

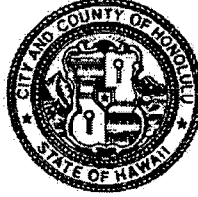
HB 354

HD1, SD1

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

REAL PROPERTY ASSESSMENT DIVISION
842 BETHEL STREET, 2ND FLOOR * HONOLULU, HAWAII 96813
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PETER B. CARLISLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

GARY T. KUROKAWA
ADMINISTRATOR

March 29, 2011

Honorable Senator David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Committee on Ways And Means
State Senate
Hawaii State Capitol, Room 215
Honolulu, Hawaii 96813

RE: HB 354 HD1 SD1 – RELATING TO TAX APPEALS

The City and County of Honolulu, joined by Maui County, opposes HB354 HD1 SD1 and requests your approval of its proposed amendments to HB354 HD1 SD1. The requested amendments have been already been incorporated into the companion bill SB34 SD HD1. Below are the reasons for the proposed amendments to HB354 HD1 SD1:

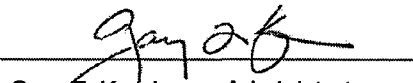
Barring pre-trial discovery in tax appeal cases brought under the small claims procedure would prevent both parties from narrowing the issues and obtaining information that could potentially settle the case. Under the small claims procedure in Tax Appeal Court ("TAC"), pretrial discovery is already restricted. Neither party may issue subpoenas or take depositions without obtaining prior written approval from the TAC. Also, the current practice of the TAC is to limit the number of interrogatories the City can pose. The Real Property Assessment Division ("RPAD") of the City proposes, at a minimum, that HRS 232-7, Section (a)(1) of HB354 HD1 SD1 be amended to allow pretrial discovery with prior court approval.

We caution that a complete bar of pre-trial discovery, as proposed by HB354 HD1 SD1, cannot operate to prevent a site inspection after an appeal has been filed in TAC. Under the Hawaii Constitution, the counties have the exclusive authority over real property tax matters. Thus, the Director of BFS, may examine the records, personal property and real property of any person for purposes of discharging the Director's duties. See ROH Sections 8-1.3(g) and (h). To the extent that there is any conflict between HRS Section 232-5 and ROH Sections 8-1.3(g) and (h), it is the ordinance, and not the statute, that is controlling. State of Hawaii v. City and County of Honolulu, 99 Haw. 508, 520, 57 P.3d 433, 445 (2002) citing Weinberg v. City and County of Honolulu, 82 Hawai'i 317, 922 P.2d 371 (1996).

Subsection (b) is amended to conform HRS Section 232-5 to the amendments made to HRS Sections 232-16 and -17 in 2007, making service on the director of taxation or the real property assessment division (in the case of a real property tax appeal) **jurisdictional**.

Thank you for your time and the opportunity to testify on this important matter.

Respectfully Submitted,


Gary T. Kurokawa, Administrator
Real Property Assessment Division
City and County of Honolulu

A BILL FOR AN ACT

RELATING TO TAX APPEALS.

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

SECTION 1. Section 232-5, Hawaii Revised Statutes, is amended to read as follows:

"§232-5 **Small claims.** (a) The tax appeal court shall establish by rule a small claims procedure that, to the greatest extent practicable, shall be informal[-]; provided that:

(1) No pretrial discovery shall be allowed without the prior written approval of the court; and

(2) Costs and fees awarded to the prevailing party shall be limited to fees paid directly to the court in the course of conducting the tax appeal at issue.

(b) Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000, by reason of the protested assessment or payment in question, may elect to employ the procedure established by this section upon:

- (1) Payment per taxpayer of a non-refundable filing fee set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and
- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to further appeal.

The tax appeal court shall cause a notice of the appeal and a copy of the statement to be served on the director of taxation and in the case of an appeal from a decision involving a county as a party, the real property assessment division of the county involved."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2060.

