

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

September 19, 2019

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

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Carl Nagasako

ABSENT MEMBERS:

- William Lydgate, 2nd Vice Chair
- Dr. Nancy Atmospera-Walch
- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF AUGUST 15, 2019 MINUTES**

Ms. Albitz made a motion to accept the August 15, 2019 minutes, as amended. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

Chair Cundiff acknowledged DBEDT Deputy Director Randall Tanaka for attending the meeting today and thanked him for his support.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to HAR Title 18, promulgated by Department of Taxation (DoTax), as follows:

- a. Chapter 231 Administration of Taxes, Section 3-14.17, Revocation of licenses because of abandonment

Discussion leader and Vice Chair Yamanaka stated that DoTax is proposing a rule amendment to reduce the period from 90 to 45 days for posting the abandonment of commercial tax licenses; this is intended to mirror the period for the intent to revoke. A non-substantive change involves correcting cross-references to other sections of the rules. He did not see any negative impact to small business regarding these changes.

DoTax Administrative Rule Specialist Mr. Jacob Herlitz reminded the members that these rules came before this Board a few years ago due to the hundreds of thousands of abandoned tax licenses that were still on DoTax's books. This new proposal will remove the prior requirement where the only way to revoke a license is via postal mail. As this takes much time and expense, the new changes entail DoTax revoking licenses the very next day rather than the current requirement of waiting 45 days.

Mr. Herlitz added that DoTax would have the ability to un-revoke a revoked license quite easily in the event there was a mistaken revocation of a commercial tax license; there is no cost to the businesses to un-revoke a revoked license. In regard to impacting small business, Mr. Herlitz confirmed that small and large businesses would be affected equally and minimally.

Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

b. Chapter 235 Income Tax Law, Section 3-01, Distribution of credit for partnerships, S corporations, estates, and trusts, promulgated by DoTax

Discussion leader and Vice Chair Yamanaka stated that the changes to these rules were straight-forward and more efficient. Mr. Herlitz added that the rules establish how income tax credits may be distributed by partnerships, S corporations, estates and trusts to their partners, shareholders, and beneficiaries when the method of distribution is not specified by statute.

Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

c. Chapter 243 Fuel Tax Law, Section 4-01, Refund of fuel taxes more than 1 cent per gallon for certain fuels used for operating agricultural equipment in areas other than upon the public highways of the State, promulgated by DoTax

Mr. Herlitz explained that changes to these sections contain rules for requesting refunds of fuel tax arising from the operation of equipment in areas other than on public highways of the state. Under the current rules, the law specifies that itemized lists of equipment and fuel need not be furnished along with forms requesting the refund of fuel tax; the proposed rules amend the law by requiring taxpayers to furnish this information.

All businesses, large and small, will be required to comply with the proposed rule changes. Specifically, taxpayers are required to furnish information related to equipment and fuel used when making claims for fuel tax refunds for vehicles in areas other than public highways operated by the state. Any impact would not be overly burdensome to small businesses.

Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Mr. Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 18 Chapter 235 Income Tax Law, Sections 17-01 through 17-19, promulgated by DoTax

Ms. Titin Sakata, DoTax Administrative Rules Specialist, explained that the proposed rules provide guidance for the administration of the motion picture, digital media, and film production income tax credit. The credit cap was increased by the Legislature from \$35 million to \$50 million, effective January 1, 2019.

It was questioned whether the rules impact small businesses due to a filmmaking entity requiring that it have at least \$200,000 of qualified production costs. Ms. Sakata replied that the production costs of \$200,000 is defined in the statute and includes wages, money spent on food and caterers, stage costs, renting of studios, etc., as well as certain criteria to meet the qualifications, such as pre-qualification requirements with DBEDT for permits.

Ms. Mariah White, Economic Development Specialist from DBEDT's Film Office, stated that there are many small production companies in the Hawaiian Islands that consistently benefit from the film tax credits. Further, because production is a costly endeavor, the various expenses that go into production add up very quickly.

For purposes of allocating the film credit's \$50 million aggregated cap, the rules offer priority to taxpayers applying for credits totaling \$1 million or less for the year. DoTax believes that this allowance will mitigate the impact of the film credit's \$50 million cap to small production companies if the total credits applied for in any year exceeds \$50 million; Ms. Sakata noted that the cap is constant and ongoing.

