

S.B. NO. 1269

JAN 24 2019

A BILL FOR AN ACT

RELATING TO TAX APPEALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26-10, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) There shall be within the department of taxation a
4 ~~[board of review for each taxation district]~~ tax appeal review
5 panel and a tax appeal court. The composition of ~~[each board of~~
6 ~~review]~~ tax appeal review panel and the tax appeal court and its
7 respective functions, duties, and powers shall be as
8 ~~[heretofore]~~ provided ~~[by law for the boards of review and tax~~
9 ~~appeal court existing immediately prior to November 25, 1959.]~~
10 in chapter 232."

11 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§28-8.3 Employment of attorneys.** (a) No department of
14 the State other than the attorney general may employ or retain
15 any attorney, by contract or otherwise, for the purpose of
16 representing the State or the department in any litigation,
17 rendering legal counsel to the department, or drafting legal
18 documents for the department; provided that the foregoing

S.B. NO. 1269

1 provision shall not apply to the employment or retention of
2 attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted
20 from time to time;

21 (5) By the real estate commission for any action involving
22 the real estate recovery fund;

S.B. NO. 1269

- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the office of Hawaiian affairs;
- 4 (8) By the department of commerce and consumer affairs for
- 5 the enforcement of violations of chapters 480 and
- 6 485A;
- 7 (9) As grand jury counsel;
- 8 (10) By the Hawaii health systems corporation, or its
- 9 regional system boards, or any of their facilities;
- 10 (11) By the auditor;
- 11 (12) By the office of ombudsman;
- 12 (13) By the insurance division;
- 13 (14) By the University of Hawaii;
- 14 (15) By the Kahoolawe island reserve commission;
- 15 (16) By the division of consumer advocacy;
- 16 (17) By the office of elections;
- 17 (18) By the campaign spending commission;
- 18 (19) By the Hawaii tourism authority, as provided in
- 19 section 201B-2.5;
- 20 (20) By the division of financial institutions;
- 21 (21) By the office of information practices; [~~e~~]
- 22 (22) By the tax appeal review panel; or

S.B. NO. 1269

1 [~~22~~] (23) By a department, if the attorney general, for
2 reasons deemed by the attorney general to be good and
3 sufficient, declines to employ or retain an attorney
4 for a department; provided that the governor waives
5 the provision of this section.

6 (b) For purposes of this section the term "department"
7 includes any department, board, commission, agency, bureau, or
8 officer of the State.

9 (c) Every attorney employed by any department on a full-
10 time basis, except an attorney employed by the public utilities
11 commission, the labor and industrial relations appeals board,
12 the Hawaii labor relations board, the office of Hawaiian
13 affairs, the Hawaii health systems corporation or its regional
14 system boards, the department of commerce and consumer affairs
15 in prosecution of consumer complaints, insurance division, the
16 division of consumer advocacy, the University of Hawaii, the
17 Hawaii tourism authority as provided in section 201B-2.5, the
18 office of information practices, the tax appeal review panel, or
19 as grand jury counsel, shall be a deputy attorney general.

20 (d) All attorneys retained by contract, whether by the
21 attorney general or a department, shall be retained in
22 accordance with chapter 103D."

S.B. NO. 1269

1 SECTION 3. Section 231-7.5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Notwithstanding any other law to the contrary,
4 including tax appeal procedures set forth under chapter 232, a
5 taxpayer shall be eligible to petition the department once for
6 participation in the administrative appeals and dispute
7 resolution program after issuance of a notice of [~~proposed~~
8 final assessment; provided that if a taxpayer has filed a tax
9 appeal with the tax appeal court or other court, the taxpayer
10 shall first be required to obtain the approval of the director
11 and permission from the respective court prior to petitioning
12 the department for participation. The director shall have the
13 right to deny a petition for cause."

14 SECTION 4. Section 232-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§232-1 Appeals by persons under contractual obligations.**
17 Whenever any person is under a contractual obligation to pay a
18 tax assessed against another, the person shall have the same
19 rights of appeal to the [~~board of review~~] tax appeal review
20 panel, the tax appeal court, and the intermediate appellate
21 court, subject to chapter 602, in the person's own name, as if
22 the tax were assessed against the person. The person against

S.B. NO. 1269

1 whom the tax is assessed shall also have a right to appear and
2 be heard on any such application or appeal."

