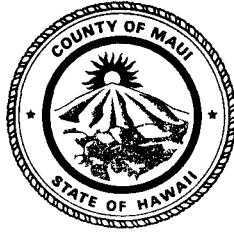


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MEMO TO: Riki Hokama, Chair
Budget and Finance Committee

FROM: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

DATE: April 6, 2016

SUBJECT: **FISCAL YEAR ("FY") 2017 BUDGET** (CC-6) (BF-1)

We are in receipt of your memorandum dated April 4, 2016, inquiring about the Council's ability to increase the biodiesel fuel tax from \$0.09 to \$0.115 per gallon. Hawaii's Fuel Tax Law is codified in Chapter 243, Hawaii Revised Statutes ("HRS"). The Fuel Tax Law was amended to account for alternative fuels and it was stated that:

The legislature finds that alternative transportation fuels could provide a substantial part of Hawaii's transportation energy demand and that local production of these fuels could diversify energy supplies while producing environmental and economic benefits to the public.

The legislature also finds that vehicles that operate on fuels containing less energy per gallon require more gallons of fuel to travel the same distance as those using fuels with more energy. However, motor fuels other than liquefied petroleum gas are currently taxed at the same per-gallon rate. Therefore, several alternative fuels are put at a disadvantage on a cost-per-mile basis and would bear a disproportionate share of the highway tax burden.

The legislature finds and declares that there is a need to remove unnecessary disincentives to the use of alternative fuels, by adjusting transportation fuel tax rates to reflect energy content of alternative fuels, and to provide an incentive to the use of these fuels by providing reduced tax rates for several years.¹

The County's authority to set the amount of the fuel tax is found in Section 243-5, HRS, and states, in regards to alternative fuels:

The amount fixed for alternative fuels **may** be proportional to the energy contents of the fuels, as determined by their lower heating values, times one-half. (Emphasis added)

While it was the intent of the legislature to have a lower amount of fuel tax for alternative fuels, Section 243-5, HRS, uses "may" rather than "shall", indicating that the provided formula for calculating the fuel tax for alternative fuels is a recommendation and not a requirement. The Hawaii Supreme Court in reviewing questions of statutory interpretation follows certain well established principles, as follows:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. And fifth, in construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.²

¹ 2001 Haw. Sess. Laws Act 143, §1 at 349-350

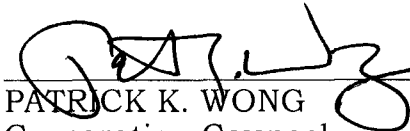
² Hawaii Government Employees Association v. Lingle, 124 Hawaii 197, 239 p.3d 1 (2010)

Riki Hokama, Chair
Budget and Finance Committee
April 6, 2016
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After our review of Section 243-5, HRS, we feel comfortable in advising you that the Council is not required to follow the provided formula in determining the amount of fuel tax fixed for alternative fuels; and that Section 243-5, HRS, does not contain any legal limitations on the amount of the biodiesel fuel tax that may be fixed in the FY 2017 budget.

JTU:lk

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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