

TAX FOUNDATION OF HAWAII

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SUBJECT: TAX APPEALS; Filing; Appeal from Final Judgment

BILL NUMBER: HB 1806

INTRODUCED BY: YAMASHITA

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: Upon approval.

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: 2/3/2024

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Submitted on: 2/5/2024 11:42:09 AM

Testimony for JHA on 2/6/2024 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|----------------|
| James Manjiro Yuda | KleinLawGroup LLLC | Support | In Person |

Comments:

Honorable Members,

My name is Jiro Yuda and I am an attorney with Klein Law Group. We support HB1806 because it will provide clarification as to the deadline for litigants in Tax Appeal Court to appeal to the Intermediate Court of Appeals. Our firm has recently been involved in litigation on this very procedural issue.

Thank you for the opportunity to comment on this bill.

PS: Last evening I spent approximately 90 minutes drafting much more detailed written testimony. I followed all of the instructions and clicked "submit". When I checked later if my written submission had been received, the Legislature's website indicated that it had not been. I hope this testimony goes through.

Mahalo.