

TAX REVIEW COMMISSION

MINUTES OF THE SIXTH 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, DECEMBER 22, 2011 AT 8:30 A.M.

The members 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, December 22, 2011.

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

Staff: Donald Rousslang, Johnnel Nakamura, Titin Sakata and Sondra Kaawa

Others: Randall Nishiyama, Department of the Attorney General
Isaac W. Choy, House of Representatives
Craig Hirai, Hawaii Association of Realtors
Nandana Kalupahana, House Finance
Shannon Alirado, GCA
Sherman Wong, GCA
Gladys Marrone, BIA-Hawaii
Hamid Jahanmir, Department of Taxation
Lowell Kalapa, Tax Foundation of Hawaii
Peter Fritz

CALL TO ORDER

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

APPROVE MINUTES FROM PREVIOUS MEETING

Chair Iwase said the first item of business on the agenda was approval of the minutes from the meetings of September 29, 2011 and October 31, 2011. He asked if there were any comments,

suggested changes, or requests for amendments. Mr. Amemiya suggested several minor corrections to the minutes for the meeting of September 29.

Chair Iwase asked for a motion to approve the minutes from meeting of September 29, 2011 and October 31, 2011. The motion was made by Mr. Ho and seconded by Mr. Amemiya, with the corrections to September 29, 2011 minutes previously noted by Mr. Amemiya. The motion carried unanimously.

COMMUNICATION TO THE COMMISSION

Chair Iwase introduced two honorable guests, former Chair of the TRC and current State Representative Isaac Choy, and former Chair of the TRC Mr. Craig Hirai.

Representative Choy thanked Chair Iwase and the TRC for allowing him to speak. He started by wishing the TRC a Merry Christmas and thanked them for their service to the state. He said he understands that being on a TRC is a hard task because when he was the chair, he told the members to bring their pillows, because until they were finished, they were not going to leave. He said that DOTAX staff could attest that certain meetings lasted for a very long time.

Representative Choy said that he takes a great pride in being the past chair of the TRC, and that so did Mr. Hirai. He brought some suggestions that he compiled from his colleagues in the Legislature. He said that the list did not reflect the official position of the House of Representatives and pointed out that the TRC would find duplicates on the list, because the suggestions were compiled as they were received. He explained that the items presented were mere suggestions, not anything the Legislators required of the TRC. The list was extensive. Representative Choy acknowledged that the TRC cannot study all of the things mentioned; however, they were things the House of Representatives is very interested in knowing.

Representative Choy stated that there probably will be questions from his colleagues in public hearings to inquire whether the TRC will consider the things on the list he shared with them. If it is the cost or time that prevents the TRC from addressing the issues, it would be understandable, provided that the TRC discussed it. He reiterated that the list is just a compilation of ideas from his colleagues. He wished the TRC the best of luck.

Mr. Hirai said that he had very little to add to the material presented by Representative Choy and he did not envy the TRC in their task. He said he is sure the TRC will do a good job.

Representative Choy said he would be more than glad to answer any questions the members had for him.

Chair Iwase asked if there were any questions for Representative Choy or Mr. Hirai.

Mr. Amemiya asked Representative Choy regarding item number 4 on the list ("Internet and catalog sales – How much GET/use tax revenues are being lost? How can the State legally tax

those sales?"). Specifically, he asked whether the House has looked at how the State can regulate the tax on Internet sales.