Report Title:

Tax Appeals; Small Claims

Description:

Allows discovery with court approval, limits the award of costs in controversies involving small claim tax appeals, and requires notice to the Director of Taxation and the county real property assessment division. Effective July 1, 2060. (Proposed SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

William P. Kenoi
Mayor



Nancy E. Crawford
Finance Director

Deanna S. Sako
Deputy Director

County of Hawai'i

DEPARTMENT OF FINANCE - REAL PROPERTY TAX

Aupuni Center • 101 Pauahi Street • Suite No. 4 • Hilo, Hawai'i 96720 • Fax (808) 961-8415
Appraisers (808) 961-8354 • Clerical (808) 961-8201 • Collections (808) 961-8282
West Hawai'i Civic Center • 74-5044 Ane Keohokalole Hwy. • Bldg. D, 2nd Flr. • Kailua Kona, Hawai'i 96740
Fax (808) 327-3538 • Appraisers (808) 323-4881 • Clerical (808) 323-4880

March 30, 2011

The Honorable David Y. Ige, Chair
Senator Michelle Kidani, Vice Chair
Committee on Ways and Means
State Senate
Hawai'i State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: HB 354, HD1, SD1 – RELATING TO TAX APPEALS

Dear Mr. Ige, Ms. Kidani and Honorable Members of the Committee on Ways and Means:

The Real Property Tax Division of the County of Hawai'i joins Maui County and the City and County of Honolulu in opposition to HB354, HD1 and requests your approval of their proposed amendments to HB354, HD1. Below are the reasons for the proposed amendments to HB354, HD1:

Barring pre-trial discovery in tax appeal cases brought under the small claims procedure would prevent both parties from narrowing the issues and obtaining information that could potentially settle the case. Under the small claims procedure in Tax Appeal Court ("TAC"), pretrial discovery is already restricted. Neither party may issue subpoenas or take depositions without obtaining prior written approval from the TAC. Also, the current practice of the TAC is to limit the number of interrogatories the County can pose. The Real Property Tax Division of the County proposes, at a minimum, that HRS 232-7, Section (a)(1) of HB354, HD1 be amended to allow pretrial discovery with prior court approval.

A complete bar of pre-trial discovery, as proposed by HB354, HD1, would operate to prevent a site inspection after an appeal has been filed in TAC. Under the Hawaii Constitution, the counties have the exclusive authority over real property tax matters. Thus, the Director of Finance, may examine the records, personal property and real property of any person for purposes of discharging the Director's duties under HCC Chapter 19. To the extent that there is any conflict between HRS Section 232-5 and HCC Chapter 19, it is the County of Hawaii ordinance, and not the statute, that is controlling.

The proposed amendment of Subsection (b) conforms HRS Section 232-5 to the amendments made to HRS Sections 232-16 and -17 in 2007, making service on the director of taxation or the real property assessment division (in the case of a real property tax appeal) jurisdictional.

Thank you for your time and opportunity to testify on this important matter.

Sincerely,


Stanley A. Sitko
Real Property Tax Administrator

Hawai'i County is an Equal Opportunity Provider and Employer

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Managing Director



Wallace G. Rezentes Jr.
Finance Director

Sally A. Motta
Deputy Finance Director

COUNTY OF KAUA'I
Department of Finance
Real Property Assessment

March 30, 2011

The Honorable Senator David Y. Ige, Chair
Committee on Ways and Means
State Senate
Hawai'i State Capitol, Room 215
415 South Beretania Street
Honolulu, Hawai'i 96813

Subject: House Bill No. 354, HD1 SD1 Relating to Tax Appeals

The County of Kaua'i opposes the current version of HB354 HD1 SD1 for the following reasons.

