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TO: Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair
Committee on Finance

FROM: Richard T. Bissen, Jr., Mayor
Steve Tesoro, Acting Director of Finance

DATE: February 22, 2024

SUBJECT: **OPPOSITION OF HB1806 HD1, RELATING TO THE PROCEDURE FOR TAX APPEALS.**

Thank you for the opportunity to testify in **OPPOSITION** of this important measure. The Act removes language specifying that an appeal from the Tax Appeal Court be filed with the Tax Appeal Court and allows an appeal from the Tax Appeal Court to be filed within thirty days of entry of a final judgment.

We **OPPOSE** this measure for the following reasons:

1. This measure is being introduced by an experienced law firm that missed a deadline in a County of Maui case. The current deadline structure works and has been in place for years. All four counties should be consulted and their comments considered prior to this measure being passed.
2. There are multiple levels of appeals for county real property tax appeals; Board of Review, Tax Appeal Court, Intermediate Court of Appeals and Supreme Court. HRS consistently provides for thirty days from the filing of the decision for an escalated appeal deadline. It appears that this bill will create a different deadline criterion for the upper level appeals which will complicate the process. Consistency and simplicity are desired.
3. Changing the deadline to "...within thirty days after the filing of the decision or within thirty days after entry of final judgment." will create uncertainty for the counties with regards to the accounting and disbursement of litigated claims, tax payments and refunds.

For the foregoing reasons, we **OPPOSE** this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: TAX APPEALS; Filing; Appeal from Final Judgment

BILL NUMBER: HB 1806 HD 1

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs

EXECUTIVE SUMMARY: Removes language specifying that an appeal from the Tax Appeal Court be filed with the Tax Appeal Court. Allows an appeal from the Tax Appeal Court to be filed within thirty days of entry of a final judgment.

SYNOPSIS: Amends section 232-19, HRS, to provide that a taxpayer may appeal by filing a notice of appeal and depositing the costs of appeal, in the manner required by court rules, within thirty days after the filing of the decision or within thirty days after entry of final judgment.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: *Alford v. City & County of Honolulu*, 109 Haw. 14, 122 P.3d 809 (2005), following the reasoning of *Lewis v. Kawafuchi*, 108 Haw. 69, 116 P.3d 711 (Ct. App. 2005), held that HRS § 232-19, authorizing appeals from “the decision of the tax appeal court,” is worded differently from the rule of HRS § 641-1(a), which authorizes appeals from “final judgments, orders, or decrees,” and this difference gave the Court sufficient flexibility to accept an appeal from certain orders that resolved important issues in their respective cases but did not dispose of all claims raised by all parties. No Final Judgment had been filed in either case.

In a recent case, a taxpayer appealed from a Final Judgment that had been entered by the Tax Appeal Court. The county in whose favor the judgment was entered noted that the appeal was filed 30 days after the Final Judgment but more than 30 days after the previous order embodying the decision that was at issue in the appeal and suggested that the Court lacked jurisdiction over the appeal. The Court held that the appeal was untimely but would entertain the appeal just this once under the “unique circumstances doctrine” in *Cabral v. State*, 127 Haw. 175, 176, 277 P.3d 269, 270 (2012). In other words, litigators who follow the normal rules (in courts other than the Tax Appeal Court) and wait until there is a final judgment before filing an appeal may be in for a rude surprise.

The bill tries to harmonize the two schemes by providing that an appeal is timely if it is within 30 days of either the “decision” appealed from or the Final Judgment. This approach appears to be fairer because litigants and attorneys who do not often practice before the Tax Appeal Court may be unaware of the *Alford* rule. Technical pitfalls whereby the government wins dismissal of a tax appeal before the appellate court can consider the merits of the case do not instill confidence that the taxing power of the government is being wielded fairly.

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The bill also removes the obsolete requirement that the notice of appeal be filed with the Tax Appeal Court. Under modern practice, the notice of appeal is filed with the appellate court to open a case there.

Digested: 2/21/2024