRC may be challenged for not functioning within the charge of the statute.

Chair Iwase said he did not want to overstate his conversations with key individuals, but said that he felt they were comfortable with the direction the TRC is moving. He said that if there is any disagreement, the TRC will be challenged. He said the TRC needs to keep in mind that it could be challenged by anyone. In spite of this, it is the question of whether or not they think they are right. Mr. Imanaka sensed that the charge implicitly incorporates forward thinking in terms of what our structure should be otherwise there would be no sense in doing such a study.

Mr. Fritz said he has sat in meetings of the previous TRC and explained that back then, the TRC viewed part of their duties as looking at the tax structure as it existed as well as how the structure could be changed in order to provide fairness and adequacy. He felt in order to provide fairness and adequacy, issues like nexus, which has been reviewed by the Legislature in the past, may need to be reviewed again.

Mr. Ho said some local organizations might generally be willing to provide services that the TRC needs for less than retail rack rate which would benefit TRC financially. On the other hand, he questioned if this is an appropriate approach for the TRC owing to the ethics situation.

According to Mr. Nishiyama of the Department of the Attorney General, the State has accepted services from private entities. For example, the State's Early Education Care Coordinator was funded through a grant from the Kellogg Foundation of which the money was deposited into a trust fund. The State recognized that the Kellogg Foundation established a broad purpose and use of the money but it did not direct the State on what specifically the money must be use for. Another example is a monetary contribution from Aloha Care that the State is using for a Healthcare Coordinator. Again, Aloha Care presented a broad range of what its donation was to be used for and left it to the State's discretion on exactly how the money would be used. In particular, the Ethics Commission, in an informal opinion with respect to those types of donations indicated that a person being hired should not be working or taking discretionary action on those specific items which the donor may be bringing before the State. Other than that, the State is free to accept donations or reduced rates.

Mr. Ho said he will take the lead on seeking out potential resources within the local communities to support the TRC. He is pleasantly surprised by how much support there is in the community for things important to the community. Through this type of networking and tapping into local resources, there's a chance to help the TRC stretch its budget dollars.

NEXT MEETING

The next meeting was scheduled for Thursday, September 8, 2011, at 8:30 AM, in the Director's Conference Room.

ADJOURNMENT

The meeting was adjourned at 9:05 AM.