3 SECTION 5. Section 232-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§232-6 [Appointment,] Tax appeal review panel;
6 appointment, removal, compensation. (a) There is created [a
7 ~~board of review for each taxation district. Additional boards~~
8 ~~may be created in any taxation district by the director of~~
9 ~~taxation where the number of disputes to be decided cannot be~~
10 ~~reasonably decided within one year. Each taxation district~~
11 ~~shall have no more than three boards. Each board]~~ a tax appeal
12 review panel to hear appeals duly filed by taxpayers.

13 (b) The panel shall consist of [five] no more than three
14 members who shall be [citizens of the State and residents of the
15 district for which the board is appointed, shall have resided at
16 the time of appointment for at least three years in the State,
17 and shall be appointed and be removable by the governor as
18 provided in section 26-34.] appointed for terms of two years
19 each. Each panel member shall act as an independent hearings
20 officer and shall have the power to administer oaths, compel the
21 attendance of witnesses, produce documentary evidence, examine
22 witnesses, and render decisions on cases assigned to them. In

S.B. NO. 1269

1 case of disobedience by any person of any order or subpoena
2 issued by the panel member, or the refusal of any witness to
3 testify to any matter regarding which the witness may be
4 questioned lawfully, any circuit judge, on application by the
5 director or tax appeal review panel member, shall compel
6 obedience as in the case of disobedience of the requirements of
7 a subpoena issued by a circuit court, or a refusal to testify
8 therein. All panel members shall be appointed by the director
9 of taxation and be removable by the director of taxation for
10 cause. For the purposes of this section, "cause" includes
11 rendering decisions that are not supported by a "reasonable
12 basis", at a minimum, as defined in section 231-36.8. [The
13 ~~governor shall designate a member of each board to act as~~
14 ~~chairperson thereof. In addition, the governor shall designate~~
15 ~~a member of each board to act as vice chairperson who shall~~
16 ~~serve as the chairperson of the board during the temporary~~
17 ~~absence from the State, illness, or disqualification of the~~
18 ~~chairperson. Any vacancy in any board shall be filled for the~~
19 ~~unexpired term. Each member shall receive and be paid out of~~
20 ~~the treasury compensation for the member's services at the rate~~
21 ~~of \$10 per day for each day's actual attendance and the member's~~

S.B. NO. 1269

1 ~~actual traveling expenses. No officer or employee of the State~~
2 ~~shall be eligible for appointment to any such board.]~~

3 (c) The director of taxation shall designate one member of
4 the panel as chairperson. The chairperson of the panel shall be
5 responsible for the administrative functions of the panel,
6 including assigning appeals to panel members for hearing. The
7 panel may appoint professional staff and assistants as it may
8 deem necessary in the performance of its functions, prescribe
9 their duties, and fix their compensation and provide for
10 reimbursement of actual and necessary expenses incurred by them
11 in the performance of their duties within the amounts made
12 available by appropriations therefor.

13 (d) The members shall devote full time to their duties as
14 members of the panel. No member shall hold any other public
15 office or be in the employment of the State or a county, or any
16 department or agency thereof, or any employee organization
17 during the member's term.

18 (e) Any vacancy in the panel shall not impair the
19 authority of the remaining members to exercise all the powers of
20 the panel. The director of taxation may appoint an acting
21 member of the panel during the temporary absence from the State,
22 temporary inability to act due to recusal, or illness of any

S.B. NO. 1269

1 regular member. An acting member, during the acting member's
2 term of service, shall have the same powers and duties as the
3 regular member; provided that subsection (d) shall not apply to
4 an acting member and an acting member appointed due to a regular
5 member's recusal shall be appointed for the case in which the
6 recusal occurred, and the acting member's appointment shall
7 terminate when the final decision is filed or the case is
8 withdrawn.

9 (f) The panel shall be within the department of taxation
10 for budgetary and administrative purposes. All members of the
11 panel and its employees shall be exempt from chapters 76 and 89.

