

S.B. NO. 2926

JAN 27 2016

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE TAX APPEALS AND DISPUTE RESOLUTION PROGRAM.

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

SECTION 1. Section 231-7.5, Hawaii Revised Statutes, is amended to read as follows:

"§231-7.5 ~~[Expedited]~~ Administrative appeals and dispute resolution program. (a) The department shall be authorized to implement an administrative appeals and dispute resolution program that shall expeditiously resolve all tax, penalty, interest, fine, assessment, and other such disputes between the department and the taxpayer or return preparer. The director or the director's designee, who shall report directly and be answerable solely to the director, shall serve as an ~~[independent]~~ administrative appeals officer and ~~[shall]~~ may be authorized to compromise, settle, or otherwise resolve any dispute on any basis, including hazards and costs of litigation, considering equally the position of the taxpayer or return preparer and the department on an impartial basis. The ~~[independent]~~ administrative appeals officer shall be independent and not be influenced by any department tax

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1 compliance initiatives and policies, or loss of revenue to the
2 State. ~~[Decisions of the independent appeals officer shall be~~
3 ~~in writing stating the facts, analysis, and conclusions in~~
4 ~~support, which shall be provided to the taxpayer and return~~
5 ~~preparer.]~~ Persons who currently serve or have served in the
6 previous five years as an auditor, audit supervisor or manager,
7 collector, collection supervisor or manager, district manager or
8 supervisor, tax compliance coordinator, or tax compliance
9 administrator, shall not be eligible to be the ~~[director's~~
10 ~~designee.]~~ administrative appeals officer.

11 (b) Decisions of the administrative appeals officer shall
12 be provided to the taxpayer or return preparer and shall be in
13 writing stating the facts, analysis, and conclusions in support.
14 Decisions of the administrative appeals officer may not be
15 appealed to the board of review or any court.

16 ~~[(b)]~~ (c) Notwithstanding any other law to the contrary,
17 including tax appeal procedures set forth under chapter 232, a
18 taxpayer or return preparer shall be eligible to petition the
19 department once for participation in the administrative appeals
20 and dispute resolution program after ~~[issuance of]~~ a notice of
21 proposed assessment ~~[+]~~ or notice of assessment is issued;
22 ~~[provided that if a taxpayer has filed a tax appeal with the tax~~
23 ~~appeal court or other court, the taxpayer shall first be~~

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1 ~~required to obtain the approval of the director and permission~~
2 ~~from the respective court prior to petitioning the department~~
3 ~~for participation.] provided that if:~~

4 (1) A taxpayer petitions the administrative appeals and
5 dispute resolution program after a notice of proposed
6 assessment has been issued, the petition must be filed
7 within twenty days after the mailing of the notice of
8 proposed assessment;

9 (2) A taxpayer petitions the administrative appeals and
10 dispute resolution program after a notice of final
11 assessment has been issued, the petition must be filed
12 within thirty days after the mailing of the notice of
13 assessment to the taxpayer's last known residence or
14 place of business;

15 (3) A taxpayer has filed an appeal with the board of
16 review, the taxpayer shall withdraw its appeal to the
17 board of review prior to the administrative appeals
18 officer commencing any substantive work towards the
19 resolution of the dispute;

20 (4) A return preparer petitions the administrative appeals
21 and dispute resolution program after a notice and
22 demand of the penalty is made, the petition must be
23 filed within thirty days after the mailing of the

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1 notice and demand of the penalty to the return
2 preparer's last known residence or place of business;
3 or

4 (5) A taxpayer or return preparer has filed a tax appeal
5 with the tax appeal court or other court, the taxpayer
6 or return preparer shall first obtain permission from
7 the director and the respective court in order to
8 participate in the administrative appeals and dispute
9 resolution program.

10 The director shall have the right to deny a petition for cause.

11 (d) Nothing in this section shall be interpreted to affect
12 appeal rights provided under section 235-114.

13 ~~[(e)]~~ (e) The department shall adopt procedures to carry
14 out the purposes of this section, including procedures relating
15 to ex parte communications between the director or the
16 ~~[director's designee]~~ administrative appeals officer and other
17 department personnel to ensure that such communications do not
18 compromise or appear to compromise the independence of the
19 administrative appeals and dispute resolution program.

20 (f) Taxpayers and return preparers shall petition the
21 administrative appeals and dispute resolution program using the
22 forms prescribed by the Department. All petitions must be filed
23 with the administrative appeals and dispute resolution program

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1 and the auditor or department official assigned to the taxpayer
2 or return preparer's case by the applicable deadline set forth
3 in subsection (c).

4 ~~[(d)]~~ (g) The director of taxation may appoint an
5 administrative appeals officer as necessary to administer this
6 section, and perform other duties as directed by the director.
7 The director may appoint, commission, or assign support staff as
8 necessary to assist the administrative appeals officer. The
9 administrative appeals officer shall be exempt from chapter 76
10 and may be a legal or accounting professional; provided that no
11 individual appointed under this section shall render legal
12 services reserved to the attorney general under chapter 28.

13 (h) The director may prescribe such rules as may be
14 necessary or appropriate to carry out the purposes of this
15 section."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This act shall take effect upon its approval.

INTRODUCED BY: 

BY REQUEST

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Report Title:

Tax Administration; Administrative Tax Appeals and Dispute Resolution Program

Description:

Amends section 231-7.5, Hawaii Revised Statutes, to clarify the types of cases that can be appealed, clarify certain procedures, and make other technical, nonsubstantive changes.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO ADMINISTRATIVE
TAX APPEALS AND DISPUTE RESOLUTION PROGRAM.

PURPOSE: To provide technical amendments to section
231-7.5, Hawaii Revised Statutes (HRS), to
assist the department in administering the
administrative appeals and dispute
resolution program.

MEANS: Amend section 231-7.5, HRS.

JUSTIFICATION: This measure makes clarifying technical
amendments to section 231-7.5, HRS, which
relate to the administration of the
administrative appeals and dispute
resolution program.

Impact on the public: These amendments
clarify that both taxpayers and return
preparers may appeal an assessment or
proposed assessment to the administrative
appeals and dispute resolution program.

Impact on the department and other agencies:
These amendments clarify administrative
provisions which will allow the program to
conform closely to appeal programs offered
by the Internal Revenue Service.

GENERAL FUND: None.

OTHER FUNDS: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.