

**ACT 118**

S.B. NO. 1204

A Bill for an Act Relating to Tax Appeals.

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

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

“(d) There shall be within the department of taxation a taxation board of review [~~for each taxation district~~] and a tax appeal court. The composition

of [each] the taxation board of review and the tax appeal court and [its] their respective functions, duties, and powers shall be as [heretofore] provided [by law for the boards of review and tax appeal court existing immediately prior to November 25, 1959.] in chapter 232.”

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

“**§232-1 Appeals by persons under contractual obligations.** Whenever any person is under a contractual obligation to pay a tax assessed against another, the person shall have the same rights of appeal to the taxation board of review, the tax appeal court, and the intermediate appellate court, subject to chapter 602, in the person’s own name, as if the tax were assessed against the person. The person against whom the tax is assessed shall also have a right to appear and be heard on any such application or appeal.”

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

“**§232-6 [Appointment,] Taxation board of review; appointment, removal, compensation.** (a) There is created a taxation board of review for [each taxation district. Additional boards may be created in any taxation district by the director of taxation where the number of disputes to be decided cannot be reasonably decided within one year. Each taxation district shall have no more than three boards. Each board] the State.

(b) The board shall consist of [five] no more than ten members who shall be [citizens] residents of the State [and residents of the district for which the board is appointed, shall have resided at the time of appointment for at least three years in the State,] and shall be appointed and be removable by the governor as provided in section 26-34. The governor shall designate a member of [each] the board to act as chairperson thereof. In addition, the governor shall designate a member of [each] the board to act as vice chairperson who shall serve as the chairperson of the board during the temporary absence from the State, illness, or disqualification of the chairperson. Any vacancy in [any] the board shall be filled for the unexpired term. Each member shall receive and be paid out of the treasury compensation for the member’s services at the rate of \$10 per day for each day’s actual attendance and the member’s actual traveling expenses. No officer or employee of the State shall be eligible for appointment to [any such] the board.

(c) Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint, without regard to section 26-34, an acting member of the board during any regular member’s temporary absence from the State, temporary inability to act due to recusal, disqualification, or illness. An acting member, during the acting member’s term of service, shall have the same powers and duties as the regular member; provided that an acting member appointed due to a regular member’s recusal or disqualification shall be appointed for the case in which the recusal or disqualification occurred, and the acting member’s appointment shall terminate when the final decision is filed or the case is withdrawn.”

SECTION 4. Section 232-7, Hawaii Revised Statutes, is amended to read as follows:

“**§232-7 [Boards] Taxation board of review; duties, powers, procedure before.** (a) The taxation board of review [for each district] shall hear informally all disputes between the assessor and any taxpayer in all cases in which appeals have been duly taken and the fact that a notice of appeal has been duly filed by a

taxpayer shall be conclusive evidence of the existence of a dispute; provided that this ~~[provision]~~ subsection shall not be construed to permit a taxpayer to dispute an assessment to the extent that it is in accordance with the taxpayer's return.

(b) ~~[Each]~~ At least three board members shall be present at any meeting or proceeding of the board to constitute a quorum. The board shall hold public meetings at some central location in [its] each taxation district at least once annually and shall hear, as speedily as possible, all appeals presented for each year. Taxpayers and others appearing before the board may also participate via teleconference or any other cost-efficient means of the board's choosing.

(c) A taxpayer's identity and final documents submitted in support or opposition of an appeal shall be public information; provided that an individual taxpayer ~~[is]~~ shall be authorized to redact all but the last four digits of the taxpayer's social security number from any accompanying tax return. ~~[Each]~~ The board [shall have the power and authority to] may decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer in the notice of appeal; provided that ~~[no]~~ the board shall not have the power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, ~~[each]~~ the board shall have the power to allow or disallow exemptions pursuant to law, whether or not previously allowed or disallowed by the assessor, and to increase or lower any assessment.