Representative Choy answered "yes". He said he has introduced Internet sales tax bills every year since he was elected. There is a commerce clause issue in federal law that limits the powers of the States in this regard. California signed an agreement with Amazon.com to collect the tax. New York is already collecting the tax on internet sales. Both states have Nexus legislation not Streamlined Sales Tax legislation. There are three bills in the U.S. Congress, one Streamlined Sales Tax bill and two Nexus bills. Personally, Representative Choy doesn't think that either bill will pass. He said that If Internet sales and transactions at Expedia and Travelocity were smaller amounts, the Legislature would not address them. However, he said they were looking at \$20 to \$40 million of lost revenues. Representative Choy said he believes that Nexus bill is the way to go and that he will be introducing legislation again. He has three pieces of legislation all printed and ready to go. The first version is the Colorado model, which is a requirement to report sales, such as Form 1099 information for the Department of Taxation. The second version is a straight Nexus bill, which mimics California and New York's legislation. The last version is the Streamlined Sales Tax bill, which is controversial, because Hawaii doesn't have a sales tax; hence, the mechanics of changing our excise tax system to a sales tax scheme would be formidable, and it's something that Representative Choy does not support.

Mr. Amemiya asked if the House is already addressing this issue, why should the TRC duplicate their efforts.

Representative Choy repeated that he did not review the list and that it was a compilation of ideas from his colleagues. He said the TRC would find some duplicates, but that it is what the Legislators are interested in.

Mr. Hirai said that he thought the TRC may want to address the merits, strengths and weaknesses, pros and cons of Nexus versus the bill. He asked whether Streamlined Sales Tax legislation would be workable, since the Streamlined Sales Tax is based on a sales tax, which Hawaii does not have. He said that Nexus was workable. Perhaps the Congress may or may not pass the necessary bills, but that they were pending before the Congress. Mr. Hirai believed that the TRC should study what makes more sense for Hawaii. He said the TRC may want to make recommendation whether Nexus is better than Streamlined Sales Tax or vice versa.

Chair Iwase said he is somewhat familiar with the Main Street Fairness Act. He asked what the Marketplace Equity Act is.

Representative Choy said that is a Nexus bill.

Mr. Hirai clarified that if certain minimum standards are met, the State has the ability to tax.

Chair Iwase asked if Senator Inouye was co-sponsor on one of the bills.

Representative Choy said he didn't think so, but he could get that information to the TRC.

Mr. Hirai said Senator Durbin was a sponsor.

Chair Iwase asked if they knew who was pushing the Marketplace Equity Act.

Mr. Hirai said it was some bi-partisan group, but he didn't have that information on hand.

Representative Choy said the third bill is a compromise of the two bills.

Chair Iwase asked if the Marketplace Equity Act was the third bill.

Representative Choy said no, it was the second bill.

Mr. Hirai said in his opinion, whichever bill that would keep the General Excise tax in place without having to change all or part of it to a sales tax would probably be preferable from an administrative standpoint. That's something the TRC may want to look at.

Mr. Taketa asked Representative Choy to explain the Legislature's expectations of the TRC.

Representative Choy replied that during the legislative session, the Legislature doesn't have the time and opportunity to vet certain issues like the Streamlined Sales Tax and they relied on the TRC to study certain aspects of our tax system. He said he realizes that the TRC's mandate is to look at the entire tax structure; however, he believed that all previous TRC concluded that to look at the entire tax structure takes too much money and time. Therefore, previous Commissions have tended to concentrate on certain portions of the tax system. The Legislature expects academic bipartisan work from the TRC to provide them with more details on specific subjects that the TRC believes are important. The Legislature relies on the studies done by the TRC.

Mr. Taketa asked for a recommendation from Representative Choy given the fact that the TRC is over a month behind schedule in its report.

Representative Choy replied, "bring a pillow" as he said in his opening remarks. He added that it was going to take a lot of hours. Under his leadership, the TRC worked very hard and they spent many long hours. In the last couple of months of his tenure, he was at the Department of Taxation every day, working closely with Dr. Rousslang in making sure that their thoughts were clearly articulated in the report. Representative Choy shared some of the techniques he used; he made sure that everyone had a voice. For example, on the study regarding the high technology investment tax credit, both supporting and opposing comments are included to ensure that the report is balanced.

Chair Iwase stated that part of the reason the TRC is having a difficulty securing consultants is because there is not enough money. The TRC will probably be putting in a bill requesting additional funds and an extension of time.

