

TAX APPEALS

CHAPTER 232 TAX APPEALS

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Cross Reference

Tax Information Release No. 2002-1, “Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest”

Law Journals and Reviews

Hawaii’s General Excise Tax Law: A Comprehensive Review of the Decisions. II HBJ No. 13, at pg. 1.

Rules of Court

See Tax Appeal Court Rules.

§232-1 Appeals by persons under contractual obligations. *[Section effective until June 30, 2006. For section effective July 1, 2006, see below.]* 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 board of review and the tax appeal court and the supreme court, 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. [L 1932 2d, c 40, §55; RL 1935, §1936; RL 1945, §5201; RL 1955, §116-1; HRS §232-1; am imp L 1984, c 90, §1; gen ch 1985]

§232-1 Appeals by persons under contractual obligations. *[Section effective July 1, 2006. For section effective until June 30, 2006, see above.]* 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 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. [L 1932 2d, c 40, §55; RL 1935, §1936; RL 1945, §5201; RL 1955, §116-1; HRS §232-1; am imp L 1984, c 90, §1; gen ch 1985; am L 2004, c 202, §18]

Note

L 2004, c 202, §82 provides:

“SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.”

Case Notes

When lessee may properly appeal. 33 H. 214.

A party with secondary contractual obligation to pay the tax assessed against another has a right under this section to challenge that assessment to the tax appeal court. 85 H. 36, 936 P.2d 672.

A person under a contractual obligation to pay property taxes need not pay the taxes in order to perfect an appeal of the tax assessment. 85 H. 36, 936 P.2d 672.

§232-2 Assessment in accordance with return no cause of grievance. No taxpayer shall be deemed aggrieved by an assessment to the extent that it is in accordance with the taxpayer’s return. [L 1939, c 208, pt of §5; RL 1945, pt of §5211; RL 1955, §116-2; HRS §232-2; am imp L 1984, c 90, §1; gen ch 1985]

Cross References

Not applicable to monthly returns, see §237-30.

Case Notes

Inapplicable where director of taxation changes assessment classification to one taxed at higher rate. 63 H. 579, 633 P.2d 535.

§232-3 Grounds of appeal, real property taxes. In the case of a real property tax appeal, no taxpayer or county shall be deemed aggrieved by an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown:

- (1) Assessment of the property exceeds by more than twenty per cent the ratio of assessment to market value used by the director of taxation as the real property tax base, or
- (2) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or
- (3) Denial of an exemption to which the taxpayer is entitled and for which the taxpayer has qualified, or
- (4) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State (in addition to the ground of illegality of the methods used, mentioned in clause (2)). [L Sp 1957, c 1, §13(a); am L 1963, c 92, §2; Supp, §116-2.1; HRS §232-3; am L 1973, c 115, §1; am imp L 1984, c 90, §1; gen ch 1985]

Case Notes

Method of valuation of cane lands inappropriate and illegal. 47 H. 41, 384 P.2d 287.

“Assessment” means the percentage of fair market value, and unless this valuation exceeds the full market value there can be no reduction. 53 H. 45, 487 P.2d 1070.

Merely showing discrepancies in assessment of different parcels of land is not sufficient to prove denial of equal protection. 53 H. 45, 487 P.2d 1070.

Without appellant providing evidence of fair market value of the fee simple interest in the land, an appeal showing method used in determining assessment was wrong cannot be sustained. 60 H. 487, 591 P.2d 607.

§232-4 Second appeal. In every case in which a taxpayer appeals a real property tax assessment to a tax appeal court and there is pending an appeal of the assessment, the taxpayer shall not be required to file a notice of the second appeal; provided the first appeal has not been decided prior to April 9 preceding the tax year of the second appeal; and provided further the assessor gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal. [L 1965, c 201, §1; Supp, §116-2.2; am L 1967, c 255, §§17, 40, 46; HRS §232-4; am L 1969, c 170, §26; am L 1975, c 157, §31; am L 1989, c 14, §5]

Case Notes

Taxpayers were not entitled to automatic appeals under plain language of section. 73 H. 63, 828 P.2d 263.

