



**STATE OF HAWAII**  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Senate Committee on Ways and Means

Date: Thursday, April 4, 2019  
Time: 10:35 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 1043, H.D. 1, S.D. 1, Relating to Tax Appeals

The Department of Taxation (Department) strongly supports H.B. 1043, H.D. 1, S.D. 1, an Administration measure, and provides the following comments for the Committee's consideration.

H.B. 1043, H.D. 1, S.D. 1, amends the State tax appeals process by replacing the boards of review with a single streamlined Tax Appeal Review Panel. A summary of key provisions are as follows:

- Amends section 26-10, Hawaii Revised Statutes (HRS), to replace the boards of review for each taxation district with a Tax Appeal Review Panel (Panel) within the Department of Taxation;
- Amends section 28-8.3, HRS, to authorize the Panel to employ and retain attorneys;
- Amends section 231-7.5, HRS, to only allow appeals to the Administrative Appeals and Dispute Resolution program from final assessments;
- Amends section 231-1, HRS, to enshrine taxpayers' right of appeal to the Panel;
- Amends section 232-6, HRS, to set forth governing rules and powers of the Panel, including:
  - Composition of no more than three members, appointed for terms of five years each;
  - Members shall devote full time to their duties on the Panel, and shall not hold any public office or other public employment during their term;
  - Authorizes Panel members to act as independent hearings officers and administer oaths, compel the attendance of witnesses, produce documentary evidence, examine witnesses, and render decisions on cases assigned to them;
  - All panel members shall be appointed by the Director of Taxation (Director), and shall be removable for cause, with "cause" including the rendering of decisions that are not supported by a minimum "reasonable basis," as defined in section

- 231-36.8, HRS;
- The Director shall designate one member of the Panel as Chairperson, with the Chairperson responsible for administrative functions of the Panel, including assigning appeals to Panel members for hearing;
- Authorizes the Panel to appoint professional staff, prescribe their duties, fix their compensation, and provide for reimbursement of expenses within amounts made available by appropriations therefor;
- Provides that any vacancy in the Panel shall not impair the authority of the remaining members to exercise all powers of the Panel; and
- Permits the Director to appoint an acting member of the Panel during temporary absence, illness, or inability of one of the Panel members to act due to recusal;
- Amends section 232-7, HRS, to set forth operational procedures for the Panel, including:
  - Requires that each Panel member hold public meetings at least once annually;
  - Authorizes Panel members to use cost efficient means to conduct their proceedings, such as teleconferencing, whenever appropriate and practicable;
  - Authorizes each individual Panel member to render a decision on matters assigned to them;
  - Empowers the Panel to declare an assessment illegal or void; and
  - Requires all Panel decisions to be reduced to writing and to state separately the Panel's findings of fact and conclusions;
- Amends sections 232-13, 232-14.5, 232-15, 232-16, 232-17, 232-18, and 232-20 to clarify that repealing the State boards of review does not affect the right of appeal from county tax review boards (or equivalent county administrative bodies) to the Tax Appeal Court;
- Amends sections 232-22, 232-24, 232-25, and 235-114, to replace various references to the boards of review with references to the Tax Appeal Review Panel;
- Explicitly does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the measure's effective date, provided that all appeals filed before January 1, 2021, in which a decision has not been issued shall be heard by the Panel;
- Explicitly does not affect county real property tax appeals and the respective county boards to which they are appealed, nor does it abrogate any county ordinance relating to a county's real property tax appeal procedure; and
- Has a defective effective date of July 1, 2030, with Section 21 (making unspecified appropriations for fiscal years 2019-2020 and 2020-2021) taking effect on July 1, 2019.

The Senate Committee on Judiciary amended the previous version of this measure to increase the terms of panel members from two years to five years, to authorize the panel to determine or declare that an assessment is illegal or void, and to change the date of transfer for existing appeals to the new panel until January 1, 2021.

