

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

March 21, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch
- Mary Albitz
- Mark Ritchie

ABSENT MEMBERS:

- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF FEBRUARY 26, 2019 MINUTES

Mr. Nakamoto made a motion to accept the February 26, 2019 minutes, as presented.

Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 235 Income Tax Law, promulgated by Department of Taxation (DoTax)

- a. Section 235-98 Returns; form, verification; time of filing

Discussion leader and Second Vice Chair Yamanaka stated that the proposed amendments provide an automatic six-month extension for the deadline to file income tax returns to businesses without filing an application first; whereas prior to the amendments, only consumers were given an automatic extension. The amendments are straight-forward, non-controversial, and there was no testimony at the public hearing.

Second Vice Chair Yamanaka made a motion to forward the proposed rules to the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

b. Section 235-1.14(d) Substantial gainful business or occupation; defined

Discussion leader and Second Vice Chair Yamanaka explained that the purpose of the amendments is to prevent taxpayers who are blind, deaf or totally disabled, with substantially large gross business income from taking business deductions to reduce net income below \$30,000 and to receive income and general excise tax benefits designed for persons and businesses incapable of generating substantial income for themselves due to disability.

During the public hearing, there were no testimonies or feedback for or against the changes. Ms. Albitz stated that DoTax does not do a very good job at reaching out to the stakeholders. Chair Borge noted that that Board's response letter to DoTax and the Governor should include the recommendation that, in the future, DoTax reach out to the stakeholders, particularly situations like this where there is a blind vendor association; Mr. Ritchie added that it should not be difficult to determine who these stakeholders would be.

Ms. Albitz made a motion to move the proposed amendments to the Governor for adoption and to recommend that the department try to engage small businesses impacted by the rule changes through various means of outreach including business organizations and trade associations. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 237, Income Tax Law, Section 29-57-01 Exemption for intangible property used outside the state, promulgated by DoTax

Discussion leader and Second Vice Chair Yamanaka explained that the new section defines where intangible property is used for purposes of the general excise tax exemption for gross income received from intangible property used outside the state. Specifically, the section allows when intangible property is used, it is based on whether the customer is a business, individual, military, or government. It was noted that the law was intended to close a "loophole" for clarification purposes when different states are involved. Chair Borge stated that there was no commentary made during the public hearing; Ms. Albitz added that, again, DoTax did not do a very good job at reaching out to the stakeholders.

Second Vice Chair Yamanaka made a motion to move the proposed rules to the Governor for adoption and to recommend that in the future DoTax attempt to engage small businesses impacted by the proposed rule changes. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 157, Examination and Immunization – promulgated by Department of Health (DOH)

Dr. Sarah Park, Chief, and Mr. Ronald Balajadia, Branch Chief, at DOH's Disease Outbreak Control Division, explained that the proposed changes to the rules are to update and insure that, going forward, physicians are able to refer to and follow ACIP (Advisory Committee on Immunization Practices). ACIP is a national, mandated committee that includes consumer

groups, experts, ex officio members, and others who discuss vaccines on a regulator basis. The rules, by default, exclude the tuberculosis control portion because those regulations have since split off into its own rules. Discussion leader, Mr. Nakamoto explained that the rule changes are intended to align and create specific guidelines which is a benefit to small businesses.

Public hearings were held on Oahu and on the neighbor islands. Multiple testifiers, individuals, organizations and small businesses attended the public hearings with many both in opposition as well as in support of the rule changes. Those against the rules were mostly against immunization, and the small businesses, such as physicians, provided mostly support for the immunization.

Testifier, Ms. Theresa Chao, a pharmacist for 30+ years, has worked with vaccines over the past several years so she understands how and why they have evolved. She stated that the public hearing notice was limited to DOH's and the Lieutenant Governor's websites, so daycare centers and other similar-type centers would not be privy to the notice; she added that Senator Russell Ruderman was instrumental in having public hearings on the neighbor islands. She believes that at some of the public hearings because individual testimonies were limited to short periods of time and to smaller venues, it resulted in not hearing the full testimonies that were provided. Ms. Chao paraphrased her written testimony which she left with the Board.

Ms. Dawn Poicuni, individual testifier and a representative of HFIC (Hawaii for Informed Consent) expressed the impact of these rules on small business/pre-schools as well as the risks and concerns about giving flu shots and other vaccines to children. She recommended that this Board delay its recommendation of these rules and invite principals of public and private schools to discuss resulting effects of vaccinations.