§232-5 Small claims. [Section effective until June 30, 2006. For section effective July 1, 2006, see below.] The tax appeal court shall establish by rule a small claims procedure that, to the greatest extent practicable, shall be informal. Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000 by reason of the protested assessment or payment in question, may elect to employ the procedure upon:

- (1) Payment per taxpayer of a non-refundable filing fee set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and
- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to appeal to the supreme court.

The tax appeal court shall cause a notice of the appeal and a copy of the statement to be served on the director of taxation. [L 1967, c 231, §6; HRS §232-5; am L 1997, c 152, §1]

§232-5 Small claims. [Section effective July 1, 2006. For section effective until June 30, 2006, see above.] The tax appeal court shall establish by rule a small claims procedure that, to the greatest extent practicable, shall be informal. Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000, by reason of the protested assessment or payment in question, may elect to employ the procedure upon:

- (1) Payment per taxpayer of a non-refundable filing fee set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and
- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to further appeal.

The tax appeal court shall cause a notice of the appeal and a copy of the statement to be served on the director of taxation. [L 1967, c 231, §6; HRS §232-5; am L 1997, c 152, §1; am L 2004, c 202, §19]

Note

L 2004, c 202, §82 provides:

“SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.”

Cross References

Payments under protest, see §40-35.

Rules of Court

Small claims procedure, see Rules of the Tax Appeal Court, part II.

BOARDS OF REVIEW

§232-6 Appointment, removal, compensation. There is created a board of review for each taxation district. Each board shall consist of five members who shall be citizens 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 board to act as chairperson thereof. In addition, the governor shall designate a member of each 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 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 board. [L 1932 2d, c 40, §39; RL 1935, §1938; RL 1945, §5202; RL 1955, §116-3; am L Sp 1957, c 1, §13(b); am L Sp 1959 2d, c 1, §5; am L 1965, c 25, §1; am L 1967, c 37, §1 and c 80, §1; HRS §232-6; am imp L 1984, c 90, §1; gen ch 1985]

Cross References

Boards, generally, see §26-34.

§232-7 Boards of review; duties, powers, procedure before. (a) The 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 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 board shall hold public meetings at some central location in its taxation district, commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. Each board shall have the power and authority to 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 board shall have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have 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.

(c) 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. 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 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, to enforce by proper proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, records, and papers at the hearings of the boards. [L 1932 2d, c 40, §40; RL 1935, §1939; am L 1939, c 208, §6; RL 1945, §5203; am L 1951, c 133, §7; RL 1955, §116-4; am L Sp 1957, c 1, §13(c); am L Sp 1959 1st, c 28, §1; am L 1963, c 92, §3 to 6; am L 1967, c 37, §1, c 231, §1, and c 255, §§18, 41, 46; HRS §232-7; am L 1969, c 170, §27; am L 1975, c 157, §32; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 14, §6]

Case Notes

These are statutory administrative tribunals of special and limited jurisdiction. 34 H. 515.

Board has no authority to increase the assessment at the instance of the State upon an appeal filed by the taxpayers. 56 H. 229, 533 P.2d 1218.

TAX APPEAL COURT; PROCEDURE BEFORE

§232-8 Judges; assignment of cases. The administrative judge of the circuit court of the first circuit, subject to the direction of the chief justice as provided by section 601-2(b)(2)(B), shall assign all tax appeal court matters to such judge or judges of the circuit court of the first circuit as shall be deemed appropriate. [L 1932 2d, c 40, §42; am L 1933, c 195, §1; RL 1935, §1945; am L 1935, c 161, §1; am L 1939, c 208, §10; RL 1945, §5204; RL 1955, §116-5; am L 1967, c 231, §2; HRS §232-8; am L 1984, c 51, §1]

Law Journals and Reviews

Taxes in Hawaii Since July 1, 1968: A Report on the Unreported Decisions of Judge Dick Yin Wong. Arthur B. Reinwald, 9 HBJ 95.

Case Notes

Member not being disinterested was disqualified. 8 H. 308.

Cited: 34 H. 515, 533.