First, the Department notes that the current existing Board of Review appeals structure is overwhelmed with challenges to the point where it has become essentially inoperable. A substantial number of tax appeals to the boards of review have been unable to be heard or have been substantially delayed in being heard due to the boards' inability to constitute quorum. The Department further notes that the nominal compensation for board members and the conflicts of interest that may arise for practicing professionals have limited the pool of candidates who are

qualified and willing to serve as board members. Replacing the boards of review with a single Tax Appeal Review Panel, with members who will serve on a full-time basis and are endowed with the power to hear and decide cases individually, will allow appeals to be resolved more expeditiously.

Second, the Department notes that prohibiting appeals to the Administrative Appeals and Dispute Resolution program from proposed assessments, and instead requiring a final assessment be issued before an appeal may be made, will avoid unnecessary appeals and promote efficiency. The minimum 30-day period between a proposed and final assessment is intended to give the taxpayer time to confer with the Department and submit any new information that may impact the examination. Appeals taken from proposed assessments may be premature, as changes to the proposed assessment may be made based on additional information provided by the taxpayer during this 30-day period.

The Department believes that Hawaii taxpayers will greatly benefit from improved efficiency in tax administration and having appeals decided expeditiously. Accordingly, the Department strongly supports this measure, and will be able to implement it with an effective date of January 1, 2020 as the original version of this measure was written.

Thank you for the opportunity to provide testimony in support of this measure.

# TAX FOUNDATION OF HAWAII

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SUBJECT: ADMINISTRATION, Tax Appeals

BILL NUMBER: HB 1043, SD-1

INTRODUCED BY: Senate Committee on Judiciary

EXECUTIVE SUMMARY: Replaces the tax boards of review with a single tax appeal review panel comprised of members who shall devote full time to their duties. Amends the grounds upon which an appeal to the administrative appeals and dispute resolution program may be made by disallowing appeals of proposed assessments.

SYNOPSIS: Amends section 28-8.3, HRS, to allow the Department of Taxation to hire attorneys to serve on the tax appeal review panel.

Makes multiple changes to chapter 232, HRS, to change the boards of review now provided to a tax appeal review panel. Panel members are empowered to act as independent hearings officers. The panel as a whole may hire professional staff and assistants. Panel members are full-time employees who are hired for five-year terms. They can be dismissed for cause, including rendering decisions that are not supported by a reasonable basis in the tax law. Decisions of the panel shall be reduced to writing and shall state separately the panel's findings of fact and conclusions (of law). The panel will have the power to determine or declare an assessment illegal or void (the current boards of review are specifically denied this power).

Amends section 231-7.5, HRS, to allow a taxpayer to participate in the administrative appeals and dispute resolution program only after a final assessment has issued.

Makes technical and conforming changes.

States that any person who has already filed an appeal with a board of review as of the effective date of this Act may choose to continue their appeal before the board of review or withdraw their appeal and re-file the appeal with the tax appeal review panel; provided that on January 1, 2021, all appeals that are pending before a board of review shall be transferred automatically to the tax appeal review panel.

EFFECTIVE DATE: 7/1/2030.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Taxation and designated TAX-03 (19).

Under current law, those who do not agree with the Department of Taxation have two options. They can have their disputes heard by a board of review, with the possibility of further review in the Tax Appeal Court and then the appellate courts; or they can go to Tax Appeal Court, with the possibility of further review in the appellate courts.

Board of Review members are basically volunteers, just like others who serve on boards and commissions. Financial disclosures are required of them, and they are treated as employees of the Department of Taxation for purposes of state ethics laws. This means that they are not allowed to practice before the Department for the term of their Board of Review appointment and for one year thereafter.

Unfortunately, it has become increasingly tough to find Board of Review members. People who know the tax laws well enough to be considered for Board of Review appointment tend to be practitioners, such as tax attorneys, CPAs, or enrolled agents. For such people, a prohibition on practice before the Department could impact their ability to feed their families. The result in recent years has been that there are so many vacancies in the boards of review that they don't have a quorum and can't function. This bill addresses the problem by instead having full-time state workers do the job.

Digested 4/2/2019