

## Tales of the Unexpected: The Odyssey of Ray Kamikawa

by Doug Sheppard

For the Love of Tax is a regular series appearing in *Tax Notes Federal*, *Tax Notes State*, and *Tax Notes International* that invites practitioners and other tax professionals to share what attracted them to the tax field and the things they find most fulfilling about the work they do.

In this installment, *Tax Notes State* commentary editor Doug Sheppard traces the legacy of Ray Kamikawa of Chun Kerr LLP with the IRS and the Hawaii Department of Taxation and in private practice, highlighting some of the innovations he initiated as Hawaii's tax director.

Getting a call at his Honolulu home one Sunday night in January 1995 from Hawaii Gov.-elect Ben Cayetano wasn't necessarily surprising to tax attorney Ray Kamikawa. Only days earlier, he'd been in Cayetano's office, advising the Democratic governor on ways to improve the Department of Taxation. What the first Filipino governor in U.S. history said over the phone did take Kamikawa off guard, however.

"You have the job if you want it," Cayetano said, referring to the tax director position in his cabinet.

Technically, the previous meeting with the governor-elect had been an interview for that very job, but Kamikawa wasn't necessarily interested, concluding the talk with: "You know, I don't want the job, but you should reappoint the current director and ask him to follow through on some of these suggestions."

But now, as he gripped the phone receiver, it was serious. Eager for the new challenge ahead, Kamikawa accepted.

"I was floored. I had to go back and explain all this to my partners, who I informed that I was meeting with the governor but would never take the job," Kamikawa recalled with a laugh. "I

ended up telling my partners after thinking about it that yeah, I think I would accept the governor's offer. And they were very gracious about it."

While unexpected, the move wasn't unusual for Kamikawa himself. Envisioning a life in music, he'd grown up in Hawaii playing piano, violin, and trumpet — only to have his parents nudge him in the direction of legal studies. Kamikawa expected to become a public defender after enrolling at George Washington University Law School in 1974, but ended up in tax. He certainly didn't expect to enter the political arena, but the Cayetano appointment dictated otherwise.

It's all part of a career that has included stints at the IRS in Washington and San Francisco, a return to his native Hawaii in the public and private sectors, and even a sojourn in Australia. While some of those turns were unforeseen, there's virtually nothing Ray Kamikawa hasn't done in 40-plus years in tax.

### Entering the Tax Arena

Kamikawa credits a George Washington law professor (whose name is lost to history) with inspiring his interest in tax: "In my last year of law school, I had what they called back then an adjunct professor — someone in private practice who did law school teaching on a contract basis — and he was so inspiring in that one course that I decided tax was for me and then started taking more tax courses."

From there, Kamikawa got a job in the IRS chief counsel's office in 1977, which provided him with "the best possible training" as he attended night school for a master of laws in taxation degree from Georgetown University. "That grounding in tax work at an institution like the IRS gave me both the technical and hands-on experience I needed to really blossom in private practice," he said.

Four years at the IRS national office — coupled with another advanced degree from Georgetown — served Kamikawa well in his next gig, a one-year stint (1981-1982) with the San Francisco district counsel's office doing tax litigation work. After nearly a decade on the mainland, however, "Let's Go to Hawaii" by The Rivas started playing metaphorically in his head. Wanting his children to experience growing up in his home state, he took a job with the IRS's Hawaii district counsel office in 1983, which was followed by a move to the private sector as a tax associate with Case & Lynch in 1986 before becoming a partner. Kamikawa joined Chun Kerr Dodd (as it was then known) as a partner in 1991 before soon undertaking what he called an "experiment" at the Hawaii attorney general's office from 1992 to 1993.

In the meantime, the name of his firm — now Chun Kerr Dodd Beaman & Wong — got longer, but it was more than willing to take Kamikawa back as a partner in 1993. Were it not for that fateful call from the governor, that might have been the end of the story.

### Department of Tax Reforms

Becoming tax director wasn't the first curveball thrown at Kamikawa when he reentered the public sector in 1995. He soon discovered that the list of reforms planned for his tenure would have to wait.