Ms. Albitz made a motion to go into executive session at 10:44 a.m.; Mr. Nakamoto seconded the motion, and the Board members unanimously agreed. The motion was passed under Section 92-5(a)(4), to consult with the Board's attorney concerning the Board's powers, duties, immunities, privileges and liabilities as it relates to discussing HAR Chapter 11-157, Examination and Immunization. The executive session ended at 10:48 a.m.

In response to the question as to what State of Hawaii exemptions are available, Dr. Park stated that there are medical exemptions; for example, if someone is undergoing chemotherapy he/she may be requested by the patient's physician for an exemption. Another automatic exemption is for religious purposes where a parent simply states that it is against their religious beliefs. Dr. Park also explained that DOH is not privy to "who" the people are requesting exemptions because only the "number" of exemptions from the schools are conveyed to the State; this is done on a yearly basis.

Mr. Nakamoto made a motion to move the proposed rules to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

- A. Discussion and Action on Governor’s Message 624, Submitting for Consideration for the Gubernatorial Nomination of Mr. James Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020

Second Vice Chair Yamanaka referred Mr. Lee as a member of this Board because he believed Mr. Lee would be a good candidate due to his affiliation with W.H. Shipman, Ltd. W.H. Shipman is a large landowner in the Hilo District of the Big Island that has a wide-range of access to farmers, businesses, and industrial and commercial entities.

Vice Chair Cundiff made a motion to support the gubernatorial nomination of Mr. James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2020. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

- B. Discussion and Action on Governor’s Message 625, Submitting for Consideration for the Gubernatorial Nomination for Mr. Garth Yamanaka to the Small Business Regulatory Review Board for a term to expire June 30, 2023

Ms. Albitz made a motion to support the gubernatorial nomination of Mr. Garth Yamanaka to the Small Business Regulatory Review Board. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

- C. Update on Governor’s Message 559, Submitting for Consideration of the Gubernatorial Nomination of Mr. Jonathan Shick to the Small Business Regulatory Review Board for a term to expire June 30, 2022

This measure has yet to be scheduled for a hearing with the Senate Committee on Energy, Economic Development and Tourism.

- D. Update on Senate Bill 1348 Relating to the Small Business Regulatory Review Board – Clarifies the intent of the small business regulatory review board’s powers when reviewing state and county administrative rules that impact small business by changing “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action

Chair Borge reminded the members that in the original bill, “ordinances” was deleted so there would be no question as to what the Board reviews; other changes to the bill reflect some minor housekeeping measures. However, Senate Bill 1348 SD1 brought “ordinances” back into the bill. Therefore, Chair Borge met with House Representative Angus McKelvey to go over why the Board wanted “ordinances” out of the statute. Additionally, funding of \$50,000 will be added to the bill to assist the Board with travel and outreach expenses.

Mr. Ritchie made a motion to go into executive session at 11:04 a.m.; Mr. Nakamoto seconded the motion, and the Board members unanimously agreed. The motion was passed under Section 92-5(a)(4), to consult with the Board's attorney concerning the Board's powers, duties, immunities, privileges and liabilities as it relates to discussing Senate Bill 1348 SD1. The executive session ended at 11:12 a.m.

Mr. Ritchie stated that in order for small businesses to object to an ordinance that is passed by one of the Counties, they would need to work with their County Council members and the Mayors. It was noted that while ordinances are County Council specific, the Board does review County administrative rules.

Second Vice Chair Yamanaka recommended that the Board support the removal of the term "ordinances" under Chapter 201M-5(a), HRS, to clarify the statute, verify the Board's intended purview, and to avoid the potential heavy workload. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

a. Review and Action on the Board's Website Changes, to date

The members reviewed and discussed the Board's mock webpage that was created by Hawaii Information Consortium. Although the website is not yet interactive, Phase 1 is now complete; the \$5,000 payment is in process.

Because the Budget & Finance Department approved the funding for the final payment of \$12,052.35, Phase II is now in the beginning stages.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, April 18, 2019, in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Nakamoto made a motion to adjourn the meeting and Ms. Albitz seconded the motion; the meeting adjourned at 11:35 a.m.