

S.B. NO. 2894

JAN 23 2014

A BILL FOR AN ACT

RELATING TO TAX APPEALS.

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

1 SECTION 1. Section 231-7.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§231-7.5 Expedited appeals and dispute resolution
4 program. (a) The department shall be authorized to implement
5 an administrative appeals and dispute resolution program that
6 shall expeditiously resolve all tax, penalty, interest, fine,
7 assessment, and other such disputes between the department and
8 the taxpayer or return preparer. The director or the director's
9 designee, who shall report directly and be answerable solely to
10 the director, shall serve as an independent appeals officer and
11 ~~shall~~ may be authorized to compromise, settle, or otherwise
12 resolve any dispute on any basis, including hazards and costs of
13 litigation, considering equally the position of the taxpayer and
14 the department on an impartial basis. The independent appeals
15 officer shall not be influenced by any department tax compliance
16 initiatives and policies, or loss of revenue to the State.
17 Decisions of the independent appeals officer shall be in writing
18 stating the facts, analysis, and conclusions in support, which

1 shall be provided to the taxpayer and return preparer. Persons
2 who currently serve or have served in the previous five years as
3 an auditor, audit supervisor or manager, collector, collection
4 supervisor or manager, district manager or supervisor, or tax
5 compliance administrator, shall not be eligible to be the
6 director's designee.

7 (b) The independent appeals officer may decide all
8 questions of fact and all questions of law, excepting questions
9 involving the Constitution or laws of the United States,
10 necessary to the determination of the objections raised by the
11 taxpayer in the petition; provided the independent appeals
12 officer may not determine or declare an assessment illegal or
13 void. Without prejudice to the generality of the foregoing, the
14 independent appeals officer may allow or disallow exemptions
15 pursuant to law whether or not previously allowed or disallowed
16 by the assessor and may increase or lower any assessment.

17 (c) The independent appeals officer shall base the
18 officer's decision on the evidence before it, and, as provided
19 in section 231-20, the assessment made by the assessor shall be
20 deemed prima facie correct. The independent appeals officer
21 shall file with the assessor concerned the officer's decision in
22 writing on each appeal decided by the officer and a copy of the
23 decision shall be furnished to the taxpayer concerned by

1 delivery or by mailing the copy addressed to the taxpayer's last
2 known place of residence.

3 ~~[-(b)-]~~ (d) Notwithstanding any other law to the contrary,
4 including tax appeal procedures set forth under chapter 232, a
5 taxpayer shall be eligible to petition the department once for
6 participation in the administrative appeals and dispute
7 resolution program after issuance of a notice of ~~[proposed]~~
8 final assessment; provided that if a taxpayer has filed a tax
9 appeal with the tax appeal court or other court, the taxpayer
10 shall first be required to obtain the approval of the director
11 and permission from the respective court prior to petitioning
12 the department for participation. If a taxpayer has filed a
13 notice of appeal with a board of review, the taxpayer shall
14 first be required to obtain the approval of the board of review
15 to transfer the case prior to petitioning the department for
16 participation; provided that a taxpayer may not petition the
17 department for participation after a board of review has issued
18 a decision on the same case. The director shall have the right
19 to deny a petition for cause.

20 ~~[-(e)-]~~ (e) The department shall adopt procedures to carry
21 out the purposes of this section, including procedures relating
22 to ex parte communications between the director or the
23 director's designee and other department personnel to ensure

1 that such communications do not compromise or appear to
2 compromise the independence of the administrative appeals and
3 dispute resolution program.

4 ~~(d)~~ (f) The director of taxation may appoint an
5 administrative appeals officer as necessary to administer this
6 section, and perform other duties as directed by the director.
7 The administrative appeals officer shall be exempt from chapter
8 76 and may be a legal or accounting professional; provided that
9 no individual appointed under this section shall render legal
10 services reserved to the attorney general under chapter 28."

11 SECTION 2. Section 232-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§232-7 Boards of review; duties, powers, procedure**
14 **before.** (a) The board of review for each district shall hear
15 informally all disputes, where the total amount in controversy
16 for all title 14 taxes, excluding penalties and interest, is no
17 more than \$25,000, between the assessor and any taxpayer in all
18 cases in which appeals have been duly taken and the fact that a
19 notice of appeal has been duly filed by a taxpayer shall be
20 conclusive evidence of the existence of a dispute; provided that
21 this provision shall not be construed to permit a taxpayer to
22 dispute an assessment to the extent that it is in accordance
23 with the taxpayer's return.