Deputy Director Randall Tanaka stated that, when looking at the aggregate, everyone benefits, but most importantly, it is bringing film production to Hawaii. On the high end, the bulk of the tax credit attracts the "50" and "Magnum" series' production companies and others as it has a trickle effect, thus, the state benefits not only in jobs but in tax generation. Further, it is not only the number of jobs that make a difference but the quality and dignity of the jobs; as such, there is a need to have a tax credit to attract the larger companies.

Deputy Director Tanaka added that there are competitive forces, such as other state's tax credits; i.e., Los Angeles, California; New York, New York; Atlanta, Georgia, etc., that Hawaii must deal with. Chair Cundiff stated that there are a lot peripheral benefits to the film tax credit because of the small businesses associated with it. As the cap is worked through the film industry, it results in a positive attitude where Hawaii wants businesses to come to the state by showing that it is a much more business-friendly state.

Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 120, Community-Based Economic Development Loan and Grants Programs, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Mr. Mark Ritchie, Branch Chief at DBEDT's Business Development and Support Division, explained that the changes reflect a clean-up of rules for the division's CBED (Community-Based Economic Development) program as well as some legislative statutory changes. One program entails loans, which are provided to businesses, and another program provides grants to mostly non-profit organizations involved in some type of economic development activity; technical assistance is also provided to both programs.

Overseeing the CBED program for the loans and grants is an advisory council. Recently, the number of council members was reduced which has helped with quorum issues. Regarding the small business aspect, while these rules do impact small business, it is believed that the impact is positive.

One of the main changes in the rules involves the loan program. DBEDT may loan up to \$250,000, however, there is currently insufficient funds in the revolving loan fund to make these large amounts. The more plausible and standard loan amount is \$25,000, of which DBEDT is in partnership with the Department of Agriculture. Although the current rules require a small business two commercial "turn downs" before they may approach DBEDT, the proposed rules require only one turn down.

Vice Chair Yamanaka stated that the CBED program appears to be a good program for small businesses to get off the ground. Deputy Director Tanaka noted that for the State to build a sustainable agricultural industry, this program is needed despite the risks involved and the longer-term investment associated with it.

Ms. Albitz made a motion to move the proposed rules to public hearing. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Subtitle 8 Part 10, promulgated by Department of Labor and Industrial Relations (DLIR)

1. Adoption:
 - a. Chapter 221.1 Existing Pressure Retaining Items
 - b. Chapter 222.1 Power Boilers
 - c. Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heater
 - d. Chapter 224.1 Pressure Vessels
 - e. Chapter 225.1 Pressure Systems
2. Amendment and Compilation:
 - a. Chapter 220 General Administrative and Legal Provisions
3. Deletion:
 - a. Chapter 221 Existing and New Boilers and Pressure Vessels
 - b. Chapter 222 Power Boilers
 - c. Chapter 223 Heating Boilers

- d. Chapter 224 Pressure Vessels
- e. Chapter 225 Pressure Systems

Discussion leader Ms. Albitz explained that these rules are after public hearing, and during the public hearing there was mostly support for the changes.

Mr. William Kunstman, DLIR's Assistant to the Director, reminded the board members that the rule changes update and incorporate the national consensus code and make it easier for the practitioners in the field to understand the contemporary terminology in the rules. In addition, there are significant proposed increases in the fees, which most if not all, of the increases impact the larger entities. He explained that during the public hearing, the testimonies supporting the rule changes included supporting the fee increases as well.

Chair Cundiff stated that the public hearing was very well attended with great support coming in for the proposed changes. He believes this support is attributed to DLIR reaching out to stakeholders early in the process to hear the business' input, work with them, and address their concerns, which clearly make the overall process work smoothly.

Ms. Albitz made a motion to move the proposed rules to the Governor for adoption. Mr. Shick 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, on the following:
 - a. Discussion and Action on the Board's existing "Standard Operating Guidelines and Procedures"

Board members reviewed the updates to its existing standard operating guidelines and procedures which sets up the process for addressing incoming complaints, etc., and how the information is handled.

