

H.B. NO. 1256

A BILL FOR AN ACT

RELATING TO THE PERFECTION OF APPEALS TO THE TAX APPEAL COURT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 232-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§232-17 Appeals from boards of review to tax appeal**
4 **court.** An appeal shall lie to the tax appeal court from the
5 decision of a state board of review, or equivalent
6 administrative body established by county ordinance [~~by the~~].
7 An appeal to the tax appeal court is properly commenced by the
8 filing, by the taxpayer, or the county, [~~or the tax assessor,~~]
9 of a written notice of appeal in the office of the tax appeal
10 court within thirty days after the filing of the decision of the
11 state board of review, or equivalent county administrative body,
12 and, in the case of any appealing taxpayer, the payment of the
13 costs of court in the amount fixed by section 232-22 [~~The~~
14 ~~taxpayer shall also file a copy of the notice of appeal in the~~
15 ~~assessor's office and, in case of an appeal from a decision~~
16 ~~involving a county as a party, with the county clerk. If an~~
17 ~~appeal is taken by a county, a copy of the notice of appeal~~
18 ~~shall be filed in the assessor's office and a copy shall be~~

1 ~~served upon the taxpayer or taxpayers concerned.]~~, and service
2 of the notice of appeal on the director of taxation and, in the
3 case of an appeal from a decision involving the county as a
4 party, the county clerk. A notice of appeal shall be sufficient
5 if it states that the taxpayer, or county~~[, or assessor]~~ appeals
6 from the decision of the state board of review, or equivalent
7 county administrative body, to the tax appeal court and may be
8 amended at any time. The appeal shall bring up for determination
9 all questions of fact and all questions of law, including
10 constitutional questions involved in the appeal.

11 In case of an appeal by the ~~[assessor,]~~ county, or the
12 director of taxation, a copy of the notice of appeal shall be
13 forthwith delivered or mailed to the taxpayer concerned or to
14 the clerk of the county concerned in the manner provided in
15 section 232-7 for giving notice of decisions.

16 An appeal shall be deemed to have been taken in time, and
17 properly commenced, if the notice thereof and costs, if any, and
18 the copy or copies of the notice shall have been deposited in
19 the mail, postage prepaid, properly addressed to the tax appeal
20 court, ~~[tax assessor,]~~ director of taxation, taxpayer or
21 taxpayers, and county, respectively, within the time period
22 provided by this section."

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1 SECTION 2. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 3. This Act shall take effect upon its approval
4 and shall apply to any notice of appeal filed after the
5 effective date of this Act.

6
7 INTRODUCED BY: _____

Calvin H. Day

8 BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE PERFECTION OF APPEALS TO THE TAX APPEAL COURT.

PURPOSE: The purpose of this bill is to amend section 232-17, Hawaii Revised Statutes, to clarify that an appeal by a taxpayer to the Tax Appeal Court from a board of review decision, or the decision of an equivalent county administrative body, must be served on the Director of Taxation or county clerk within thirty days of the date of the final assessment to properly confer jurisdiction over the appeal and to make other stylistic changes to the section.

MEANS: Amend section 232-17, Hawaii Revised Statutes.

JUSTIFICATION: In In re Tax Appeal of Narmore v. Kawafuchi, S.Ct. No. 26890 (Sept. 29, 2006), the Hawaii Supreme Court ruled in a divided 3-2 decision that a taxpayer is not required to serve the Director of Taxation with the notice of appeal within thirty days of the final assessment in order to confer jurisdiction over the appeal in the tax appeal court. The Court's majority opinion concluded that the text of the statute stating that the taxpayer "shall file" a copy of the notice with the tax assessor was directory rather than mandatory. The Court's decision could lead to the unfortunate result that the Director of Taxation is not served with notices of appeal on a timely manner which may adversely affect the State's due process rights and may interfere with the timely collection of tax revenues.

Impact on the public: Individuals wishing to appeal to the tax appeal court from a board of review or equivalent county administrative body must timely serve the Director of Taxation or the county clerk with the notice of appeal to confer jurisdiction over the appeal.

Impact on the department and other agencies: None.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: ATG-100
OTHER AFFECTED
AGENCIES: Department of Taxation.
EFFECTIVE DATE: Upon approval.