12 (g) At the close of each fiscal year, the panel shall make
13 a written report to the governor and the director of taxation on
14 its activities, including the cases and their dispositions, and
15 the names, duties, and salaries of its officers and employees;
16 provided that the report shall not contain any information that
17 is not made public under section 232-7."

18 SECTION 6. Section 232-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~§232-7 [Boards of]~~ Tax appeal review panel; duties,
21 powers, procedure before. (a) The [~~board of review for each~~
22 ~~district]~~ tax appeal review panel shall hear informally all

S.B. NO. 1269

1 disputes between the assessor and any taxpayer in all cases in
2 which appeals have been duly taken and the fact that a notice of
3 appeal has been duly filed by a taxpayer shall be conclusive
4 evidence of the existence of a dispute; provided that this
5 provision shall not be construed to permit a taxpayer to dispute
6 an assessment to the extent that it is in accordance with the
7 taxpayer's return.

8 (b) [~~Each board~~] Each panel member shall hold public
9 meetings [~~at some central location in its taxation district~~] at
10 least once annually and shall hear, as speedily as possible, all
11 appeals presented to the panel and assigned to that panel member
12 for each year. Whenever appropriate and practicable, the panel
13 members may utilize cost efficient means to conduct their
14 proceedings, such as teleconferencing.

15 (c) A taxpayer's identity and final documents submitted in
16 support or opposition of an appeal to the panel shall be public
17 information; provided that an individual taxpayer is authorized
18 to redact all but the last four digits of the taxpayer's social
19 security number from any accompanying tax return. [~~Each board~~]
20 The panel shall have the power and authority to decide all
21 questions of fact and all questions of law, excepting questions
22 involving the Constitution or laws of the United States,

S.B. NO. 1269

1 necessary to the determination of the objections raised by the
2 taxpayer in the notice of appeal; provided that [~~no board~~] the
3 panel shall not have power to determine or declare an assessment
4 illegal or void. Without prejudice to the generality of the
5 foregoing, [~~each board~~] the panel shall have power to allow or
6 disallow exemptions pursuant to law whether or not previously
7 allowed or disallowed by the assessor and to increase or lower
8 any assessment.

9 [~~(e)~~] (d) Each individual member of the panel shall have
10 the authority to render a decision on matters assigned to them.
11 The [~~board~~] panel member shall base [~~its~~] their decision on the
12 evidence before [~~it,~~] them, and, as provided in section 231-20,
13 the assessment made by the assessor shall be deemed prima facie
14 correct. All decisions of the panel shall be reduced to writing
15 and shall state separately the panel's findings of fact and
16 conclusions. The [~~board~~] panel shall file with the assessor
17 concerned its decision in writing on each appeal decided by it,
18 and a certified copy of the decision shall be furnished by the
19 assessor to the taxpayer concerned by delivery or by mailing the
20 copy addressed to the taxpayer's last known place of residence.
21 [~~(d) Each board~~] (e) The panel and each member thereof in
22 addition to all other powers shall also have the power to

S.B. NO. 1269

1 subpoena witnesses, administer oaths, examine books and records,
2 and hear and take evidence in relation to any subject pending
3 before the ~~[board]~~ panel. The tax appeal court shall have the
4 power, upon request of the ~~[boards,]~~ panel, to enforce by proper
5 proceedings the attendance of witnesses and the giving of
6 testimony by them, and the production of books, records, and
7 papers at the hearings of the ~~[boards.]~~ panel.

8 ~~[(e) If there exists more than one board of review in a
9 taxation district, the chair of one board, administratively and
10 without requirement of any formal action, may assign a member of
11 that board to serve as a temporary member of the requesting
12 board for purposes of establishing a quorum at a designated
13 meeting of the requesting board. The temporary member shall
14 serve only for the specific board meeting for which the
15 assignment is made and only for the period necessary to
16 establish and maintain a quorum. A temporary member may
17 participate in discussion and vote on all matters before the
18 board. Nothing herein shall prevent a member from being assigned
19 multiple times under this subsection.] "~~