1 (b) Each board shall hold [~~public~~] meetings at some
2 central location in its taxation district at least once annually
3 and shall hear, as speedily as possible, all appeals presented
4 for each year. A taxpayer's identity and final documents
5 submitted in support or opposition of an appeal shall [~~be public~~
6 ~~information, provided that an individual taxpayer is authorized~~
7 ~~to redact all but the last four digits of the taxpayer's social~~
8 ~~security number from any accompanying tax return.~~] not be open
9 to public inspection under chapter 92F. Each board shall have
10 the power and authority to decide all questions of fact and all
11 questions of law, excepting questions involving the Constitution
12 or laws of the United States, necessary to the determination of
13 the objections raised by the taxpayer in the notice of appeal;
14 provided that no board shall have power to determine or declare
15 an assessment illegal or void. Without prejudice to the
16 generality of the foregoing, each board shall have power to
17 allow or disallow exemptions pursuant to law whether or not
18 previously allowed or disallowed by the assessor and to increase
19 or lower any assessment.

20 (c) The board shall base its decision on the evidence
21 before it, and, as provided in section 231-20, the assessment
22 made by the assessor shall be deemed prima facie correct. The
23 board shall file with the assessor concerned its decision in

1 writing on each appeal decided by it, and a certified copy of
2 the decision shall be furnished by the assessor to the taxpayer
3 concerned by delivery or by mailing the copy addressed to the
4 taxpayer's last known place of residence.

5 (d) Each board and each member thereof in addition to all
6 other powers shall also have the power to subpoena witnesses,
7 administer oaths, examine books and records, and hear and take
8 evidence in relation to any subject pending before the board.

9 The tax appeal court shall have the power, upon request of the
10 boards, to enforce by proper proceedings the attendance of
11 witnesses and the giving of testimony by them, and the
12 production of books, records, and papers at the hearings of the
13 boards.

14 (e) If there exists more than one board of review in a
15 taxation district, the chair of one board, administratively and
16 without requirement of any formal action, may assign a member of
17 that board to serve as a temporary member of the requesting
18 board for purposes of establishing a quorum at a designated
19 meeting of the requesting board. The temporary member shall
20 serve only for the specific board meeting for which the
21 assignment is made and only for the period necessary to
22 establish and maintain a quorum. A temporary member may
23 participate in discussion and vote on all matters before the

1 board. Nothing herein shall prevent a member from being
2 assigned multiple times under this subsection.

3 (f) Each board shall have the authority to refer, at its
4 discretion, any case appealed to it to the expedited appeals and
5 dispute resolution program established under section 231-7.5."

6 SECTION 3. Section 235-114, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) If the appeal is first made to the board, the appeal
9 shall either be heard by the board or be transferred to the tax
10 appeal court for hearing at the election of the taxpayer or
11 employer. If heard by the board, an appeal shall lie from the
12 decision thereof to the tax appeal court and to the intermediate
13 appellate court, subject to chapter 602, in the manner and with
14 the costs provided by chapter 232. The tax appeal court shall
15 have jurisdiction of any case transferred by the board; provided
16 that the taxpayer or employer pays to the tax appeal court the
17 costs provided by chapter 232 within ten business days from the
18 date of transfer. The supreme court shall prescribe forms to be
19 used in the appeals. The forms shall show:

20 (1) The amount of taxes or liability upon the basis of the
21 taxpayer's computation of the taxpayer's taxable
22 income or the employer's computation of the employer's
23 liability;

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- 1 (2) The amount upon the basis of the assessor's
- 2 computation;
- 3 (3) The amount upon the basis of the decisions of the
- 4 board of review and tax appeal court, if any; and
- 5 (4) The amount in dispute.

6 If or when the appeal is filed with or transferred to the tax
7 appeal court, the court shall proceed to hear and determine the
8 appeal, subject to appeal to the intermediate appellate court as
9 is provided in chapter 232."

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

BY REQUEST

S.B. NO. 2804

Report Title:

Taxes; Tax Appeals

Description:

Clarifies that the independent appeals officer may decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer in the petition. Specifies procedure of the expedited appeals and dispute resolution program. Limits the amount in controversy for board of review cases to \$25,000. Clarifies the procedure for the transfer of cases from the board of review to the Tax Appeal Court.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAX APPEALS.

PURPOSE: Clarify procedures relating to the expedited appeals and dispute resolution program and the authority granted to the independent appeals officer; limit the cases that a board of review can hear to cases where the amount in controversy is \$25,000 or less; and set forth procedure for transferring a case from a board of review to the Tax Appeal Court.

MEANS: Amend sections 231-7.5, 232-7, and 235-114 (b), Hawaii Revised Statutes.

JUSTIFICATION: The expedited appeals and dispute resolution program will be able to hear and decide taxpayer appeal cases in a timely manner. The amount in controversy limitation for board of review cases will prevent overly complex tax issues being appealed to the board. Clarification of the procedure and requirements for transferring a case from a board of review to the Tax Appeal Court is necessary.

Impact on the public: The public will benefit from these amendments because appeals will be decided in a more timely manner and appeal procedures will be set forth more clearly.

Impact on the department and other agencies: The Department will be able to resolve administrative tax appeal cases more efficiently.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.