

ACT 91

S.B. NO. 2599

A Bill for an Act Relating to Appeals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-5.1, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Any decision made by an appropriate county authority or the board pursuant to a public hearing or hearings under this section may be appealed directly on the record to the ~~supreme~~ intermediate appellate court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g) shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The appropriate county authority or the board shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this section for purposes of an appeal.”

SECTION 2. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

“**§235-114 Appeals.** (a) Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth. Appeal may be made either to the district board of review or to the tax appeal court. The first appeal to either the district board of review or to the tax appeal court may be made without payment of the tax so assessed. Either the taxpayer or the assessor may appeal to the tax appeal court from a decision by the board or to ~~an~~ the intermediate appellate court from a decision by the tax appeal court; provided that if the decision by the board or the tax appeal court is appealed by the taxpayer, or the decision by the board in favor of the department is not appealed, the taxpayer shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

(b) If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the intermediate appellate court, subject to chapter 602, in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show:

- (1) The amount of taxes or liability upon the basis of the taxpayer’s computation of the taxpayer’s taxable income or the employer’s computation of the employer’s liability;
- (2) The amount upon the basis of the assessor’s computation;
- (3) The amount upon the basis of the decisions of the board of review and tax appeal court, if any; and
- (4) The amount in dispute.

If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the intermediate appellate court as is provided in chapter 232.

(c) Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer also shall file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed, properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The tax appeal court may allow an individual taxpayer to file a subsequent appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax."

SECTION 3. Section 353-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the refusal of any person in charge of any such correctional facility to give free access thereto or to any records or books kept in connection therewith, or of any such officer, district judge, sheriff, official, or employee to furnish such information, the paroling authority or director may make informal application in writing to any circuit court, reciting the facts and requesting an order directing the person concerned to give such access, or furnish such information and the court, after such reasonable notice to the person as it shall direct, shall proceed to hear the application and shall make such order as may appear proper. In case of the refusal of a circuit judge to furnish information as is required by this section, the paroling authority or director may apply to the ~~[supreme]~~ intermediate appellate court for relief in the same manner as in the case of an application to a circuit court provided in this section. The circuit courts and the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, shall have jurisdiction and all powers necessary for the purposes of this section."

SECTION 4. Section 438-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An appeal may be taken from a final action of the board suspending or revoking a license, apprentice permit, or temporary permit for the causes mentioned in section 438-14 or 439-19 to the circuit court of the circuit in which the person whose license, apprentice permit, or temporary permit has been suspended or revoked resides. The judgment of the circuit court may be reviewed by the ~~[supreme]~~ intermediate appellate court~~[-]~~, subject to chapter 602."

SECTION 5. Section 607-7, Hawaii Revised Statutes, is amended to read as follows:

"§607-7 Deposit and payment of fees and costs on appeal. All fees and costs required to be paid upon the filing of ~~[any]~~ a notice of appeal from a court shall be ~~[deposited with]~~ paid to the clerk of the court from which the appeal is taken~~[-]~~, ~~which deposit shall be transmitted~~. The clerk of the court shall immediately transmit a record of the payments and deposits, along with a copy of the notice of appeal, to the clerk of the supreme court [together with the record of the appeal; provided that the filing fee]. The required fees and costs for an appeal shall be

payable only once upon the initial filing of the appeal. The deposit shall be made at the time of filing the notice of appeal.

Where the appeal is from a governmental official or body other than a court, the required ~~[payment of]~~ costs and fees for filing the appeal shall be made payable to the clerk of the court to which the appeal is taken ~~[except as otherwise provided,]~~ and transmitted by the government official or body upon receipt to the clerk of the court to which the appeal is taken, along with a copy of the notice of appeal. If an appeal from a government official or body is taken directly to the intermediate appellate court, the required costs and fees for the appeal shall be payable only once, upon the initial filing of the appeal.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 10, 2006.)