20 SECTION 7. Section 232-13, Hawaii Revised Statutes, is
21 amended to read as follows:

S.B. NO. 1269

1 "§232-13 Hearing de novo; bill of particulars. The
2 hearing before the tax appeal court shall be a hearing de novo.
3 Irrespective of which party prevails in proceedings before [a
4 ~~state board of review~~] the tax appeal review panel or the county
5 board or any equivalent administrative body established by
6 county ordinance, the assessment as made by the assessor, or if
7 increased by the [~~board~~] panel, county board, or equivalent
8 county administrative body, the assessment as so increased,
9 shall be deemed prima facie correct. Each party shall have the
10 right to introduce, or the tax appeal court, of its own motion,
11 may require the taking of such evidence in relation to the
12 subject pending as in the court's discretion may be deemed
13 proper. The court, in the manner provided in section 232-16,
14 shall determine all questions of fact and all questions of law,
15 including constitutional questions, involved in the appeal.

16 The jurisdiction of the tax appeal court is limited to the
17 amount of valuation or taxes, as the case may be, in dispute as
18 shown on the one hand by the amount claimed by the taxpayer or
19 county and on the other hand by the amount of the assessment, or
20 if increased by the [~~board~~] panel, or county board or equivalent
21 county administrative body, the assessment as so increased.

S.B. NO. 1269

1 Assessments for the same year upon other similar property
2 situated in the State shall be receivable in evidence upon the
3 hearing.

4 Upon the application of either the taxpayer, the county, or
5 the assessor, the judge of the tax appeal court, upon notice,
6 may allow and direct a bill of particulars of the claim of
7 either the taxpayer, the county, or the assessor to be delivered
8 to the other, and in case of default the judge shall preclude
9 the person so defaulting from giving evidence of the part or
10 parts of the person's affirmative claim of which particulars
11 have not been delivered."

12 SECTION 8. Section 232-14, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The [~~boards of review~~] tax appeal review panel shall
15 have power, consistent with this chapter and chapter 91, to make
16 rules relating to procedure, and to prescribe forms to be used,
17 including procedure and forms for the issuance of subpoenas and
18 other process by the [~~boards of review~~] panel or members
19 thereof. The rules shall have the force and effect of law."

20 SECTION 9. Section 232-14.5, Hawaii Revised Statutes, is
21 amended to read as follows:

S.B. NO. 1269

1 " [†] § 232-14.5 [†] Appeals relating to claims for refund.

2 (a) The denial in whole or in part by the department of
3 taxation of a tax refund claim may be appealed by the filing of
4 a written notice of appeal to [~~a board of review~~] the tax appeal
5 review panel or the tax appeal court within thirty days after
6 notice of the denial of the claim.

7 (b) An appeal may be filed with [~~a board of review~~] the
8 tax appeal review panel or the tax appeal court for review of
9 the merits of a tax refund claim, upon a notice of appeal filed
10 at any time after one hundred eighty days from the date that the
11 claim was filed; provided that the department has not given
12 notice of a denial of the claim within that period.

13 (c) Notwithstanding any law to the contrary under title
14 14, this section shall apply to tax refund claims for all taxes
15 administered by the department of taxation. The procedures for
16 appeals from tax assessors, [~~a board of review,~~] the tax appeal
17 review panel, and the tax appeal court provided under this
18 chapter and under section 235-114 shall apply to appeals
19 relating to tax refund claims under this section. Any claimed
20 tax refund or credit appealed pursuant to this section shall be
21 awarded only if the claim therefor was filed within the
22 applicable statutory period of limitation."

S.B. NO. 1269

1 SECTION 10. Section 232-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§232-15 Appeal to [~~board of review.~~] tax appeal review
4 panel. [~~The appeal to a board of review may be either to the~~
5 ~~board of review for the district in which the taxpayer has the~~
6 ~~taxpayer's principal place of business or to the board of review~~
7 ~~for the district in which the taxpayer resides or has the~~
8 ~~taxpayer's principal office or to the board of review of the~~
9 ~~first district.] The notice of appeal to the tax appeal review
10 panel must be lodged with the panel and the assessor on or
11 before the date fixed by law for the taking of the appeal. An
12 appeal to the [~~board of review~~] tax appeal review panel shall be
13 deemed to have been taken in time if the notice thereof shall
14 have been deposited in the mail, postage prepaid, properly
15 addressed to the panel and assessor, on or before such date.~~

