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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways & Means

From: Isaac W. Choy, Director
Department of Taxation

Date: Wednesday, February 3, 2021

Time: 10:00 A.M.

Place: Via Videoconference, Hawaii State Capitol

Re: S.B. 384, Relating to Tax Appeals

The Department of Taxation (Department) offers the following comments regarding S.B. 384 for your consideration.

S.B. 384 amends sections 232-22 and 232-33, Hawaii Revised Statutes (HRS), which govern tax appeals. The proposed bill would replace the word “cost” and the phrase “nonrefundable costs to be deposited” with “filing fee” and “nonrefundable filing fee,” respectively. The measure is effective upon approval.

The Department is able to administer the bill as written, as there are no substantive changes to its administration of the Board of Review’s appeals process.

Thank you for the opportunity to provide comments.



The Judiciary, State of Hawai'i

Testimony to the Thirty-First State Legislature, Regular Session of 2021

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Wednesday, February 3, 2021, 10:00 AM
State Capitol, Conference Room 211

By:
Jessica N. Orr
Staff Attorney
District Court, First Circuit

Bill No. and Title: Senate Bill No. 384, Relating to Tax Appeals.

Purpose: To amend Sections 232-22 and 232-23, Hawai'i Revised Statutes (HRS) by clarifying that the Tax Appeal Court established a non-refundable filing fee making parts of section 232-23 no longer necessary.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 384 which is included in the Judiciary's 2021 legislative package.

Act 152, Session Laws of Hawai'i 1997 gave authority to the Supreme Court to establish a rule to allow for a non-refundable filing fee for tax appeal cases. Prior to this legislation, pursuant to HRS § 232-22, a person filing a tax appeal was required to deposit with the court an amount that was 5 percent of the amount of taxes in dispute, but no more than \$100. At the conclusion of the tax appeal, per HRS § 232-23, a portion of the deposit made by the filing party would be returned based on the outcome of the appeal.

This bill is a housekeeping measure which seeks to align the intent of Act 152, SLH2997 and to clarify the filing fee process for tax appeal cases. Act 152, SLH1997 amended HRS § 232-22 by allowing the courts to establish a non-refundable filing fee. Based on the amendment

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authorized by Act 152, SLH1997, the Supreme Court established a filing fee of \$100 for tax appeal cases. However, Act 152, SLH1997 inadvertently left the word “deposit” instead of replacing it with “filing fee” in HRS § 232-22 and did not delete the sections in § 232-23 referring to “returning of the deposit.”

The use of the “deposit” under HRS § 232-22 unintentionally “triggers” a refund under HRS § 232-23 and Rule 3 (a) of the Rules of Tax Appeal Court to the filing party. Generally, a filing fee is not refunded.

By amending “deposit” to “filing fee” in HRS § 232-22 and deleting any reference and/or section regarding “returning of the deposit” would: (1) complete the intention of Act 152, SLH1997, (2) be consistent with current court filing fee practices, and (3) allow the Judiciary to transfer \$306,782 to the State General Fund. The \$306,782 is the current amount that needs to be refunded to filing parties due to the inconsistent language in HRS § 232-22 and HRS § 232-23.

Approval of this bill will allow the Judiciary to end the refund process (as was intended by the 1997 amendment) and potentially transfer filings fees currently held in the amount of \$306,782 to the General Fund without delay.

Thank you for the opportunity to testify on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: APPEALS, Taxation of Costs

BILL NUMBER: HB 184; SB 384

INTRODUCED BY: HB by SAIKI by request; SB by KOUCHI by request

EXECUTIVE SUMMARY: The bill appears intended to clarify that filing fees for tax appeals are nonrefundable and that no deposits are required for tax appeals. The substantive effect of the bill is far different, as explained below.

SYNOPSIS: Amends section 232-22, HRS, to change the terminology “costs” to “filing fee,” provides that no filing fee shall be charged on appeal to the board of review, and that the courts may set a filing fee for an appeal to the tax appeal court.

Repeals most of section 232-23, HRS, which now provide for the taxation of costs in Tax Appeal Court litigation.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: “Taxation of costs” is a term of art used in litigation. While Hawaii courts generally follow the “American rule” saying that each party normally bears its own attorneys’ fees regardless of the outcome of the case, there is a different rule for costs. Costs include such items as filing fees, sheriff’s fees for service of the complaint and summons, deposition costs, fees for transcripts, witness fees, and printing costs. Under Hawaii Rules of Civil Procedure 54(d), the winning party typically can recover its costs against the losing party; however, when the losing party is the Government, recovery of costs is allowed only if statute allows for it. That is the function section 232-23, HRS, now serves in the context of a tax appeal.

The bill as now drafted will not allow any part of the filing fee to the Tax Appeal Court to be refunded for any reason, which is counter to Rule 6 of the Rules of the Tax Appeal Court.

The bill as now drafted (section 232-22(c)) will not allow taxation of any costs against either party on appeal, which is different from current law and practice.

The bill as now drafted (section 232-23) will not allow taxation of any trial costs against the State, while it apparently would allow taxation of trial costs against the taxpayer. This is different from current law and practice and creates the appearance of unfairness.

Digested 1/30/2021