DBEDT staff requested that board members timely notify them of travel plans and/or an inability to attend meetings, to sign travel forms, or to conduct board business. To keep the work flowing, it was agreed that should the chair be unavailable, the vice chair would be approached by staff.

Mr. Shick made a motion to approve the Board's existing "Standard Operating Guidelines and Procedures" as amended. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

- b. Discussion with Representatives from Hawaii Information Consortium on the Board's Newly Created Website

Chair Cundiff stated that a press release went out today announcing the Board's newly created website. He welcomed Mr. Christopher Cosner and Ms. Rosemary Warfield,

representatives from HIC (Hawaii Information Consortium), who worked with DBEDT's website team and who were responsible for creating the current new site.

Mr. Cosner walked the members through the website page by page, beginning with the homepage and highlighted all the new features that were not on the prior website.

Adjustments discussed will include: 1) fixing the broken link on the rulemaking process page; 2) updating logic so the next month's meeting time will not change until 2:00 p.m.; 3) adding the missing 2017 SBRRB 201M-7 report on the SBRRB reports page; 4) correctly displaying the Internet Explorer call to action section on the home page; and 5) containing the rule-tracking spreadsheet to stats on the webpage.

c. Discussion and Action on the Board's Fiscal Year-End 2020 – 2021 Budget Request

Chair Cundiff outlined the Board's proposed fiscal year-end 2020 to 2021 budget request, rounded to \$25,000, as follows:

\$19,200 - Travel expenses – Currently, there are 4 Neighbor Island Members

- \$15,000 = Airfare - 5 members x \$250 x 12 months
- \$900 = Parking – 5 members x \$15 x 12 months
- \$3,300 = Car Rental/Taxi – 5 members x \$55 x 12 months

\$2,200 – Outreach

- \$800 Maui Small Business Conference – sponsored by Maui Economic Development Board (includes travel)
- \$1,000 TBD – Other Small Business Conferences
- \$400 - Business Cards - \$80 x 5 sets of cards

\$750 - Miscellaneous

- Office Supplies, postage stamps, membership, etc.

Chair Cundiff expressed the value of attending various conferences throughout the year for outreach and would like to continue this.

Mr. Nagasako questioned whether Skype could conceivably be utilized for monthly board meetings. Although there is a possibility to have neighbor island members skyped or video-conferenced into the meeting, Deputy Attorney General Polk-Waihee explained that while Office of Information Practices governs this aspect of board meetings there are several items to weigh-in when video-conferencing neighbor island members. For example, if conducting meetings where the neighbor island members are located, and the video connection is lost, the meeting is over even if quorum still exist because that location can no longer be part of the meeting.

Because the meetings are open to the public, the public would be entitled to attend the meetings where the meetings' locations are identified in the agenda. Also, hand-outs must be distributed to all members attending, and all those people who attend the meeting expecting to testify are required by law to testify.

Mr. Jonathan Shick made a motion to approve the proposed fiscal year-end 2020 to 2021 budget request, as presented. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

d. Meetings with Board Members and State Department Directors

Ms. Albitz has scheduled an upcoming meeting with Department of Labor and Industrial Relations.

Mr. Shick mentioned to the members that the new short-term rental law changes, which has some positive effects, also result in negative effects on not only those owning vacation rentals but other related small businesses; thus, he wanted to know if the Board would be interested in hearing from those small businesses.

Chair Cundiff responded that clarification as to what the impacts and concerns are would be needed as the Board's purview is to review rules and regulations promulgated by state and county agencies. Therefore, because this item is not on the agenda, the Board is unable to discuss it today, however, it may be able to discuss these issues if the specific state and county rules and regulations were identified. The Board would then be able to place it on the agenda and review the impacts; Mr. Shick concurred.

Deputy Director Tanaka suggested that on the tourism perspective of the short-term rental law, in looking at the impact, currently there is monitoring being performed by the state. He will get back to the Board and DBEDT staff on any information he may be able to find.

Chair Cundiff acknowledged that from now until the next board meeting, research will be done to determine if rules and regulations currently exist or are being considered that have an impact to small business that this Board may address.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, October 17, 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 – Vice Chair Yamanaka made a motion to adjourn the meeting and Mr. Jonathan Shick seconded the motion; the meeting adjourned at 11:37 a.m.