16 The notice of appeal must be in writing and any such
17 notice, however informal it may be, identifying the assessment
18 involved in the appeal and stating the grounds of objection to
19 the assessment shall be sufficient. [~~Upon the necessary~~
20 ~~information being furnished by the taxpayer to the assessor, the~~
21 ~~assessor shall prepare the notice of appeal upon request of the~~

S.B. NO. 1269

1 ~~taxpayer and any notice so prepared by the assessor shall be~~
2 ~~deemed sufficient as to its form.]~~

3 The appeal shall be considered and treated for all purposes
4 as a general appeal and shall bring up for determination all
5 questions of fact and all questions of law, excepting questions
6 involving the Constitution or laws of the United States,
7 necessary to the determination of the objections raised by the
8 taxpayer in the notice of appeal. Any objection involving the
9 Constitution or laws of the United States may be included by the
10 taxpayer in the notice of appeal and in such case the objections
11 may be heard and determined by the tax appeal court on appeal
12 from a decision of the [~~board of review,~~] tax appeal review
13 panel; but this provision shall not be construed to confer upon
14 the [~~board of review~~] tax appeal review panel the power to hear
15 or determine such objections. Any notice of appeal may be
16 amended at any time prior to the [~~board's~~] panel's decision;
17 provided the amendment does not substantially change the
18 dispute.

19 SECTION 11. Section 232-16, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:

21 "(a) A taxpayer or county may appeal directly to the tax
22 appeal court without appealing to [~~a state board of review~~] the

S.B. NO. 1269

1 tax appeal review panel or the county board or any equivalent
2 administrative body established by county ordinance; provided
3 that a taxpayer appealing a real property tax assessment shall
4 first obtain a decision from a county board or an equivalent
5 administrative body established by county ordinance, prior to
6 appealing to the tax appeal court, if county ordinance requires
7 a taxpayer to do so. An appeal to the tax appeal court is
8 properly commenced by filing, on or before the date fixed by law
9 for the taking of the appeal, a written notice of appeal in the
10 office of the tax appeal court and by service of the notice of
11 appeal on the director of taxation and, in the case of an appeal
12 from a decision involving the county as a party, the real
13 property assessment division of the county involved. An
14 appealing taxpayer shall also pay the costs in the amount fixed
15 by section 232-22.

16 (b) The notice of appeal to the tax appeal court shall be
17 sufficient if it meets the requirements prescribed for a notice
18 of appeal to the [~~board of review~~] tax appeal review panel and
19 may be amended at any time; provided that it sets forth a brief
20 description of the property involved in sufficient detail to
21 identify the same and the valuation placed thereon by the
22 assessor."

S.B. NO. 1269

1 SECTION 12. Section 232-17, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§232-17 Appeals from [~~boards of review~~] tax appeal review
4 panel to tax appeal court. An appeal shall lie to the tax
5 appeal court from the decision of [~~a state board of review,~~] the
6 tax appeal review panel or a county board or equivalent
7 administrative body established by county ordinance. An appeal
8 to the tax appeal court is properly commenced by the filing, by
9 the taxpayer, or the county, or the director of taxation, of a
10 written notice of appeal in the office of the tax appeal court
11 within thirty days after the filing of the decision of the
12 [~~state board of review~~] tax appeal review panel, county board, or
13 an equivalent county administrative body, and, in the case of
14 any appealing taxpayer, the payment of the costs of court in the
15 amount fixed by section 232-22, and service of the notice of
16 appeal on the director of taxation and, in the case of an appeal
17 from a decision involving the county as a party, the real
18 property assessment division of the county involved. A notice
19 of appeal shall be sufficient if it states that the taxpayer,
20 county, or director of taxation appeals from the decision of the
21 [~~state board of review~~] tax appeal review panel, a county board,
22 or an equivalent county administrative body, to the tax appeal

S.B. NO. 1269

1 court and may be amended at any time. The appeal shall bring up
2 for determination all questions of fact and all questions of
3 law, including constitutional questions involved in the appeal.

