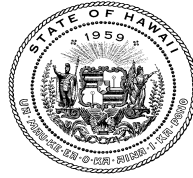


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To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Judiciary

Date: March 15, 2016

Time: 2:00 P.M.

Place: Conference Room 325, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 2926, S.D. 1, Relating to Administrative Tax Appeals and Dispute Resolution Program.

The Department of Taxation (Department) strongly supports S.B. 2926, S.D. 1, an Administration measure, and provides the following comments for your consideration.

The Department recently launched the Administrative Appeals and Dispute Resolution Program (AADRP), which provides taxpayers a streamlined method to quickly and fairly resolve tax disputes over proposed or final assessments. The AADRP, headed by the administrative appeals officer, works with the compliance division and the taxpayer to settle disputes within a timeframe of 6 to 12 months, thereby providing a quick and cost effective alternative to litigation. The appeals officer may settle disputes, taking into account the hazards and costs of litigation, or otherwise attempt to resolve disputes on an impartial basis.

The AADRP is an independent body within the Department, similar to the structure of the Office of Appeals at the Internal Revenue Service. The appeals officer reports directly to and is answerable solely to the director, but shall not be influenced by any of the Department's tax compliance initiatives and policies or loss of revenue to the State. To further maintain its independence, ex-parte communications is prohibited in AADRP. Additionally, AADRP will not take investigative actions, raise new issues, or reopen issues agreed to by the taxpayer and the Department.

S.B. 2926, S.D. 1, makes several clarifying and technical amendments to section 231-7.5, Hawaii Revised Statutes (HRS), which will clarify procedural requirements and also bring the program into close conformity with appeals programs offered by the Internal Revenue Service, including: 1) changing the title of the appeals officer from "independent appeals officer" to "administrative appeals officer" and specifying that the appeals officer shall be independent; 2) specifying the deadlines for submitting a petition to AADRP; 3) clarifying that nothing in section 231-7.5, HRS, shall be interpreted to affect appeal rights provided under section 235-114, HRS; 4) specifying that a petition to the AADRP must be done in writing on forms prescribed by the

Department and must be filed with AADRP and the auditor; 5) specifying that the director may appoint, commission, or assign support staff to the program; and 6) clarifying that the director may prescribe rules to carry out the purpose of section 231-7.5, HRS.

The Senate Committee on Judiciary and Labor also made several amendments to S.B. 2926, which were proposed by the Department, based on testimony this committee received on the House version of the bill (H.B. 2397). Specifically, provisions stating that decisions of the administrative appeals officer may not be appealed and provisions stating that a taxpayer shall withdraw an appeal to the Board of Review prior to participating in AADRP, were deleted. S.B. 2926, S.D. 1, has a defective effective date of January 7, 2059.

The Senate Committee on Ways and Means, the last committee to hear this bill, noted in its committee report that there were concerns that the bill is unclear with regard to the address to which a notice of proposed assessment must be sent and requested that further discussion take place at the next committee hearing on this concern. Subsection (c)(1) of the bill provides that a petition to AADRP must be filed within 20 days after mailing of the notice of proposed assessment, which differs from subsection (c)(2), which provides that a petition to AADRP must be filed within 30 days after mailing of the notice final assessment *to the taxpayer's last known residence or place of business*. The Department notes that the omission of the phrase "to the taxpayer's last known residence or place of business" is consistent with section 235-108, HRS, relating to audits, which does not specify where a notice of proposed assessment should be mailed, but does specify that a notice of final assessment shall be mailed to the taxpayer's last known address or place of business. The Department's current practice is to mail notices of proposed assessment to the taxpayer's last known residence or place of business, and therefore, does not object to addition of such language to subsection (c)(1).

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATIVE, Tax Appeals and Dispute Resolution Program

BILL NUMBER: SB 2926, SD-1

INTRODUCED BY: Senate Committee on Judiciary and Labor

EXECUTIVE SUMMARY: This measure tweaks the statute implementing the Department's appeals and dispute resolution program, which was authorized in 2009. Most of the amendments appear to be clarifying changes and the addition of deadlines.

