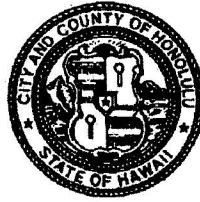


DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
REAL PROPERTY ASSESSMENT DIVISION
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GARY T. KUOKAWA
ADMINISTRATOR

February 22, 2011

Honorable Gilbert S.C. Keith-Agaran
Chair, Judiciary Committee
Honorable Karl Rhoads
Vice Chair, Judiciary Committee
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, Hawaii 96813

LATE TESTIMONY

RE: HB354 - RELATING TO TAX APPEALS

The City and County of Honolulu opposes HB354 and respectfully requests your approval of its proposed amendments to HB354. Below are the reasons for the proposed amendments to HB354:

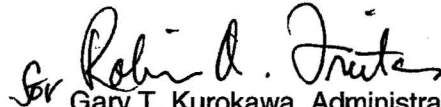
1. Preventing pretrial discovery in cases brought under the small claims procedure would hamstring the City in any efforts to obtain information from the taxpayer that could potentially settle the case. Under the small claims procedure in Tax Appeal Court ("TAC"), pretrial discovery is already seriously curtailed. One cannot issue subpoenas or take depositions without obtaining prior written approval from the TAC. Also, the TAC already limits the number and type of interrogatories that can be requested. To prohibit pretrial discovery entirely, as proposed by HB 354, would bar a site inspection, which is fundamental to a real property tax appeal. The Real Property Assessment Division ("RPAD") proposes that at a minimum pretrial discovery be allowed with prior court approval. Moreover, Rule 35 of the Rules of Tax Appeal Court under the small claims procedure allows a single taxpayer to file multiple appeals pertaining to the same kind of tax in a single notice of appeal. Our Corporation Counsel is currently defending a case brought under small claims Rule 35 of a 69-unit condominium project valued for 2011 at \$6,314,800 in the aggregate. To be prevented from conducting pretrial discovery in this case would put the City at a great disadvantage. Consequently, the RPAD proposes limiting pretrial discovery to appeals where the aggregate amount of tax in controversy is less than \$1,000.
2. Subsection (a)(2) is amended for clarification.
3. Subsection (a)(3) is added to conform HRS Section 232-5 to the amendments to HRS Section 232-16 proposed by SB 1222 and HB 1532.

Honorable Gilbert S.C. Keith-Agaran
Honorable Karl Rhoads
February 22, 2011
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4. Subsection (b) is amended to conform HRS Section 232-5 to the amendments made to HRS Section 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 in appeals where the aggregate amount of taxes in controversy is less than \$1,000 without the prior written approval of the court;
- (2) Costs and fees shall not be awarded to the prevailing party but shall be limited to costs and fees paid directly to the court in the course of conducting the tax appeal at issue; and
- (3) That where county law requires a taxpayer appealing a real property tax assessment to first

obtain a decision from an administrative body before appealing to the tax appeal court, then the taxpayer shall first obtain a decision from an administrative body established by county ordinance before appealing to the tax appeal court.

(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.

An appeal to the tax appeal court brought under the small claims procedure is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property

assessment division of the county involved. 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, 2011.

INTRODUCED BY: _____

Report Title:

Tax Appeals; Small Claims

Description:

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: SB 34; HB 354 (Identical)

INTRODUCED BY: SB by Baker by request; HB by McKelvey

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, 2011

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 2/14/11

LATE TESTIMONY