

## ACT 123

H.B. NO. 851

A Bill for an Act Relating to Taxation Appeals.

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

SECTION 1. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

**“§235-114 Appeals.** 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[; ~~provided that, for appeals other than to the board, the tax so assessed shall have been paid~~]. 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 [~~upon which the tax so assessed shall have been paid. If the taxpayer chose not to pay the tax when appealing to the board, and the~~] or to an 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 [must] shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

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 supreme court 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 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, the amount upon the basis of the assessor's computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and 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 supreme court as is provided in chapter 232.

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 [~~shall~~] 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 [~~an~~] 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 2. Section 236D-15, Hawaii Revised Statutes, is amended to read as follows:

**“§236D-15 Administration by department; action for collection of tax; appeal.** The department may collect the taxes provided for in this chapter, including applicable interest and penalties, and shall represent this State in all matters pertaining to this chapter, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of the taxes and any interest and penalties on the taxes.

The circuit court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Hawaii shall have jurisdiction to hear and determine all questions in relation to the estate tax arising under this chapter. If no probate or administration proceedings have been taken out in any court of this State, the circuit court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a nondomiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other. The tax appeal court shall have jurisdiction to hear and determine all questions in relation to the generation-skipping transfer tax arising under this chapter.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114[; provided the tax so assessed shall have been paid]. The distribution of taxes paid pending the appeal shall be as provided in chapter 232.”

SECTION 3. Section 237-42, Hawaii Revised Statutes, is amended to read as follows:

**“§237-42 Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid].”

SECTION 4. Section 237D-11, Hawaii Revised Statutes, is amended to read as follows:

**“§237D-11 Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid].”

SECTION 5. Section 238-8, Hawaii Revised Statutes, is amended to read as follows:

**“§238-8 Appeal, correction of assessment.** If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon the person by the director of taxation, the person may[; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid,] appeal the assessment in the manner and within the time and in all other respects as provided in section 235-114, for which purpose the word “income” shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 6. Section 243-14.5, Hawaii Revised Statutes, is amended to read as follows:

**“§243-14.5 Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 7. Section 244D-12, Hawaii Revised Statutes, is amended to read as follows:

**“§244D-12 Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 8. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

**“§245-10 Appeals.** Any person aggrieved by any assessment of the taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 9. Section 247-4.5, Hawaii Revised Statutes, is amended to read as follows:

**“§247-4.5 Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 10. Section 251-10, Hawaii Revised Statutes, is amended to read as follows:

**“§251-10 Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the surcharge tax so assessed shall have been paid~~].”

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SECTION 11. Section 346E-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346E-8]]~~ **Appeals.** Any operator aggrieved by any assessment of the tax imposed by this chapter for any quarter or any year, may appeal from the assessment in the manner and within the time and in all other respects, as provided in the case of income tax appeals by section 235-114~~[- provided the tax so assessed shall have been paid].~~”

SECTION 12. Section 431:7-204.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:7-204.5]]~~ **Appeals.** Notwithstanding section 431:2-308, any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in section 235-114~~[- provided the tax so assessed shall have been paid].~~”

SECTION 13. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2004 and shall apply to tax appeals filed on or after July 1, 2004.

(Approved June 15, 2004.)