Barring pre-trial discovery in tax appeal cases brought under small claims procedures would prevent both parties from narrowing the issues and obtaining information that could potentially settle the case. Under the small claims procedure in Tax Appeal Court ("TAC"), pre-trial discovery is already restricted. Neither party may issue subpoenas or take depositions without obtaining prior written approval from the TAC. Also, the current practice of the TAC is to limit the number of interrogatories the County can pose. Real Property Assessment Division ("RPAD") of Kaua'i County proposes, at a minimum, that HRS 232-7, Section (a)(1) of HB354, HD1 be amended to allow pre-trial discovery with prior court approval.

We caution that a complete bar of pre-trial discovery, as proposed by HB354, HD1, cannot operate to prevent a site inspection after an appeal has been filed in TAC. Under the Hawai'i Constitution, the counties have the exclusive authority over real property tax matters. Thus, the Director of Finance may examine the records, personal property and real property of any person for the purposes of discharging the Director's duties. See K.C.C. Sections 5A-1.2 (7) and 5A-1.10. To the extent that there is any conflict between HRS Section 232-5 and K.C.C. Sections 5A-1.2 (7) and 5A-1.10, it is the ordinance, and not the statute, that is controlling. State of Hawai'i v. City and County of Honolulu, 99 Haw. 508, 520, 57 P.3d 433, 445 (2002) citing Weinberg vs City and County of Honolulu, 82 Hawai'i 317, 922 P2d 371 (1996).

Subsection (b) is amended to conform HRS Section 232-5 to the amendments made to HRS Sections 232-16 and -17 in 2007, making service on the director of taxation or the RPAD (in the case of a real property tax appeal) **jurisdictional**.

Kaua'i County would support HB354 HD1 SD1 with the inclusion of the proposed amendments.

Thank you for your consideration on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally A. Motta".

Sally A. Motta
Deputy Finance Director

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TAX APPEALS, Small claims tax appeals

BILL NUMBER: HB 354, SD-1

INTRODUCED BY: Senate Committee on Judiciary and Labor

BRIEF SUMMARY: Amends HRS section 232-5 to provide that the tax appeal court: (1) shall not allow pretrial discovery; and (2) shall provide that costs and fees awarded to the prevailing party shall be limited to the fees paid directly to the court in conducting the tax appeal at issue.

EFFECTIVE DATE: July 1, 2060

STAFF COMMENTS: The proposed measure would clarify that pretrial discovery is not allowed in the small claims division of the tax appeal court. While pretrial discovery is permitted in the civil courts, the small claims court is meant to handle claims quickly and cheaply. Legal representation is not permitted in small claims trials, but an attorney may be consulted with prior to trial.

Digested 3/29/11

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March 31, 2011

The Honorable David Y. Ige
Chairman Senate Ways and Means Committee
The Honorable Michelle Kidani
Vice Chair Senate Ways and Means Committee
Hawaii State Capitol
Honolulu, Hawaii

RE: HB 354 --- Reply Comments in Favor of HB354 Relating to Tax Appeals--Small Claims (Parallel to SB34)

HEARING DATE: April 1, 2011 9:00 AM, Room 211, Hawaii State Capitol

Dear Senators Ige and Kidani and the Honorable Members of the Senate Ways and Means Committee,

Please accept this letter testimony as well as my original testimony letter in favor of HB354, dated February 4th, 2011, which is attached for your convenience.

HB354 is the same measure as SB34, which your committee and the Senate Judiciary and Labor Committee have already considered and approved, with a defective effective date to allow further discussion.

This letter responds to the most recent testimony opposing this measure contained in the City and County of Honolulu's testimony letter dated March 18, 2011. (I submitted a testimony letter to the Senate Judiciary and Labor Committee dated March 18, 2011 responding to earlier arguments from the City and County of Honolulu contained in their letter of February 22, 2011. The opposition has now apparently dropped some of their February 22, 2011 contentions and therefore I have only responded to their most recent position letter of March 18, 2011.)

This opposition from the City and County of Honolulu is without merit for the following reasons:

1. Barring Pre-trial Discovery in Small Claims Tax Appeals Will NOT Hamper the Ability of the Government to Settle Cases.