4 In case of an appeal by the county or the director of
5 taxation, a copy of the notice of appeal shall be forthwith
6 delivered or mailed to the taxpayer concerned or to the clerk of
7 the county concerned in the manner provided in section 232-7 for
8 giving notice of decisions.

9 An appeal shall be deemed to have been taken in time, and
10 properly commenced, if the notice thereof and costs, if any, and
11 the copy or copies of the notice shall have been deposited in
12 the mail, postage prepaid, properly addressed to the tax appeal
13 court, director of taxation, taxpayer or taxpayers, and, if
14 relevant, the real property assessment division of the county
15 involved, respectively, within the time period provided by this
16 section."

17 SECTION 13. Section 232-18, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§232-18 Certificate of appeal to tax appeal court.** Upon
20 the perfecting of an appeal to the tax appeal court, the tax
21 assessor [~~of the district from which the appeal is taken~~] shall
22 immediately send up to the tax appeal court a certificate in

S.B. NO. 1269

1 which there shall be set forth the information required by
2 section 232-16 to be set forth in the notice of appeal where an
3 appeal is taken direct from the assessment to the tax appeal
4 court.

5 The certificate shall be accompanied by the taxpayer's
6 return, if any has been filed; provided that the department of
7 taxation is authorized to redact all but the last four digits of
8 an individual taxpayer's social security number from an
9 accompanying tax return, a copy of the notice of appeal to the
10 ~~[state board of review]~~ tax appeal review panel, the county
11 board, or an equivalent administrative body established by
12 county ordinance, and any amendments thereto, and the decision
13 or action, if any, of the ~~[state board of review]~~ tax appeal
14 review panel, county board, or equivalent administrative body.
15 Failure of the assessor to comply herewith shall not prejudice
16 or affect the taxpayer's, county's, or assessor's appeal and the
17 certificate of appeal may be amended at any time up to the final
18 determination of the appeal."

19 SECTION 14. Section 232-20, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§232-20 **Certificate of appeal.** Upon the perfection of an
22 appeal, the judge of the tax appeal court shall send to the

S.B. NO. 1269

1 appellate court a certificate in which there shall be set forth,
2 among other things:

3 (1) A brief description of the assessment and the property
4 involved in the appeal, if any, in sufficient detail
5 to identify the same together with the valuation
6 placed on the property by the assessor;

7 (2) The valuation claimed by the taxpayer or county;

8 (3) The taxpayer's or county's grounds of objection to the
9 assessment;

10 (4) The valuation, if any, placed thereon by the county
11 board or an administrative body established by county
12 ordinance equivalent to [a state board of review,] the
13 tax appeal review panel; and

14 (5) The valuation placed thereon by the tax appeal court.

15 The certificate shall be accompanied by the taxpayer's
16 return, if any, a copy of the notice of appeal from the
17 assessment and any amendments thereof, the decision, if any, of
18 the [~~state board of review~~] tax appeal review panel, county
19 board, or equivalent county administrative body, a copy of the
20 notice of appeal from the decision of the [~~state board of~~
21 ~~review~~] tax appeal review panel, county board, or equivalent
22 county administrative body, if any, and any amendments thereof,

S.B. NO. 1269

1 and a transcript or statement of the evidence before and the
2 decision of the tax appeal court, and all exhibits, motions,
3 orders, or other documents specified by either the taxpayer, the
4 county, or the assessor. No failure of the judge of the tax
5 appeal court to send or properly prepare the certificate or the
6 accompanying documents shall prejudice, limit, or in any manner
7 affect the taxpayer's, county's, or assessor's appeal, and the
8 certificate of appeal may be amended at any time up to the final
9 determination of the appeal.

10 SECTION 15. Section 232-22, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§232-22 **Costs; deposit for on appeal.** No costs shall be
13 charged on appeal to the [~~state board of review~~] tax appeal
14 review panel.

15 The nonrefundable costs to be deposited in any one case per
16 taxpayer on any appeal to the tax appeal court shall be an
17 amount set pursuant to rules adopted by the supreme court, which
18 shall not exceed \$100.