§232-9 Clerk; reporter; custody of records. The clerk of the land court shall be ex officio the clerk of the tax appeal court and shall serve as such without additional compensation. The clerk shall record all the proceedings of the court and perform, on its behalf, any routine duties which it may assign to the clerk. Upon the entry of any written order of the court, the clerk shall immediately send a copy thereof to all interested parties and to the department of taxation which shall forthwith correct the assessment list to conform thereto. All records of the court shall be kept in the office of the clerk. Any assistant to the clerk may act in the place of the clerk.

Whenever necessary the court shall engage the services of a reporter who shall receive such compensation as may be fixed by it. The office of the court shall be in the judiciary building, at Honolulu, but it may sit at such other places as it may deem necessary. [L 1932 2d, c 40, §47; am L 1933, c 195, §3; RL 1935, §1946; RL 1945, §5205; RL 1955, §116-6;

am L Sp 1959 2d, c 1, §16; HRS §232-9; am imp L 1984, c 90, §1; gen ch 1985]

§232-10 Sessions held where, when. The tax appeal court shall commence to hold meetings to hear and determine appeals not later than July 1 of each year and at such place as shall be determined by the court, and the court may adjourn from time to time and may hold hearings at such other time or times and at such place or places as the court may determine. Notice shall be given to all persons in interest of the time and place set for hearings. [L 1932 2d, c 40, §44; RL 1935, §1949; RL 1945, §5206; RL 1955, §116-7; am L 1967, c 231, §3; HRS §232-10]

§232-11 Court of record; general duties, powers, seal. The tax appeal court shall hear and determine appeals as provided in section 232-16 or 232-17. It shall be a court of record; have jurisdiction throughout the State with respect to matters within its jurisdiction; and shall have the power and authority in the manner provided in section 232-13, to decide all questions of fact and all questions of law, including constitutional questions, involved in any such matters, without the intervention of a jury. The court may meet at such times during the year and at such places from time to time as shall be deemed advisable to carry out its work. The court, with the approval of the supreme court, shall adopt and use, and with such approval may change from time to time, an official seal. [L 1932 2d, c 40, §43; RL 1935, §1947; am L 1935, c 153, §2; am L 1939, c 208, §11; RL 1945, §5207; RL 1955, §116-8; am L 1967, c 231, §4; HRS §232-11]

Case Notes

Scope of review under former law. 34 H. 515.
Cited: 33 H. 149, 160; 47 H. 41, 45, 384 P.2d 287.

§232-12 Powers when hearing appeals. The tax appeal court when hearing appeals, shall, in respect to the summoning and examination of witnesses and the production of papers and documents and punishment for contempts and otherwise carrying out its duties and functions, have all the powers and authority of a circuit court. [L 1932 2d, c 40, §48; RL 1935, §1948; RL 1945, §5208; RL 1955, §116-9; am L 1967, c 231, §5; HRS §232-12; am L 1973, c 133, pt of §11]

Rules of Court

See HRCPC rule 45.

Case Notes

Cited: 47 H. 41, 45, 384 P.2d 287; 33 H. 149, 160.

§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 state 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 administrative 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 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 so defaulting from giving evidence of the part or parts of the person's affirmative claim of which particulars have not been delivered. [L 1932 2d, c 40, §46; am L 1933, c 195, §2; RL 1935, §1944; am L 1939, c 208, §9; RL 1945, §5209; RL 1955, §116-10; am L Sp 1957, c 1, §13(d); am L 1963, c 92, §7; HRS §232-13; am imp L 1984, c 90, §1; gen ch 1985; am L 1986, c 339, §17; am L 1989, c 14, §7]

Case Notes

Taxpayer's 42 U.S.C. §1983 claim against validity of Hawaii's general excise tax barred, where state remedies available to taxpayer were "plain, adequate, and complete". 940 F. Supp. 260.

The determination that the board had no authority to increase the assessment at the request of the State upon an appeal filed by taxpayer was within the jurisdiction of the tax appeal court to make. 56 H. 229, 533 P.2d 1218.

"The amount claimed by the taxpayer" is not limited to amount stated by taxpayer in its notice of appeal but means whatever amount is supported by evidence presented to tax appeal court, and this section limits the jurisdiction of tax appeal court to that amount. 81 H. 248, 915 P.2d 1349.