~~[(e)]~~ (d) The board shall base its decision on the evidence before it, and, as provided in section 231-20, the assessment made by the assessor shall be deemed prima facie correct. All decisions of the board shall be reduced to writing and shall state separately the board's findings of fact and conclusions of law. The board shall file with the assessor concerned its decision in writing on each appeal decided by it, and a certified copy of the decision shall be furnished by the assessor to the taxpayer concerned by delivery or by mailing the copy addressed to the taxpayer's last known place of residence.

~~[(d) Each]~~ (e) The board and each member thereof, in addition to all other powers, shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the board. The tax appeal court shall have the power, upon request of the [boards,] board, to enforce by proper proceedings the attendance of witnesses [and the,] giving of testimony by [them,] witnesses, and [the] production of books, records, and papers at the hearings of the [boards,] board.

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

SECTION 5. Section 232-13, Hawaii Revised Statutes, is amended to read as follows:

“**§232-13 Hearing de novo; bill of particulars.** The hearing before the tax appeal court shall be a hearing de novo. Irrespective of which party prevails in proceedings before [a] the state taxation board of review or any equivalent administrative body established by county ordinance, the assessment as made by the assessor, or if increased by the board, or equivalent county administra-

tive body, the assessment as so increased, shall be deemed prima facie correct. Each party shall have the right to introduce, or the tax appeal court, of its own motion, may require the taking of ~~[such]~~ evidence in relation to the subject pending as in the court's discretion may be deemed proper. The court, in the manner provided in section 232-16, shall determine all questions of fact and all questions of law, including constitutional questions, involved in the appeal.

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

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

Upon the application of either the taxpayer, ~~[the]~~ county, or ~~[the]~~ assessor, the judge of the tax appeal court, upon notice, may allow and direct a bill of particulars of the claim of either the taxpayer, ~~[the]~~ county, or ~~[the]~~ assessor to be delivered to the other, and, in case of default, the judge shall preclude the person ~~[ø]~~ defaulting from giving evidence of the part or parts of the person's affirmative claim of which particulars have not been delivered."

SECTION 6. Section 232-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The ~~[boards]~~ taxation board of review ~~[shall have power]~~, consistent with this chapter and chapter 91, ~~[tø]~~ may make rules relating to procedure~~[-]~~ and ~~[tø]~~ prescribe forms to be used, including procedure and forms for the issuance of subpoenas and other process by the ~~[boards of review]~~ board or members ~~[thereof.] of the board.~~ The rules shall have the force and effect of law."

SECTION 7. Section 232-14.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§232-14.5]]~~ **Appeals relating to claims for refund.** (a) The denial in whole or in part by the department of taxation of a tax refund claim may be appealed by the filing of a written notice of appeal to ~~[a]~~ the taxation board of review or the tax appeal court within thirty days after notice of the denial of the claim.

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

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

SECTION 8. Section 232-15, Hawaii Revised Statutes, is amended to read as follows:

"**§232-15 Appeal to taxation board of review.** ~~[The appeal to a board of review may be either to the board of review for the district in which the taxpayer has the taxpayer's principal place of business or to the board of review for~~

~~the district in which the taxpayer resides or has the taxpayer's principal office or to the board of review of the first district.] (a) The notice of appeal [must] to the taxation board of review shall be lodged with the board and assessor [on or before] no later than the date fixed by law for the taking of the appeal. An appeal to the taxation board of review shall be deemed to have been taken in time if the notice thereof shall have been [deposited in the mail, postage prepaid,] post-marked and properly addressed to the board and assessor, on or before [such] that date.~~

(b) The notice of appeal [must] shall be in writing and any [such] notice, however informal it may be, identifying the assessment involved in the appeal and stating the grounds of objection to the assessment shall be sufficient. ~~[Upon the necessary information being furnished by the taxpayer to the assessor, the assessor shall prepare the notice of appeal upon request of the taxpayer and any notice so prepared by the assessor shall be deemed sufficient as to its form.]~~

(c) The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer in the notice of appeal. ~~[Any] If any~~ objection involving the Constitution or laws of the United States ~~[may be] is~~ included by the taxpayer in the notice of appeal ~~[and in such case], the [objections] objection~~ may be heard and determined by the tax appeal court on appeal from a decision of the taxation board of review; ~~[but] provided that~~ this ~~[provision] subsection~~ shall not be construed to confer upon the board ~~[of review] the power to hear or determine [such objections;] the objection.~~ Any notice of appeal may be amended at any time ~~[prior to] before~~ the board's decision; provided ~~that~~ the amendment does not substantially change the dispute.”