19 On appeal to the intermediate appellate court, the deposit
20 for costs, and costs chargeable, shall be the same as in appeals
21 from decisions of circuit courts, as provided by sections 607-5
22 and 607-6. If the decision of the intermediate appellate court

S.B. NO. 1269

1 or the supreme court on transfer from or review of the
2 intermediate appellate court is in favor of the taxpayer, the
3 taxpayer shall pay no costs for the appeal, and any payment or
4 deposit therefor shall be returned to the taxpayer. If the
5 decision is only partly in favor of the taxpayer, the costs
6 shall be prorated in the manner provided by section 232-23. No
7 costs shall be payable by, and no deposit shall be required
8 from, the assessor or the county in any case."

9 SECTION 16. Section 232-23, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) In the event of an appeal by a taxpayer to the [state
12 ~~board of review,~~] tax appeal review panel, if the appeal is
13 compromised, or is sustained as to fifty per cent or more of the
14 amount in dispute, the costs deposited shall be returned to the
15 appellant. Otherwise the entire amount of costs deposited shall
16 be retained."

17 SECTION 17. Section 232-24, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§232-24 Taxes paid pending appeal.** The tax paid upon the
20 amount of any assessment, actually in dispute and in excess of
21 that admitted by the taxpayer, and covered by an appeal to the
22 tax appeal court duly taken, shall, pending the final

S.B. NO. 1269

1 determination of the appeal, be paid by the director of finance
2 into the "litigated claims fund". If the final determination is
3 in whole or in part in favor of the appealing taxpayer, the
4 director of finance shall repay to the taxpayer out of the fund,
5 or if investment of the fund should result in a deficit therein,
6 out of the general fund of the State, the amount of the tax paid
7 upon the amount held by the court to have been excessive or
8 nontaxable, together with from the date of each payment into the
9 litigated claims fund, the interest to be paid from the general
10 fund of the State. For purposes of this section, the rate of
11 interest shall be computed by reference to section 6621(a) (with
12 respect to interest rate determination) of the Internal Revenue
13 Code of 1986, as of January 1, 2010. The balance, if any, of
14 the payment made by the appealing taxpayer, or the whole of the
15 payment, in case the decision is wholly in favor of the
16 assessor, shall, upon the final determination become a
17 realization under the tax law concerned.

18 In a case of an appeal to [~~a board of review,~~] the tax
19 appeal review panel, the tax paid, if any, upon the amount of
20 the assessment actually in dispute and in excess of that
21 admitted by the taxpayer, shall during the pendency of the
22 appeal and until and unless an appeal is taken to the tax appeal

S.B. NO. 1269

1 court, be held by the director of finance in a special deposit.
2 In the event of final determination of the appeal [~~in the board~~
3 ~~of review,~~] by the tax appeal review panel, the director of
4 finance shall repay to the appealing taxpayer out of the deposit
5 the amount of the tax paid upon the amount held by the [~~board~~
6 panel] to have been excessive or nontaxable, if any, the balance,
7 if any, or the whole of the deposit, in case the decision is
8 wholly in favor of the assessor, to become a realization under
9 the tax law concerned."

10 SECTION 18. Section 232-25, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§232-25 **Amendment of assessment list to conform to**
13 **decision.** The assessor shall alter or amend the assessment and
14 the assessment list in conformity with the decision or judgment
15 of the last [~~board~~] panel or court to which an appeal may have
16 been taken."

17 SECTION 19. Section 235-114, Hawaii Revised Statutes, is
18 amended as follows:

19 "§235-114 **Appeals.** (a) Any person aggrieved by any
20 assessment of the tax or liability imposed by this chapter may
21 appeal from the assessment in the manner and within the time
22 hereinafter set forth. Appeal may be made either to the

S.B. NO. 1269

1 ~~[district board of review]~~ tax appeal review panel or to the tax
2 appeal court. The first appeal to either the ~~[district board of~~
3 ~~review]~~ tax appeal review panel or to the tax appeal court may
4 be made without payment of the tax so assessed. Either the
5 taxpayer or the assessor may appeal to the tax appeal court from
6 a decision by the ~~[board]~~ panel or to the intermediate appellate
7 court from a decision by the tax appeal court; provided that if
8 the decision by the ~~[board]~~ panel or the tax appeal court is
9 appealed by the taxpayer, or the decision by the ~~[board]~~ panel
10 in favor of the department is not appealed, the taxpayer shall
11 pay the tax so assessed plus interest as provided in section
12 231-39(b)(4).