RULES AND FORMS

§232-14 Rules and forms. (a) The supreme court shall have power to make rules relating to procedure, and to prescribe forms to be used, in tax appeals, including procedure and forms for the issuance of subpoenas and other process by the tax appeal court. The rules shall have the force and effect of law and shall be subject to change from time to time by the supreme court.

(b) The boards of review shall have power, consistent with this chapter and chapter 91, to make rules relating to procedure, and to prescribe forms to be used, including procedure and forms for the issuance of subpoenas and other process by the boards of review or members thereof. The rules shall have the force and effect of law. [L 1932 2d, c 40, §54; RL 1935, §1953; RL 1945, §5210; RL 1955, §116-11; am L 1961, c 103, §18; HRS §232-14; am L 1973, c 133, §3]

Case Notes

Construction, generally, of procedural sections. 34 H. 515.

[§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 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 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 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. [L 2005, c 167, §1]

Note

Applies to tax refund claims filed after June 30, 2005. L 2005, c 167, §3

APPEALS FROM ASSESSORS

§232-15 Appeal to 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. The notice of appeal must be lodged with the assessor on or before the date fixed by law for the taking of the appeal. An appeal to the 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, properly addressed to the assessor, on or before such date.

The notice of appeal must 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.

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 objection involving the Constitution or laws of the United States may be included by the taxpayer in the notice of appeal and in such case the objections may be heard and determined by the tax appeal court on appeal from a decision of the board of review; but this provision shall not be construed to confer upon the board of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the board's decision; provided the amendment does not substantially change the dispute. [L 1932 2d, c 40, pt of §38; RL 1935, pt of §1937; am L 1939, c 208, pt of §5; RL 1945, pt of §5211; RL 1955, §116-12; am L 1963, c 92, §8; am L 1967, c 37, §1; HRS §232-15; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 14, §8]

Case Notes

Where assessor accepts tax form defectively executed without question, taxpayer cannot be denied appeal on ground of such defect. 6 H. 534. Scope of review. 34 H. 515. Cited: 33 H. 795, 797.

§232-16 Appeal to tax appeal court. A taxpayer or county, in all cases, may appeal directly to the tax appeal court without appealing to a state board of review, or any equivalent administrative body established by county ordinance. 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.

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 board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, the director of taxation, or the real property assessment division of the county involved, and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal. [L 1932 2d, c 40, pt of §38; RL 1935, pt of §1937; am L 1939, c 208, pt of §5; RL 1945, pt of §5211; am L 1955, c 246, §2; RL 1955, §116-13; am L 1963, c 92, §9; HRS §232-16; am L 1989, c 14, §9; am L 2007, c 154, §1]

Note

The 2007 amendment applies to any notice of appeal filed after June 8, 2007. L 2007, c 157, §4

Rules of Court

Filing appeal, see RTAC rule 2.

Case Notes

Scope of review. 34 H. 515.

Where this section provides that only a taxpayer may appeal directly to the tax appeal court, Revised Ordinances of Honolulu §8-12.1 rejected as void insofar as it extended the right to appeal to an "owner" pursuant to this section. 102 H. 440, 77 P.3d 478.

APPEALS FROM BOARDS OF REVIEW

§232-17 Appeals from boards of review to tax appeal court. An appeal shall lie to the tax appeal court from the decision of a state board of review, or equivalent administrative body established by county ordinance. An appeal to the tax appeal court is properly commenced by the 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 board of review, or 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 board of review, or 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 period provided by this section. [L 1932 2d, c 40, §41; RL 1935, §1940; am L 1939, c 208, §7; RL 1945, §5212; RL 1955, §116-14; am L 1963, c 92, §10; HRS §232-17; am L 1973, c 51, §1; am L 1989, c 14, §10§1; am L 2007, c 154, §2]

Note

The 2007 amendment applies to any notice of appeal filed after June 8, 2007. L 2007, c 157, §4

Rules of Court

Filing appeal, see RTAC rule 2.

Case Notes

Scope of review. 34 H. 515.

The determination that the board had no authority to increase the assessment at the request of the State upon an appeal filed by taxpayer was within the jurisdiction of the tax appeal court to make. 56 H. 229, 53 P.2d 1218.

In appeal from board of review, tax appeal court jurisdiction limited to objections raised before board and any other issues of fact or law that were necessarily considered by the board. 81 H. 257, 915 P.2d 1358.