Allowing government lawyers to use the tactic of pre trial discovery in small claims court will coerce capitulation by taxpayers. Citizens will simply give up when faced with having to respond to voluminous discovery demands such written interrogatories, requests for admissions, requests for disclosures of witnesses, demands to produce documents, etc. Permitting discovery will not facilitate fair settlements.

What's more, once the discovery door is opened, citizens will face more obstacles to an expeditious hearing on their appeal than they could ever imagine. For example, there will inevitably be multiple court motions and hearings in Honolulu from government lawyers demanding responses to discovery. There will be motions for monetary sanctions. There will be requests for dismissal of an appeal for alleged failure to comply (to the lawyers' satisfaction) with discovery rules. Taxpayers will be so tied up in knots they won't know which end is up.

2. Discovery is Always Inappropriate Even With the Requirement of Prior Court Approval.

First, the fact is there simply are no issues so important or complex in a case involving a \$1,000 or less dispute that would ever justify allowing the use of discovery.

Second, the opposition is very anxious to keep this unfair strategic advantage against taxpayers. This advantage is maintained even by allowing discovery by "court order" as proposed by the City and County of Honolulu.

The reason is clear. Government lawyers can and will very easily file boilerplate written motions in court requesting pretrial discovery and setting a court date in Honolulu for a hearing. This legal bullying will force the taxpayer to give up the appeal rather than lose money by taking time off work and traveling to Honolulu—all to deal with a preliminary skirmish over a \$1,000 or less dispute. And as with all other discovery, taxpayers are in no way equipped to respond to demands from skilled litigators which require strict compliance with complex rules and procedures.

Third, normally no party in small claims court ever has a right to discovery. The government should not be entitled to any such extraordinary rights in a small claims tax appeal—especially since the government already has the advantage of being represented by their lawyers.

Fourth, it is important to note that no citizen will initiate a discovery request in a small claims case because taxpayers who are not lawyers don't even know what "discovery" is. Only government litigators will seek discovery. There couldn't be a more uneven playing field.

Fifth, contrary to the opposition's contention, this measure does not prevent site inspections. The opposition seems to suggest that the only way an assessor can inspect a property is by pre-trial discovery in a tax appeal. This is not the case. Moreover, it is obvious that any taxpayer who refuses to cooperate with a reasonable request from an assessor to inspect a property will have his case viewed very unfavorably by the court.

The opposition proposes to add a requirement to the bill that a notice of appeal be served on the assessor or director of taxation. This would not be inappropriate.

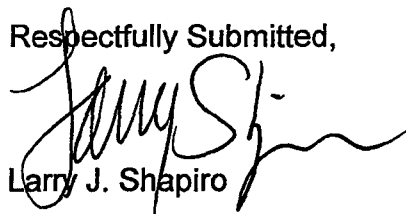
3. Conclusion.

This measure will save government agencies significant sums by preventing the waste of legal resources on small claims cases. This bill will make the Hawaii small claims court rules more uniform and consistent and promote the inexpensive and speedy resolution of small disputes. The bill will allow citizens to exercise their appeal rights without fear of legal bullying or financial hardship. Lastly, this bill will promote fairness, and increase the public's respect for the judicial and tax systems.

The measure should be adopted without modification except for the addition of the provision requiring notice of appeal be given to the assessor or department of taxation.

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,



Larry J. Shapiro

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February 4, 2011

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

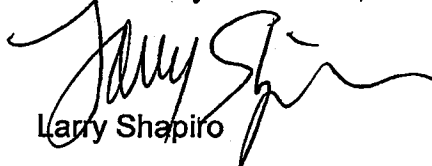
This simple bill would prevent the abuse of the court system, promote justice and fairness, stop the intimidation of innocent taxpayers and "level the playing field". The current rules make it impractical for an aggrieved citizen to exercise the right to a judicial appeal. Most taxpayers faced with discovery 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