Chair Iwase thanked Representative Choy and Mr. Hirai for taking the time to address the TRC.

Chair Iwase said the TRC received information from the Department of Taxation, which were responses to the questions raised by Mr. Taketa and questions from the October 31, 2011 overview of Hawaii taxes.

Chair Iwase asked if anyone had any questions for the Department of Taxation. He said the staff from the Department was there to answer any questions on information submitted to the TRC.

Mr. McEnerney said that he found the poverty list very helpful. For a family of two in Hawaii, the poverty level is at \$16,930; however, on the income tax data, the lowest category presented was \$50,000. He would like the income tax data be scaled down to \$10,000, \$15,000, or \$20,000 categories. He would like to know how many tax returns and tax payments are at the bottom of the scale.

Chair Iwase stated that the TRC would have more time to review the information presented in the letters from the Department. As the TRC moves forward in reviewing tax codes, the information should prove to be useful.

EXECUTIVE SESSION MEETING, PURSUANT TO SECTIONS 92-5(a)(4) and (8), HAWAII REVISED STATUTES

Chair Iwase adjourned to go into Executive Session at 8:45 a.m. The motion to move into Executive Session was made by Mr. Amemiya and seconded by Mr. Imanaka. The motion carried unanimously.

CALL TO ORDER- RECONVENE

Chair Iwase called the meeting to order at 10:00 a.m.

REPORT ON RESPONSES TO THE SOLICITATION FOR PROFESSIONAL SERVICES CONTRACT

Chair Iwase reminded everyone that the TRC issued two professional services solicitations: one for a staff economist, and another for a major economic/tax study. The negotiation with a potential staff economist was not successful; therefore, the TRC does not have a staff economist. With respect to the Notice to Providers of Professional Services for the major economic/tax study, there were no responses. Chair Iwase had gotten some responses to his request for the reasons why the vendors did not submit. Below the summary of the reasons:

- 1) The scope of the services was too large
- 2) The amount of money was too small
- 3) The timeline was too short

Chair Iwase suggested that the TRC not reissue another solicitation for a staff economist. He said he would prefer that the TRC use the money to update some of the studies done by the previous TRC. He recommended that an update to the study on the taxation of Internet sales by Dr. William Fox and, if funds were available, an update the study on GET (“Hawaii’s General Excise Tax: Should the Base be changed?”).

Mr. Taketa would like to recommend that due to the lack of bidders on the original RFP that the TRC consider breaking it down into individual studies to get more people interested in bidding instead of soliciting one big study. The potential bidders would then be free to submit bids on multiple studies. He said he believed the TRC would get a better response if the solicitation were broken into individual studies.

Chair Iwase asked if Mr. Taketa was talking about the Internet Sales and GET.

Mr. Taketa responded “yes”.

Chair Iwase clarified that he simply wanted the studies on the taxation on Internet sales and GET updated, that he did not envision issuing a notice for professional services for those studies.

Mr. Taketa said that his recommendation is to break any solicitation down as small as possible in order to get more individuals to submit bids.

Chair Iwase asked for a motion to update the studies on taxation on Internet sales and if funds were available, the study on the GET. Mr. Imanaka made a motion to permit at the discretion of the Chair an update to two studies: (1) The taxation on Internet sales, and (2) GET, if there are sufficient funds. The motion was seconded by Mr. McEnerney. The motion carried unanimously.

Chair Iwase said that given the lack of response to the solicitation for the major study, and taking into consideration the feedback on why there was no response, he recommended the TRC amend the solicitation for professional services contract by reducing the scope of the work as follows:

- Limit the solicitation to two studies:
 1. An analysis of whether the current tax system will provide sufficient revenues to meet new and long term future needs of the 21st century.
 2. A recommendation of an alternative tax structures that could improve Hawaii's ability to generate sufficient revenues.
- Allow the bidders to choose to participate in one or both of the subject areas and to provide the cost of such a study.
- Delete the need for economic models.
- Delete the need to go out and conduct public hearings prior to concluding the study.
- Keep the provision regarding, “When requested by the commission, the contractor shall make a presentation of the study to the commission”.

