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TESTIMONY IN FAVOR OF SB 34 AND HB 353 and 354—"Tax Appeals; Small Claims"

To: The Senate Judiciary and Labor Committee, Senate Ways and Means Committee and the House Judiciary Committee

Dear Honorable Committee Members,

Please accept this letter in support of the above measures. Also attached for your convenience is a research report from the Senate Majority Research Office dated January 12, 2011. Your consideration of this issue is greatly appreciated.

Brief Background

Hawaii has civil small claims courts with streamlined and very informal procedures for resolving small disputes. There is also a small claims division for tax appeals of less than \$1,000, which is part of the Hawaii Tax Court.

The measure would generally make the rules of the small claims division of the Hawaii Tax Court consistent with Hawaii's civil small claims procedures by banning pre-trial discovery and limiting the award of costs.

Why This Legislation is Needed

Appeals to the Tax Court Small Claims Division typically involve a citizen on one side and a government entity on the other. The deck will be stacked against the taxpayer because the government entity, such as a county, is represented by its lawyers.

The problem is that the existing rules allow pre-trial discovery even in these very small cases. Citizens seeking a hearing have been "papered to death" by opposing counsel with voluminous written interrogatories, requests for admissions, demands for written disclosures of witness, and requests for depositions. Compounding the burden from these discovery requests come related motions and mandatory pre-trial appearances in Tax Court in Honolulu, which are especially problematic for neighbor island citizens.

All of this occurs before there is even a hearing on the merits of the small claims case. Taxpayers have no way to deal with matters like these since only lawyers skilled in litigation techniques can understand and respond to them.

In addition, because of an ambiguity in the law, Hawaii Code of Civil Procedure Section 68, which could leave a taxpayer liable for excessive costs, has been abused. This situation involves a settlement offer under Section 68 from a government lawyer, which threatens a taxpayer that if the offer is not accepted, the citizen could be liable for all of the entity's costs incurred if they receive less from the court than the amount offered.

Such a tactic is unheard of in the small claims context and is entirely inappropriate because of its coercive effect in such relatively minor cases. This bill would clarify and limit the award of costs to those actually paid to the court.

Benefits of this Legislation

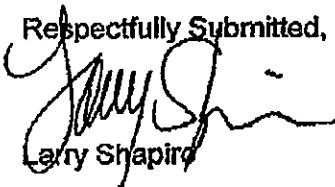
This simple bill would prevent the abuse of the court system, promote justice and fairness, stop the intimidation of innocent taxpayers and "level the playing field". The current rules make it impractical for an aggrieved citizen to exercise the right to a judicial appeal. Most taxpayers faced with discovery demands from lawyers representing their opponent will just give up and abandon their appeal. Moreover, the existing rules are totally inconsistent with the informal nature of a small claims court procedure.

Fiscal Impact

The measure would have no fiscal cost. In fact, there would be significant cost saving to government entities by not wasting valuable resources on inappropriate legal tactics.

All of the things described in this letter happened to me and hopefully your action will prevent it from happening to others.

Respectfully Submitted,



Larry Shapiro