JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

TESTIMONY OF GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
S.B. No. 3300, Relating to Procedures for Tax Appeals

BEFORE THE:
Senate Committee on Judiciary

DATE: Tuesday, February 10, 2026
TIME: 9:15 a.m.
LOCATION: State Capitol, Room 016

Chair Rhoads, Vice-Chair Gabbard, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments regarding S.B. 3300 for your consideration.

S.B. 3300 amends section 235-114(a), Hawaii Revised Statutes (HRS), which currently allows taxpayers to make a first appeal to either the taxation board of review or tax appeal court without payment of the tax assessed but requires that the taxpayer pay the tax assessed if the taxpayer makes a second appeal. The bill amends section 235-114(a), HRS, by requiring payment of the tax by a taxpayer on the second appeal only if the first appeal was decided on the merits. The bill also requires the taxation board of review or tax appeal court make a determination of the amount of tax the taxpayer shall pay. Further, the bill deletes language that requires a taxpayer who does not appeal from a decision of the taxation board of review in favor of the department to pay the tax assessed.

The measure is effective upon approval.

First, DOTAX requests that the bill be amended to remove the repeal of the phrase “or the decision by the board in favor of the department is not appealed” on page 2, lines 15 to 16. If a taxpayer loses its appeal to the taxation board of review and does

not appeal that decision, the taxpayer must pay the tax assessed plus interest. This bill, by removing language that expressly states that the taxpayer must pay the tax if it fails to appeal the taxation board of review's decision, may cause ambiguity and complicate DOTAX's enforcement efforts.

Second, DOTAX notes that there does not appear to be a valid reason for allowing a taxpayer who lost an appeal because they failed to follow the procedural rules to be excused from paying the tax before making a second appeal, while requiring a taxpayer who lost an appeal but who followed the procedural rules to pay the tax before making a second appeal. In both cases, the taxpayers were given an opportunity to appeal and were not successful. Accordingly, in both cases, the taxpayers should be required to pay the tax before making a second appeal. DOTAX therefore recommends deleting the phrase "on the merits" on page 2, line 14.

Thank you for the opportunity to provide comments on this measure.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, GENERAL EXCISE, APPEALS, Modify "Pay to Play" Rule

BILL NUMBER: SB 3300

INTRODUCED BY: KOUCHI by request

EXECUTIVE SUMMARY: Requires a tax to be paid before the courts may entertain a second appeal on the merits of the dispute. Requires a taxpayer who partially prevailed during the taxpayer's first appeal to pay the amount determined to be due in that first appeal, rather than the entire assessment, in order to make a subsequent appeal.

SYNOPSIS: Amends section 235-114, HRS, to provide that either the taxpayer or the assessor may appeal to the tax appeal court from a decision by the board or to the intermediate appellate court from a decision by the tax appeal court; provided that if the decision on the merits by the board or the tax appeal court is appealed by the taxpayer, the taxpayer shall pay the tax as determined by the board or the tax appeal court, plus interest. (This income tax law provision is cross-referenced by section 237-42, HRS, to apply to general excise appeals. These two provisions are cross-referenced in the law governing other tax types as well.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: The need for this bill is shown by an actual case, *Tax Appeal of PM & AM Research, Inc.,* a taxpayer high on the tough luck list. The taxpayer filed an appeal in Tax Appeal Court from a general excise tax assessment. But, while the applicable law requires a taxpayer in this situation to send a copy of the notice of appeal to the Director of Taxation, the taxpayer sent the copy to the Administrative Appeals Office *in the same room of the same building* in Honolulu. The Department seized on this difference and persuaded the Tax Appeal Court to toss the case out. The taxpayer appealed to the Intermediate Court of Appeals. The ICA noticed that Hawaii has a "pay to play" law regarding tax appeals; the first appeal is free but any appeal after that can be entertained only if the taxpayer pays the assessed tax in full. The taxpayer hadn't paid the tax in full, so the ICA dismissed the appeal.

The taxpayer, with support from the Foundation as amicus curiae, argued that the pay to play law shouldn't be applied to this situation. The Tax Appeal Court's decision didn't really count as an appeal, the taxpayer argued, because the dismissal had the effect of saying, "You're in the wrong place and I can't decide the appeal," rather than expressing an independent judgment on how much or little the taxpayer owes. The Foundation argued that the appeal to the ICA shouldn't count as a second appeal because that court also can't express any judgment on how much tax the taxpayer owes, but only whether the Tax Appeal Court was correct in tossing the case. We have the documents in this case here on our website.

The Hawaii Supreme Court decided to take up this case. Briefing has been completed and a date for oral argument should be announced soon.

Although the issues in this case may seem dry and boring, they do have significant implications in the ability of our court system to operate as a check and balance against a zealous Department of Taxation. We certainly understand the need for the State to get its revenue without being dragged through the swamp by a taxpayer's overzealous attorneys, but we think it only fair that the taxpayer gets a decision *on the merits* by an independent tribunal, either the Tax Appeal Court or the Board of Review, before the appeal limit is triggered. We also think that if the independent tribunal rendered a decision between what the Department assessed and what the taxpayer contended and the taxpayer wants to appeal further, requiring the taxpayer to prepay the full assessment, which is what the statute now reads, is unfair because the tribunal already decided that the taxpayer did not owe that much. Thus, the bill instead requires the taxpayer to pay what the tribunal decided.

Digested: 2/5/2026

Richard Paul McClellan III
LAWYER
www.taxsolutionslawyer.com

February 5, 2026

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Re: **SB3300 RELATING TO PROCEDURES ON TAX APPEALS**

Hearing Date: 2/10/2026, 9:15 A.M.

Dear Chair Rhoads, Vice-Chair Gabbard, & Honorable Committee Members:

As a licensed attorney practicing for thirty years in tax controversies, I oppose Senate Bill 3300 for multiple reasons.

I do not believe its good public policy to require any tax to be paid at any stage of the appeal of a tax assessment *because it prices ordinary people and small businesses out of an appeal and appeals are our method of correcting errors of fact and misapplication of law in a transparent and public manner*.

There is also no such requirement to pre-pay at the federal level, upon which so much of our tax law is based for good reason.

My professional observation is that people are more willing and more likely to pay tax obligations that they believe are fair and just. Part of such a belief is the knowledge that you could have had your day in court if you disagreed with the assessment (whether you ultimately asked for your day in court or not.) Notably, the overwhelming majority of assessments are not appealed (20,000+ assessments with less than 100 appeals in 2023-2024 fiscal year).

Section 235-114(a) should be amended to delete the requirement of payment at any stage.

Finally, a complete revision of the Chapter 14 assessment and assessment review process is overdue. The last thirty (30) years have seen piecemeal changes to various administrative and legal tax processes, certainly well intentioned, but producing an end result that does not serve the interests of the public, tax practitioners, and the Department of Taxation to the extent that our tax code could and should.