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

S.B. NO. 1269

1 (1) The amount of taxes or liability upon the basis of the
2 taxpayer's computation of the taxpayer's taxable
3 income or the employer's computation of the employer's
4 liability;

5 (2) The amount upon the basis of the assessor's
6 computation;

7 (3) The amount upon the basis of the decisions of the
8 ~~[board of review]~~ tax appeal review panel and tax
9 appeal court, if any; and

10 (4) The amount in dispute.

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

15 (c) Any taxpayer or employer appealing from any assessment
16 of income taxes or liability shall lodge with the assessor or
17 assistant assessor a notice of the appeal in writing, stating
18 the ground of the taxpayer's or employer's objection to the
19 additional assessment or any part thereof. The taxpayer or
20 employer also shall file the notice of appeal with the ~~[board]~~
21 panel or the tax appeal court at any time within thirty days
22 subsequent to the date when the notice of assessment was mailed,

S.B. NO. 1269

1 properly addressed to the taxpayer or employer at the taxpayer's
2 or employer's last known residence or place of business. Except
3 as otherwise provided, the manner of taking the appeal, the
4 costs applicable thereto, and the hearing and disposition
5 thereof, including the distribution of costs and of taxes paid
6 by the taxpayer pending the appeal, shall be as provided in
7 chapter 232.

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

13 SECTION 20. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$212,106 or so much
15 thereof as may be necessary for fiscal year 2019-2020 and
16 \$343,711 or so much thereof as may be necessary for fiscal year
17 2020-2021 to carry out the purposes of this Act, including the
18 payment of salaries of members, the hiring of 1 staff position,
19 and other associated administrative costs.

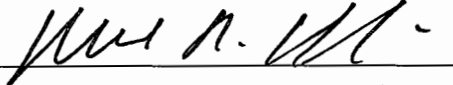
20 The sums appropriated shall be expended by the department
21 of taxation for the purposes of this Act.

S.B. NO. 1269

1 SECTION 21. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date; provided that all appeals
4 filed before January 1, 2020, in which a decision has not been
5 issued shall be heard by the tax appeal review panel, as created
6 by this Act. This Act also does not affect county real property
7 tax appeals and the respective county boards of review to which
8 they are appealed, nor does it abrogate any county ordinance
9 relating to a county's real property tax appeal procedures.

10 SECTION 22. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 23. This Act, upon its approval, shall take effect
13 on January 1, 2020; provided that section 3 shall take effect on
14 July 1, 2019.

INTRODUCED BY: 

BY REQUEST

S.B. NO. 1269

Report Title:

Tax Appeals; Tax Appeal Review Panel; Administrative Appeals and Dispute Resolution Program.

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

SB. NO. 1269

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TAX APPEALS.

PURPOSE: Replaces the boards of review with a single streamlined Tax Appeal Review Panel comprised of members who shall devote full time to their duties. Disallows appeals from notices of proposed assessments to the administrative appeals and dispute resolution program.

MEANS: Amend sections 26-10(d), 28-8.3, 231-7.5(b), 232-1, 232-6, 232-7, 232-13, 232-14(b), 232-14.5, 232-15, 232-16(a), 232-17, 232-18, 232-20, 232-22, 232-23(a), 232-24, 232-25, and 235-114, Hawaii Revised Statutes.

JUSTIFICATION: The Department of Taxation (Department) finds that 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 finds 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.

With respect to appeals to the administrative appeals and dispute resolution program, disallowing appeals from proposed assessments, and instead requiring a final assessment be issued before an appeal may be made, will avoid unnecessary appeals and promote efficiency. 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.

Impact on the public: The public will benefit from having appeals decided expeditiously.

Impact on the department and other agencies: The department will benefit from having appeals decided expeditiously.

GENERAL FUND: To be determined.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2020; provided that section 3 shall take effect on July 1, 2019.