"All of that went by the wayside," he said. "It was a very practical event that happened. As soon as I walked into that office after my appointment and the governor being sworn in in January 1995, I got hit with Y2K. It was sitting on my desk, and the staff said: 'You need to start working on this. We have legacy computer systems and we have to prepare for Y2K.'"

According to Kamikawa, that meant that "every single code entry had to be adjusted and fooled with, and you needed to hire people to do that." Inspired by the California Department of Motor Vehicles, the tax department procured a performance-based contract, got the Legislature's approval, and ultimately integrated a more flexible system across all tax types.

"This was a performance-based contract where the contractor would come in and assign its employees to work side-by-side with our

employees, and teach them how to work with the new computer system, develop software that they could use, and also make sure that the hardware complemented the software system," Kamikawa said. "So in the end, it worked — and it worked to the point where it could be used by department staff and also could collect enough revenues to pay for the procurement."

Next on the tax director's agenda was transitioning the department from traditional paper records and fax machines to the internet — a task every bit as daunting. "We had the biggest database in the state, and we had to move to internet-based not just communications, but forms and everything else that went with that," Kamikawa said.

In turn, this coincided with one of the few initial goals that Kamikawa was able to implement: replacing the multipage income tax form and conforming to "a single page borrowed off the federal adjusted gross income, because our net income tax system parallels the federal income tax system. We had the same alphabet attachments to our state returns, so we got that return down to a single-page system."

"All of the tax return entries that they keyed in were also hard-coded in our computer system, so part of our modernization effort was to make it more flexible in changing our forms," Kamikawa recalled. "It took quite an effort on behalf of our staff to actually make a single-page return happen. When items on the tax return are hard-coded, each entry has to be changed; that change results in 10 more changes that have to also be adjusted — and on and on and on."

Implementation didn't happen overnight, but the changes were dramatic. "All of a sudden, we didn't have to print tax returns and have bulk-sale weekend distribution on Rev. Martin Luther King weekends," Kamikawa said. "All of a sudden, we didn't have to fax extension forms to taxpayers living abroad. All of a sudden, they were free to do more productive things and less mundane things. But it took the internet age to get us there, and the willingness of staff to adjust to that."

Using his IRS background as a guide, Kamikawa also spearheaded the establishment of the department's criminal investigation section, which focuses on fraud and criminal matters.

## Politics Is Politics

The department's increased efficiency perhaps came at the right time, as a mini-recession forced the furlough of some younger staffers, a personnel challenge that Kamikawa described as "sad." Owing to his cabinet-level position, the new director would also have to acclimate himself to politics — something he'd never dealt with before.

According to Kamikawa, half of his job was technology, and the other half was "being up at the Legislature, either proposing legislation or opposing legislation. Because in Hawaii, unlike a sales tax, the general excise tax [GET] covers *everything* — every thing, every transaction, every receipt, every person. So those who want to be exempt from the general excise tax have the burden to go up to the Legislature, just like we wanted an exemption for the diplomatic corps here."

Kamikawa found himself often lobbying lawmakers for legislation from the administration or Department of Taxation, or opposing exemptions the department found unjustified. Hawaii may be far from the mainland, but lobbying is no different there.

"Politics is politics," Kamikawa said. "The lobbyists, like anyplace else, are influential because they represent important clients, but they're also armed with a lot of information that the legislators can trust. So like it or not, lobbyists here have a lot of influence."

## GETting It Done

Though it's not a sales tax, the Hawaii GET was enacted around the same time during the Great Depression as most states' sales levies, 1935, and for the same purpose: to address lagging revenues. Heeding a 1934 study that said adopting a gross receipts tax could generate a lot more revenue, according to Kamikawa, Hawaii "did adopt a general excise tax, and it worked. It generated a lot of revenue."

One of the GET's main distinctions is that it's imposed on the vendor — unlike the traditional sales tax, which is borne by the consumer and collected by the seller. Likewise, while a sales tax is explicitly itemized on sales receipts, it's up to the vendor to decide whether to pass the GET along to the consumer.