The agency-specific appellate procedure prescribed in this section precluded appellants' resort to judicial review under §91-14(a); jurisdiction to hear appellants' tax appeal rested exclusively with the tax appeal court. 106 H. 318, 104 P.3d 905.

Under the plain and unambiguous language of this section, it is the filing of the notice of appeal with the tax court that initiates the appeal, and not the filing of a copy of the notice of appeal with the assessor; thus, taxpayer's timely filing of taxpayer's notice of appeal with the tax court initiated taxpayer's appeal, and failure to file a copy of this notice in the assessor's office pursuant to this section did not divest the tax court, or the supreme court, of appellate jurisdiction. 112 H. 69, 143 P.3d 1271.

§232-18 Certificate of appeal to tax appeal court. 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.

The certificate shall be accompanied by the taxpayer's return, if any has been filed, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review or equivalent administrative body. Failure of the assessor to comply herewith 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. [L 1932 2d, c 40, §45; RL 1935, §1941; am L 1939, c 208, §8; RL 1945, §5213; RL 1955, §116-15; am L 1963, c 92, §11; am L 1967, c 37, §1; HRS §232-18; am L 1989, c 14, §11]

APPEALS FROM TAX APPEAL COURT

§232-19 Appeals to supreme court; procedure. [Section effective until June 30, 2006. For section effective July 1, 2006, see below.] Any taxpayer or county aggrieved or the assessor may appeal to the supreme court from the decision of the tax appeal court by filing a written notice of appeal with the tax appeal court and depositing therewith the costs of appeal within thirty days after the filing of the decision. 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, including constitutional questions, involved in the appeal. A notice of appeal may be amended at any time up to the final determination of the tax liability by the last court which an appeal may be taken. The supreme court shall enter a judgment in conformity with its opinion or decision.

All such appeals shall be speedily disposed of and in the hearing and disposition thereof the same shall be given preference over other litigation in the discretion of the court. [L 1932 2d, c 40, §51; RL 1935, §1950; am L 1939, c 208, §12; RL 1945, §5214; RL 1955, §116-16; am L 1963, c 92, §12; HRS §232-19; am L 1973, c 51, §2]

§232-19 Appeals; procedure. [Section effective July 1, 2006. For section effective until June 30, 2006, see above.] Any taxpayer or county aggrieved or the assessor may appeal to the intermediate appellate court, subject to chapter 602, from the decision of the tax appeal court by filing a written notice of appeal with the tax appeal court and depositing therewith the costs of appeal within thirty days after the filing of the decision. 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, including constitutional questions, involved in the appeal. A notice of appeal may be amended at any time up to the final determination of the tax liability by the last court from which an appeal may be taken. The appellate court shall enter a judgment in conformity with its opinion or decision.

All such appeals shall be speedily disposed of and in the hearing and disposition thereof, shall be given preference over other litigation in the discretion of the court. [L 1932 2d, c 40, §51; RL 1935, §1950; am L 1939, c 208, §12; RL 1945, §5214; RL 1955, §116-16; am L 1963, c 92, §12; HRS §232-19; am L 1973, c 51, §2; am L 2004, c 202, §20]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

Case Notes

Scope of review. 34 H. 515.

Valuation by tax appeal court fair and just. 13 H. 125. Court's determination of value can only be disturbed if clearly erroneous. 47 H. 41, 384 P.2d 287.

Notice of appeal, sufficiency, amendment. 35 H. 855.

Deputy tax commissioner has right to appeal. 44 H. 584, 358 P.2d 539.

Findings of tax appeal court are to be sustained unless shown to be erroneous, and burden of proof is on appellant. 53 H. 45, 487 P.2d 1070.

Taxpayer's 42 U.S.C. §1983 claim against validity of Hawaii's general excise tax barred, where state remedies available to taxpayer were "plain, adequate, and complete". 940 F. Supp. 260.