SECTION 9. Section 232-16, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A taxpayer or county may appeal directly to the tax appeal court without appealing to [a] the state taxation board of review or any equivalent administrative body established by county ordinance; provided that a taxpayer appealing a real property tax assessment shall first obtain a decision from an administrative body established by county ordinance, ~~[prior to] before~~ appealing to the tax appeal court, if county ordinance requires a taxpayer to do so. An appeal to the tax appeal court is properly commenced by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court and by service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. An appealing taxpayer shall also pay the costs in the amount fixed by section 232-22.

(b) The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the taxation board of review and may be amended at any time; provided that it sets forth a brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.”

SECTION 10. Section 232-17, Hawaii Revised Statutes, is amended to read as follows:

“**§232-17 Appeals from [boards] taxation board of review to tax appeal court.** An appeal shall lie to the tax appeal court from the decision of [a] the state taxation board of review, or equivalent administrative body established by county ordinance. An appeal to the tax appeal court [is] shall be properly com-

menced by the filing, by the taxpayer, ~~[or the]~~ county, or ~~[the]~~ director of taxation, of a written notice of appeal in the office of the tax appeal court within thirty days after the filing of the decision of the state taxation board of review<sup>1</sup> or an equivalent county administrative body, and, in the case of any appealing taxpayer, the payment of the costs of court in the amount fixed by section 232-22, and service of the notice of appeal on the director of taxation and, in the case of an appeal from a decision involving the county as a party, the real property assessment division of the county involved. A notice of appeal shall be sufficient if it states that the taxpayer, county, or director of taxation appeals from the decision of the state taxation board of review, or an equivalent county administrative body, to the tax appeal court and may be amended at any time. The appeal shall bring up for determination all questions of fact and all questions of law, including constitutional questions involved in the appeal.

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

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

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

“**§232-18 Certificate of appeal to tax appeal court.** (a) Upon the perfecting of an appeal to the tax appeal court, the tax assessor ~~[of the district from which the appeal is taken]~~ shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

(b) The certificate shall be accompanied by the taxpayer’s return, if any has been filed; provided that the department of taxation ~~[is authorized to]~~ may redact all but the last four digits of an individual taxpayer’s social security number from an accompanying tax return, a copy of the notice of appeal to the state taxation board of review, or an equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state taxation board of review or equivalent administrative body. Failure of the assessor to comply ~~[herewith]~~ with this section shall not prejudice or affect the taxpayer’s, county’s, or assessor’s appeal, and the certificate of appeal may be amended at any time up to the final determination of the appeal.”

SECTION 12. Section 232-20, Hawaii Revised Statutes, is amended to read as follows:

“**§232-20 Certificate of appeal.** Upon the perfection of an appeal, the ~~[judge of the]~~ tax appeal court shall send to the appellate court a certificate ~~[in which there]~~ that shall [be set forth, among other things:] include:

- (1) A brief description of the assessment and the property involved in the appeal, if any, in sufficient detail to identify the same together with the valuation placed on the property by the assessor;
- (2) The valuation claimed by the taxpayer or county;
- (3) The taxpayer’s or county’s grounds of objection to the assessment;

- (4) The valuation, if any, placed thereon by an administrative body established by county ordinance equivalent to [a] the state taxation board of review; and
- (5) The valuation placed thereon by the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any[-]; a copy of the notice of appeal from the assessment and any amendments thereof[-]; the decision, if any, of the state taxation board of review or equivalent county administrative body[-]; a copy of the notice of appeal from the decision of the state taxation board of review or equivalent county administrative body, if any, and any amendments thereof[-]; and a transcript or statement of the evidence before and the decision of the tax appeal court[-] and all exhibits, motions, orders, or other documents specified by either the taxpayer, [the] county, or [the] assessor. No failure of the judge of the tax appeal court to send or properly prepare the certificate or the accompanying documents shall prejudice, limit, or in any manner affect the taxpayer's, county's, or assessor's appeal, and the certificate of appeal may be amended at any time up to the final determination of the appeal."