Ray Kamikawa

Twice during his tenure, Kamikawa also had to deal with the federal government on that very issue — reaching amicable solutions both times. The first concerned imposing the GET on contractors building government lodging for service members transitioning to/from Hawaii or to areas of conflict. Regular contractors are subject to the GET, but the Judge Advocate General's Corps (JAG) questioned whether it should apply to those constructing a hotel on a military base.

"They sent a letter to me saying, 'You cannot tax the military; we want the 4 percent back,'" Kamikawa recalled, adding that while the military itself had agreed to the tax, the JAG requested a refund of the GET on a multimillion-dollar construction bill.

Kamikawa responded by citing *United States v. New Mexico*, noting that New Mexico's similar gross receipts tax — imposed on the vendor, not the military — was upheld. Ultimately, nothing came of it, and Hawaii did not issue a refund.

Another GET controversy involved passing the tax on to U.S. ambassadors, which was also questioned. After being summoned to the U.S.

Department of State in Washington and attempting to clarify how the tax was imposed, Kamikawa helped broker a compromise.

“Ultimately, what happened to resolve that issue was that we agreed to have legislation passed at the state level — working with the ambassadors here — to approach our Legislature to exempt sales to our diplomatic corps to the general excise tax,” Kamikawa recalled, “and that’s why today we have an exemption for sales to our diplomatic corps here in Hawaii.”

### The Australian Model

Not all of Kamikawa’s travels as tax director were controversial. During the implementation of the new tax system technology, he flew all the way to Australia in 1999 after a visit from the head of the Australian Tax Office. “They decided way back then to turn their tax agencies to be more entrepreneurial, and so if they would develop software that could be used elsewhere, they could market that and keep some of the proceeds,” he recalled.

Part of that included a visit to Hawaii by Australian tax officials from Perth, who impressed Kamikawa so much that he soon reciprocated — observing in a visit to Australia’s national tax office in Canberra the technology underlying both the country’s modernized tax system and the government.

“It was so advanced into what they called ‘organic computer modeling systems’ — almost like artificial intelligence back then,” Kamikawa recalled. “It was eye-opening and mind-boggling; it just wasn’t the right time in Hawaii or anyplace else in the [United States] to do that. But I was so impressed with just how advanced Australia was in their thinking so early on in the internet age.

“I don’t know why they developed that way, but this is an example of what people have to do with what they have,” Kamikawa added. “There’s such a vast expanse of land there, right? They can’t do what AT&T did here and just lay all these lines, so everything had to be cellular. So their connections everywhere were good; they were one of the first I saw back then to arm their auditors with laptops with Wi-Fi. No matter where they went in the rural areas or traveled, they were connected.”

### All Things Must Pass

When Kamikawa stepped down in August 2000, he’d experienced perhaps more excitement than in the rest of his career combined — making the adjustment to private practice all the more challenging. He didn’t have to look far for a new gig, landing back at the firm he’d left to join the department, Chun Kerr LLP.

“It was quite an adjustment to go from one day being involved in high-level policy matters — whether that was tax policy, HR, computer, what have you — and then to get back to private practice and draft an agreement,” he said.

Nonetheless, Kamikawa said he’d prepared by keeping his ego in check: “I was very grateful for my governor to give me that chance, but I knew it was coming to an end. You never think that you’ll always have that high, so I prepared myself for the 30,000-foot cliff after my service was over.”

Now, Kamikawa’s practice is “focused mostly on general excise tax issues when it comes up in transactions, and also in tax controversies at the back end. I think I’ve found a good niche there, and I was fortunate to have developed an expertise in that area in a small jurisdiction like Hawaii.”

To paraphrase Sheriff Will Teasle from *First Blood*, one might say it’s boring, but that’s the way Kamikawa likes it — much like life in Hawaii in general.

“Here, you have to appreciate the free goods in life,” Kamikawa said. “You have to be able to go out, smell the soft air, feel the sun on your face, and go down to the beach, where there’s no charge.” ■