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DEPT. COMM. NO. 378



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
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March 14, 2022

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

Subject: *2021 Listing of Opinions Issued by the Attorney General*

This is to inform you that an electronic copy of the Bureau's report: *2021 Listing of Opinions Issued by the Attorney General*, which was prepared in response to section 28-3, Hawaii Revised Statutes, has been transmitted to you via the Legislature's web-based application. For your convenience, an electronic copy of the report may also be accessed on the Bureau's website at:

<https://lrb.hawaii.gov/wp-content/uploads/AGOpinions.pdf>

If you have any questions or require further assistance, please contact John Morsey by phone at 587-0670 or by email at j.morsey@capitol.hawaii.gov.

Very truly yours,

A handwritten signature in black ink that reads "Charlotte A. Carter-Yamauchi". The signature is written in a cursive, flowing style.

Charlotte A. Carter-Yamauchi
Director

ja
Attachment
ec: Senators
Representatives

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**2021 LISTING OF OPINIONS
ISSUED BY THE ATTORNEY GENERAL
STATE OF HAWAII**

OPINION NO. (Date Issued)	DIGEST
21-01 (September 22, 2021)	Hawaii general excise tax and use tax on activities occurring within the Hawaii foreign-trade zone and sub-zones. An opinion was requested as to whether the Foreign-Trade Zones Act of 1934 preempts the State from imposing general excise tax and use tax on activity conducted within a foreign-trade zone. This request concerned Attorney General Opinion No. 64-52, dated November 5, 1964, which concluded that “Congress has assumed exclusive regulatory powers within the zone, and no local regulation may interfere with these powers.” That opinion further concluded that “neither the general excise tax nor the consumption tax would apply on account of sales made within the zone or on account of goods imported into the zone.” However, in the years since Opinion No. 64-52 was issued, the law changed and it is now clear that not all state taxes are preempted by the federal Act. More specifically, in 1984, Congress amended the federal Act to specify that only state and local ad valorem taxes on imported and domestic goods held for export are preempted. The fact that Congress expressly preempted ad valorem taxes on certain tangible personal property, and did not expressly preempt any other taxes, establishes that Congress did not intend to occupy the entire field of taxation and regulation within foreign-trade zones. Additionally, subsequent case law affirms that the federal Act does not expressly preempt or otherwise occupy the field to the exclusion of state laws. Therefore, Opinion No. 64-52 has been superseded to the extent that the opinion assumed that Congress intended to occupy the entire field with respect to foreign-trade zones such that all state taxation would be preempted. Ultimately, whether a state tax can be applied to a particular activity within a foreign-trade zone depends on whether the tax conflicts with the purposes and objectives of the federal Act, as determined by a conflict preemption analysis.

Compiled by:
LEGISLATIVE REFERENCE BUREAU
March 9, 2022