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To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: February 25, 2016

Time: 1:00 P.M.

Place: Conference Room 211, 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.

S.B. 2926, S.D. 1 makes several clarifying and technical amendments to section 231-7.5, Hawaii Revised Statutes, relating to the Administrative Appeals and Dispute Resolution Program (AADRP). During the hearing before the Senate Committee on Judiciary and Labor, the Department proposed several amendments to S.B. 2926 based on testimony received at the hearing for the House version of the bill, which the committee adopted. S.B. 2926, S.D. 1, has a defective effective date of January 7, 2059.

The Department recently launched the 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.

As noted above, S.D. 1 makes several amendments to section 231-7.5, HRS, including: changing the title of the appeals officer from “independent appeals officer” to “administrative appeals officer” and specifying that the appeals officer shall be independent; specifying the deadlines for submitting a petition to AADRP; clarifying that nothing in section 231-7.5, HRS, shall be interpreted to affect appeal rights provided under section 235-114, HRS; 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; specifying that the director may appoint, commission, or assign support staff to the program; and clarifying that the director may prescribe rules to carry out the purpose of section 231-7.5, HRS.

These amendments will clarify procedural requirements and also bring the program into close conformity with appeal programs offered by the Internal Revenue Service.

The revenue impact is indeterminate.

Thank you for the opportunity to provide comments.

# TAX FOUNDATION OF HAWAII

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**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, 2019.

**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