BRIEF SUMMARY: Amends HRS section 231-7.5, which is the statute governing the dispute resolution program. Changes the title of the appeals officer to "administrative" from "independent." States that decisions of the administrative appeals officer shall be provided to the taxpayer or return preparer and shall be in writing. Imposes deadlines for a petition to transfer any case to the dispute resolution program: (1) within twenty days after a notice of proposed assessment; (2) within thirty days after a notice of final assessment; (3) within thirty days after a notice and demand for payment of a return preparer penalty; (4) if the taxpayer has appealed to court, the Director of Taxation and the court must permit the case to go into the program. Provides that nothing in the section shall be interpreted to affect appeal rights otherwise provided.

EFFECTIVE DATE: January 7, 2059.

STAFF COMMENTS: This measure was submitted by the Department of Taxation as TAX-06 (16).

Act 166, SLH 2009, established an expedited appeals and dispute resolution program of the department of taxation including the designation of an independent appeals officer who is authorized to compromise, settle, and resolve any dispute on an impartial basis.

The position was established to mirror the appeals office of the IRS, which has been very successful in saving government resources by getting federal tax cases settled rather than litigated. The IRS Appeals Office annually helps over 100,000 taxpayers nationally resolve their tax disputes out of court.

Digested 2/23/2016



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Judiciary
Tuesday, March 15, 2016 at 2:00 P.M.
Conference Room 325, State Capitol**

**RE: SENATE BILL SB 2926 SD 1 RELATING TO ADMINISTRATIVE TAX
APPEALS AND DISPUTE RESOLUTION PROGRAM**

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **would like to provide comments on SB 2926 SD 1**, which changes the title of the appeals officer from independent appeals officer to administrative appeals officer. Makes a taxpayer or return preparer eligible to petition to participate in the administrative appeals and dispute resolution program and establishes conditions, procedures, and deadlines whereby the taxpayer or return preparer may petition to do so.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We would like to provide some comments, as the current language of this bill is unclear and potentially contradictory.

The bill makes changes to the statute guiding the tax appeals process. Although this function has been authorized by statute for many years, the Department has never implemented it. A working Appeals function would greatly enhance existing procedures for disagreements with the Department of Taxation.

Under the federal system on which the State appeals process is based, to the extent that there is a disagreement between the IRS and a taxpayer, the taxpayer may seek review by an independent "Appeals" office within the IRS. The Appeals office, where appropriate, may offer a compromise to the taxpayer so that the parties can settle their case. This is a good way of resolving disputes as in many cases the issue is not black-or-white and compromise and settlement are appropriate.

The State process was originally intended to mirror the federal process, but as previously noted, the Department of Tax has not yet implemented any program.



Chamber of Commerce HAWAII

The Voice of Business

Section (b) of the proposed legislation is problematic. It states, in pertinent part, “Decisions of the administrative appeals officer may not be appealed to the board of review or any court.”

One reading of this statement is that, once an appeals officer makes a decision, it cannot be reviewed, including by the tax appeal court. The appeals officer could thus decide the case 100% in favor of the State, thereby foreclosing any further judicial review. This may not be the intention of the Department, but the language could be read in this manner.

It is further significant that section (d) directly contradicts section (b), as section (d) states “Nothing in this section shall be interpreted to affect appeal rights provided under section 235-114.” At a minimum, the contradictory provisions should be eliminated.

In general, we do support anything that assists in implementing this program.

Thank you for the opportunity to testify.

Ray Kamikawa
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rkamikawa@chunkerr.com

**THE HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016**

COMMITTEE ON JUDICIARY

**Hearing date: Tuesday, March 15, 2016
Testimony on SB 2926 SD1, CR 325
Relating to Administrative Tax Appeals and Dispute Resolution Program**

Chair Rhoads, Vice Chair Buenaventura, Members of the Committee:

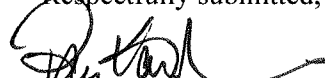
I applaud the Director of Taxation and the Department for implementing this office, which was authorized back in 2009. This office was intended to facilitate resolution of tax audits independent of the audit function and thereby minimize costs and expenditure of resources. This office is similar to the appeals office at the Internal Revenue Service, which has been very successful in settling federal tax cases.