- Keep the provision, “At the request of the commission, may make presentation to the legislature”.

Chair Iwase asked for a motion to accept the amendments to the solicitation for professional services contract. Mr. Imanaka made the motion and it was seconded by Mr. Ho. The motion carried unanimously.

Mr. McEnerney questioned if there was a budget limitation for the solicitation.

Chair Iwase said up to \$150,000.

Mr. Taketa reconfirmed that a bidder may bid for one or both areas. He asked if it would make sense to break the solicitation into two separate contracts to encourage more bidders instead of combining them into one.

Chair Iwase said if it's broken down into two different contracts, there needs to be two solicitations. He said he didn't want to go out with two solicitations; he only wanted to reissue one solicitation. If the TRC gets one person that bids on the first and another on the second, the TRC simply needs to contract with both. Chair Iwase ask Mr. Nishiyama if the TRC could do so.

Mr. Nishiyama replied that the TRC could do so.

Mr. Ho asked if that were true for the first item, if someone only bids on the economic analysis and not the recommendation.

Mr. Nishiyama replied “yes”.

Mr. Taketa asked if it wouldn't be harder to compare bids if one person submitted a bid for everything and another submitted a bid for only one section.

Chair Iwase replied it's all about the money.

Mr. Amemiya suggested having the bidders attach a fee to their proposals.

Chair Iwase confirmed that he did not want to go out with two solicitations. He said that as the bids come in, the TRC will have an opportunity to interview and inquire on their plan.

Mr. McEnerney asked Chair Iwase to include certain things to discuss with the potential bidders, such as the study done by Andrew Mason (“Aging, Pension Income, and Taxes in Hawaii”). He said the unfunded liability is another issue to consider. He also asked for the timeline of the studies.

Chair Iwase said if the TRC votes on this issue today, he would ask the Department of Taxation staff how soon the amended solicitation could be issued.

Dr. Rousslang said he would have to check with Ms. Efhan.

Chair Iwase asked if the solicitation could be issued by next week.

Mr. Taketa asked whether instead of hoping the bidder includes the study by Mr. Mason, should the TRC add that study as the third study to be updated?

Chair Iwase answered he would consider it if the TRC has enough money to get it done.

Mr. Taketa said if it's not going to cost anymore than hoping it's going to be included in the solicitation for the big study. Instead of hoping, it's better to have it done independently.

Chair Iwase told Mr. Taketa that the \$150,000 for a study that is already as big in scope as expected by the TRC may not be enough. He said he has heard estimates ranging from \$200,000 to \$500,000. Assuming the two big studies will cost \$300,000, \$150,000 is going to cover at least one study. He doesn't want to take more away from the \$150,000 reserved for the big studies. He said if a person bids \$130,000 for the big study, the TRC will ask Mr. Mason to update his study. Otherwise, the TRC could inform the person that they want Mr. Mason's study updated and it is part of the requirement. It is clearly an issue that will grow and has to be taken into account.

Mr. Taketa said he wanted to express his concern about the timeline and the reason he brought it up is because the TRC needs to expedite things. If the update to Mr. Mason's study is done independently, the TRC could ask for that update separately instead of hoping that it will be included in the big study, or waiting for leftover money. The TRC would simply be looking at a delay.

Chair Iwase said he didn't think an update to a study would take a year.

Chair Iwase said the TRC is requesting a response from the Department of Taxation prior to its next meeting of January 12, 2012, on what the Department needs to improve the collection of taxes and enforcement of tax law. He said the TRC would like to submit something to the Legislature on behalf of the Department to support the Department.

NEXT MEETING

Chair Iwase set the next meeting on Thursday, January 12, 2012 at 8:30 a.m.

ADJOURNMENT

Meeting was adjourned at 10:20 a.m.