§232-20 Certificate of appeal. *[Section effective until June 30, 2006. For section effective July 1, 2006, see below.]* Upon the perfection of an appeal to the supreme court the judge of the tax appeal court shall send up to the supreme court a certificate in which there shall be set forth, among other things:

- (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 state board of review.
- (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 board of review or equivalent county administrative body, a copy of the notice of appeal from the decision of the state 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. Failure of the judge of the tax appeal court to send up or properly prepare the certificate or the accompanying documents shall not 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. [L 1932 2d, c 40, §52; RL 1935, §1951; am L 1939, c 208, §13; RL 1945, §5215; RL 1955, §116-17; am L 1963, c 92, §13; HRS §232-20; am L 1989, c 14, §12]

§232-20 Certificate of appeal. *[Section effective July 1, 2006. For section effective until June 30, 2006, see above.]* Upon the perfection of an appeal, the judge of the tax appeal court shall send to the appellate court a certificate in which there shall be set forth, among other things:

- (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 state 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 board of review or equivalent county administrative body, a copy of the notice of appeal from the decision of the state 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. [L 1932 2d, c 40, §52; RL 1935, §1951; am L 1939, c 208, §13; RL 1945, §5215; RL 1955, §116-17; am L 1963, c 92, §13; HRS §232-20; am L 1989, c 14, §12; am L 2004, c 202, §21]

Note

L 2004, c 202, §82 provides:

"SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice's sole discretion, directs."

§232-21 Supreme court may admit additional evidence. *[Section effective until June 30, 2006. For section effective July 1, 2006, see below.]* Upon appeal to the supreme court, the court may permit any party to introduce, or may of its own motion require the taking of, additional evidence material to the matter in dispute. [L 1932 2d, c 40, §53; RL 1935, §1952; RL 1945, §5216; RL 1955, §116-18; HRS §232-21]

§232-21 Supreme court may admit additional evidence. *[Section effective July 1, 2006. For section effective until June 30, 2006, see above.]* Upon appeal, the appellate court may permit any party to introduce, or, of its own motion, may require the taking of, additional evidence material to the matter in dispute. [L 1932 2d, c 40, §53; RL 1935, §1952; RL 1945, §5216; RL 1955, §116-18; HRS §232-21; am L 2004, c 202, §22]

Note

L 2004, c 202, §82 provides:

“SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.”

COSTS; DEPOSITS; PROCEDURE AFTER DECISION

§232-22 Costs; deposit for on appeal. *[Section effective until June 30, 2006. For section effective July 1, 2006, see below.]* No costs shall be charged on appeal to the state board of review.

The non-refundable 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 supreme court, the deposit for costs, and costs chargeable, shall be the same as in appeals to the supreme court from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the supreme 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. [L 1932 2d, c 40, §49; RL 1935, §1942; am imp L 1939, c 19, §4; RL 1945, §5217; am L 1945, c 92, §1; am L 1955, c 246, §3; RL 1955, §116-19; am L 1957, c 34, §1; am L 1963, c 92, §14; am L 1965, c 92, §1; HRS §232-22; am L 1973, c 133, pt of §11; am L 1974, c 145, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 14, §13; am L 1997, c 152, §2]

§232-22 Costs; deposit for on appeal. *[Section effective July 1, 2006. For section effective June 30, 2006, see above.]* No costs shall be charged on appeal to the state board of review.

The non-refundable 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. [L 1932 2d, c 40, §49; RL 1935, §1942; am imp L 1939, c 19, §4; RL 1945, §5217; am L 1945, c 92, §1; am L 1955, c 246, §3; RL 1955, §116-19; am L 1957, c 34, §1; am L 1963, c 92, §14; am L 1965, c 92, §1; HRS §232-22; am L 1973, c 133, pt of §11; am L 1974, c 145, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 14, §13; am L 1997, c 152, §2; am L 2004, c 202, §23]

Note

L 2004, c 202, §82 provides:

“SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.”

Rules of Court

Costs of appeal, see RTAC rule 3.

§232-23 Costs, taxation. (a) In the event of an appeal by a taxpayer to the state 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.

(b) *[Subsection effective until June 30, 2006. For section effective July 1, 2006, see below.]* In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a part of the costs proportionate to the amount for which the appellant obtains a judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the

merits, the costs deposited in the amount set pursuant to rules adopted by the supreme court shall be returned to the appellant.