However, I question whether this bill is necessary; it mostly imposes time limits on petitioning the office from proposed and final assessments. We should encourage the office's participation no matter when it is petitioned, whether at the outset of the appeal, midway, or whenever in the appeal process, whether at the boards of review or tax appeal court. Why limit the office's participation at the outset by imposing 20-day or 30-day deadlines, after which you lose any right to utilize the office's services?

Also, why require the approval of the director and tax appeal court when petitioning the office after filing an appeal to the tax appeal court? This office is an arm of the Director of Taxation herself, so you would think that this procedure should be encouraged by the director without need for her approval. Also, there are no procedures set forth in obtaining permission from the tax appeal court, so we are left to guess. In practicing before the tax appeal court, I believe that the court would welcome settlement of tax appeals no matter how effected, so obtaining its approval beforehand is unnecessary and meaningless.

In all, the office and the program are fine as is and additional restrictions and traps for the unwary in imposing deadlines for petitioning the office and requiring permission for the office's consideration will only hamper the dispute resolution process and detract from its success at this critical stage of the program.

Respectfully submitted,


Ray Kamikawa

PETER L. FRITZ

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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

COMMITTEE ON JUDICIARY
Testimony on S.B. 2926 SD1
Hearing: March 15, 2016
Time: 2:00 PM

Relating to Administrative Tax Appeals and Dispute Resolution Program

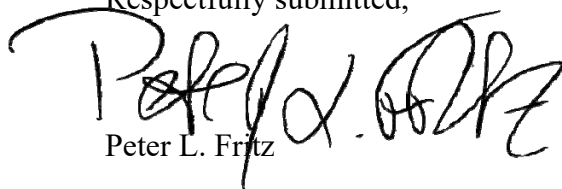
Chair Rhodes, Vice San Buenaventura, and members of the Committee. My name is Peter Fritz. I am an attorney and a former Rules Specialist for the Department of Taxation. I am submitting comments.

This bill would amend section 231-7.5, Hawaii Revised Statutes, to impose new procedures, and make other technical, nonsubstantive changes.

In 2009, legislation was enacted that established an administrative appeals office and the position of an appeals officer. The legislation established a program that is similar to the appeals office at the Internal Revenue Service. The sole function of the IRS appeals office is to review finished examination reports and provide an impartial platform for taxpayers to plead their cases to a higher power within the IRS.

The language in this bill that imposes time limits on filing a petition to appeal a proposed or final assessment is a trap for the unwary and would limit the ability of the Department of Taxation to resolve tax disputes internally.

Respectfully submitted,



Peter L. Fritz

1 (b) Any party, to which tax return information is disclosed
2 under paragraph (a), as a condition for receiving return
3 information shall:

4 (1) establish and maintain, to the satisfaction of the
5 Director, a permanent system of standardized records
6 with respect to any request, the reason for such
7 request, and the date of such request made by or of it
8 and any disclosure of return or return information made
9 by or to it;

10 (2) establish and maintain, to the satisfaction of the
11 Director, a secure area or place in which such returns
12 or return information shall be stored;

13 (3) restrict, to the satisfaction of the Director, access to
14 the returns or return information only to persons whose
15 duties or responsibilities require access and to whom
16 disclosure may be made under the provisions statute;

17 (4) provide such other safeguards which the Director
18 determines (and which are prescribes in rules) to be
19 necessary or appropriate to protect the confidentiality
20 of the returns or return information;

21 (5) furnish a report to the Director, at such time and
22 containing such information as the Director may
23 prescribe, which describes the procedures established
24 and utilized by such party, for ensuring the

1 confidentiality of returns and return information
2 required by this paragraph; and

3 (6) upon completion of use of such returns or return
4 information return to the Director such returns or return
5 information (along with any copies made therefrom) or
6 make such returns or return information undisclosable in
7 any manner and furnish a written report to the Director
8 describing such manner,

9 (7) After the close of each calendar year, the Director
10 shall furnish a report to the legislature which
11 describes the procedures and safeguards established and
12 utilized by such agencies, bodies, or commissions for
13 ensuring the confidentiality of returns and return
14 information as required by this subsection. Such report
15 shall also describe instances of deficiencies in, and
16 failure to establish or utilize, such procedures.