SECTION 13. Section 232-22, Hawaii Revised Statutes, is amended to read as follows:

**"§232-22 Costs; deposit for on appeal.** No costs shall be charged on appeal to the state taxation board of review.

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

On appeal to the intermediate appellate court, the deposit for costs, and costs chargeable, shall be the same as in appeals from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the intermediate appellate court or the supreme court on transfer from or review of the intermediate appellate court is in favor of the taxpayer, the taxpayer shall pay no costs for the appeal, and any payment or deposit therefor shall be returned to the taxpayer. If the decision is only partly in favor of the taxpayer, the costs shall be prorated in the manner provided by section 232-23. No costs shall be payable by, and no deposit shall be required from, the assessor or the county in any case."

SECTION 14. Section 232-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§232-23 Costs, taxation.<sup>2</sup>** (a) In the event of an appeal by a taxpayer to the state taxation board of review, if the appeal is compromised, or is sustained as to fifty per cent or more of the amount in dispute, the costs deposited shall be returned to the appellant. Otherwise the entire amount of costs deposited shall be retained."

SECTION 15. Section 232-24, Hawaii Revised Statutes, is amended to read as follows:

**"§232-24 Taxes paid pending appeal.** (a) The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director of finance into the "litigated claims fund". If the final determination is in whole or in part in favor of the appealing taxpayer, the director of finance shall repay to the taxpayer out of the fund, or if investment of the fund should result in a deficit therein, out of the general fund of the State, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with, from the date of each payment into the litigated claims fund, the interest

to be paid from the general fund of the State. For purposes of this section, the rate of interest shall be computed by reference to section 6621(a) [~~(with)~~, with respect to interest rate determination~~)]~~, of the Internal Revenue Code of 1986, as of January 1, 2010. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization under the tax law concerned.

(b) In a case of an appeal to [a] the taxation board of review, the tax paid, if any, upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall, during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director of finance in a special deposit. In the event of final determination of the appeal in the taxation board of review, the director of finance shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, to become a realization under the tax law concerned.”

SECTION 16. Section 235-114, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) 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~~] taxation board of review or to the tax appeal court. The first appeal to either the [~~district~~] taxation board of review or to the tax appeal court may be made without payment of the tax [sø] assessed. 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 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 shall pay the tax [sø] assessed plus interest as provided in section 231-39(b)(4).

(b) 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 intermediate appellate court, subject to chapter 602, 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:

- (1) 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;
- (2) The amount upon the basis of the assessor’s computation;
- (3) The amount upon the basis of the decisions of the taxation board of review and tax appeal court, if any; and
- (4) 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 intermediate appellate court as is provided in chapter 232.”

SECTION 17. Any member serving a term of appointment to one of the existing district boards of taxation review on the effective date of this Act shall be considered to be appointed to the new statewide taxation board of review for the remainder of the member’s current term, notwithstanding section 232-6(b), Hawaii Revised Statutes; provided that if more than ten members are



still serving terms of appointment to their respective district boards on the effective date of this Act, priority preference for appointment to the new statewide taxation board of review shall be based on length of term remaining.

SECTION 18. Any appeal or pending appeal to one of the district boards of taxation review in which a decision has not yet been rendered as of the effective date of this Act shall be automatically transferred to the jurisdiction of the newly constituted statewide taxation board of review for adjudication.

SECTION 19. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date; provided that any affected taxpayer who has already appeared before a district board of taxation review but has not yet had a decision rendered in the taxpayer's appeal may elect to either have the new statewide taxation board of review issue a ruling based on all available information in the case or request a new hearing before the statewide board.

SECTION 20. This Act shall not affect county real property tax appeals and the respective county boards of review to which they are appealed, nor shall it abrogate any county ordinance relating to a county's real property tax appeal procedures.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 22. This Act shall take effect upon its approval.

(Approved June 28, 2021.)

#### Notes

1. Prior to amendment “,” appeared here.
2. So in original.