In the event of a final determination of an appeal by a county to the tax appeal court or the supreme court, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment.

(b) *[Subsection effective July 1, 2006. For section effective until June 30, 2006, see above.]* In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a part of the costs proportionate to the amount for which the appellant obtains a judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the merits, the costs deposited in the amount set pursuant to rules adopted by the supreme court shall be returned to the appellant.

In the event of a final determination of an appeal by a county to the tax appeal court, the intermediate appellate court, or the supreme court on review, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment. [L 1932 2d, c 40, §50; RL 1935, §1943; RL 1945, §5218; am L 1945, c 92, §2; RL 1955, §116-20; am L 1957, c 34, §2; am L 1963, c 92, §15; HRS §232-23; am L 1989, c 14, §14; am L 1997, c 152, §3; am L 2004, c 202, §24]

Note

L 2004, c 202, §82 provides:

“SECTION 82. Appeals pending in the supreme court as of the effective date of this Act [July 1, 2006] may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.”

Rules of Court

Return of costs, see RTAC rule 3.

§232-24 Taxes paid pending appeal. 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 interest at the rate of eight per cent a year from the date of each payment into the litigated claims fund, the interest to be paid from the general fund of the State. 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.

In a case of an appeal to a 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 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. [L 1932 2d, c 40, pt of §64; RL 1935, pt of §1958; RL 1945, §5219; am L 1951, c 224, §2; am L 1953, c 125, §5; RL 1955, §116-21; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; am L 1967, c 134, §3; HRS §232-24; am imp L 1984, c 90, §1; gen ch 1985; am L 2000, c 199, §1]

Note

The 2000 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 8, 2000. L 2000, c 199, §§11 and 13.

Cross Reference

[Tax Information Release No. 2002-1, “Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest”](#)

Case Notes

Taxpayer who successfully appeals to board of review entitled to earnings on taxes paid but not interest. 56 H. 655, 547 P.2d 581.

§232-25 Amendment of assessment list to conform to decision. The assessor shall alter or amend the assessment and the assessment list in conformity with the decision or judgment of the last board or court to which an appeal may have been taken. [L 1932 2d, c 40, §56; RL 1935, §1954; am L 1939, c 208, §14; RL 1945, §5220; RL 1955,

§116-22; HRS §232-25]

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**[CHAPTER 232E]
TAX REVIEW COMMISSION**

Section	
232E-1	Establishment of the commission
232E-2	Term
232E-3	Duties

§232E-1 Establishment of the commission. There shall be a tax review commission, hereinafter called the commission. The commission shall consist of seven members who shall be appointed by the governor with the advice and consent of the senate and shall be in the department of taxation for administrative purposes. The commission shall elect its chairperson from one of its members. The members shall receive no compensation for their services, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission may enter into contracts with consultants and engage employees necessary to perform its duties without regard to chapter 76. Departments of the state government shall make available to the commission such data and facilities as are necessary for it to perform its duties. [L 1979, c 218, pt of §2; am L 2002, c 148, §22]

§232E-2 Term. A commission shall be appointed on or before July 1, 1980, and a new commission shall be appointed on or before July 1 every five years thereafter; provided that if any vacancy occurs in the membership of a commission prior to the completion of its duties or dissolution, the governor shall appoint a replacement member in accordance with sections 232E-1 and 26-34. The commission shall meet from time to time as necessary to execute its duties. The commission shall dissolve upon the adjournment sine die of the legislature to which it submits the evaluation and recommendations required by section 232E-3. [L 1979, c 218, pt of §2; am L 1983, c 212, §1; am L 1989, c 21, §1]

§232E-3 Duties. The commission shall conduct a systematic review of the State's tax structure, using such standards as equity and efficiency. Thirty days prior to the convening of the second regular session of the legislature after the members of the commission have been appointed, the commission shall submit to the legislature an evaluation of the State's tax structure and recommend revenue and tax policy, except that for the commission appointed on or before July 1, 1980, or the replacement commission intended to function prior to the appointment of a new commission on or before July 1, 1985, the commission shall submit the required evaluation and recommendations to the legislature thirty days prior to the convening of the regular session of 1985. [L 1979, c 218, pt of §2; am L 1983, c 212, §2]

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