

# **RULES OF THE TAX APPEAL COURT OF THE STATE OF HAWAI‘I**

**Adopted and Promulgated by  
the Supreme Court  
of the State of Hawai‘i**

**As amended March 6, 1981  
Effective March 6, 1981  
With Further Amendments as Noted**

**The Judiciary  
State of Hawai‘i**

# **RULES OF THE TAX APPEAL COURT**

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PART I. REGULAR PROCEDURE

Rule 1. FORM AND STYLE OF PAPERS.

The form and style of papers filed with the court shall be in conformity with the requirements of chapter 232 or Section 235-114, as the case may be, of the Hawai'i Revised Statutes, the Hawai'i Rules of Civil Procedure, and Rule 3 of the Rules of the Circuit Courts of the State of Hawai'i.

In the case of an action to recover moneys paid under protest pursuant to HRS, Section 40-35, the pleadings shall be pursuant to Rule 7, HRCPP, and the complaint shall state that action is being taken under said HRS, Section 40-35.

(Amended January 4, 1973, effective February 1, 1973, further amended March 6, 1981, effective March 6, 1981.)

Rule 2. APPEALS.

(a) Filing. An appeal shall be initiated by filing with the clerk of the Tax Appeal Court a written notice of appeal and, in the case of a taxpayer, paying the costs of court as prescribed in HRS, Section 232-22. The appellant shall file a copy of such notice with the assessor, taxpayer, and county, as the case may be, pursuant to HRS, Sections 232-16 and 232-17, not later than the date fixed by law for the taking of the appeal. The taxpayer's signature on the notice shall be deemed made under penalties of perjury. The notice shall be filed either by personally delivering or mailing it to the clerk of the Tax Appeal Court. The notice shall be considered filed when it is received in the Tax Appeal Court, or if mailed, properly addressed to such court and with adequate postage paid, on the postmarked date. Checks and money orders should be made payable to the "Clerk, Hawai'i Tax Appeal Court." The copy of the notice to the assessor, taxpayer, and county, as the case may be, may be filed by similar mailing.

(1) In the case of real property taxes, the notice must be filed within the time provided by HRS, Section 246-46.

(2) In the case of all other taxes over which this court shall have jurisdiction, the notice must be filed within 30 days from the date when the notice of assessment was mailed properly addressed to the taxpayer at his last known residence or place of business.

(3) If the appeal is from the decision of a board of review, the notice must be filed within 30 days after the filing of such decision.

(4) Where an action is brought under HRS, Section 40-35 to be heard in the Tax Appeal Court, such action shall be initiated by a complaint. The complaint must be filed within 30 days after payment under protest.

For purposes of these rules, the action shall be treated and disposition made thereof in the same manner as appeals from an assessment of taxes.

An appeal from any decision of the Tax Appeal Court in these actions must be filed within 30 days after the filing of such decision.

(b) Form of notice of appeal. The notice of appeal shall be substantially in the following form:

(1) CAPTION.

IN THE TAX APPEAL COURT OF THE STATE OF HAWAI'I

In the Matter of the Tax Appeal)
of ) CASE NO. \_\_\_\_
(Name of Taxpayer) )
\_\_\_\_\_)

NOTICE OF APPEAL TO TAX APPEAL COURT FROM (BOARD OF REVIEW) (ASSESSOR)

(2) NUMBERED PARAGRAPHS stating:

(A) Taxpayer's name and residence or business address, and the taxation division of the assessor or the board of review from which the notice of appeal is taken.

(B) The date of mailing of the notice of assessment or of the filing of the decision of the board of review on which the notice of appeal is taken.

(C) The amount of the deficiency determined by the assessor (and the board of review if an appeal is taken from its decision), the nature of the tax, the year or other period from which the determination was made, and the approximate amount of taxes in controversy. If the appeal concerns the property tax, the description of the property by location, classification and whether land or improvements or

## Rule 2

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both, and the assessment valuation placed thereon by the assessor and the taxpayer, and, where applicable, by the board of review.

(D) A clear and concise statement of the grounds of appeal.

(E) A prayer setting forth the relief prayed for by the taxpayer.

(F) The amount of court costs paid by the taxpayer and the amount of general excise tax paid, when applicable.

(G) The signature of the taxpayer or that of his counsel. A signature by a taxpayer shall be deemed made under penalties of perjury.

**(c) Return.** The party filing the notice of appeal shall attach thereto a copy of the taxpayer's return, if any has been filed.

**(d) Record.** Upon the filing of a notice of appeal and payment of costs, the assessor of the division concerned shall within 15 days thereof deliver to the clerk of the court a certificate which shall include:

(1) **PROPERTY TAXES.**

(A) A description of the property and the assessment valuation placed thereon by the assessor.

(B) The assessment valuation claimed by the taxpayer.

(C) The assessment valuation, if any, placed thereon by the board of review.

(2) **OTHER TAXES.**

(A) A copy of the notice of assessment.

(B) A copy of the taxpayer's return, if any.

(C) A copy of the decision of the board of review, if any.

**(e) Forms.** Forms of notice of appeal may be obtained from the director of taxation, any assessor, or the clerk of the Tax Appeal Court.

*(Amended March 6, 1981, effective March 6, 1981; further amended December 10, 2003; effective January 1, 2004; further amended May 30, 2006, effective July 1, 2006; further amended December 1, 2006, effective January 1, 2007.)*

### Rule 3. COSTS OF APPEAL; RETURN OF COSTS.

**(a) Appeal to the tax appeal court.** On appeals to the Tax Appeal Court each taxpayer shall submit a one hundred dollar (\$100.00) non-refundable deposit for costs. Costs shall be taxed in accordance with Hawai'i Revised Statutes section 232-23. If the appeal is dismissed without a decision on the merits,

twenty-five dollars (\$25.00) shall be refunded to the taxpayer.

**(b) Appeal.**

(1) **FILING FEE.** On appeal, each taxpayer shall deposit, as costs, the filing fee required by Hawai'i Revised Statutes section 607-6, as amended by Rule 45(e)(5) of the Hawai'i Rules of Appellate Procedure.

(2) **FILING FEE REFUNDS.** Filing fee refunds shall be made in accordance with Hawai'i Revised Statutes section 232-22.

*(Amended March 6, 1981, effective March 6, 1981; further amended effective June 18, 1997; amended effective March 16, 1998; further amended May 30, 2006, effective July 1, 2006.)*

### Rule 4. DOCKET AND CALENDAR.

Upon receipt of a notice of appeal, the clerk will enter the case upon the docket, assign a number, and notify the parties thereof within five (5) days of the filing of the notice of appeal. The parties shall place the docket number on all papers thereafter filed in the case. The clerk will place all proceedings upon the calendar for hearing and disposition. Upon direction of the court, the clerk will notify the parties of the place where and the date and time when the appeal or other proceeding will be heard. In the discretion of the court, and to the extent warranted by circumstances, the residence of the taxpayer or the situs of the property involved in the appeal will determine the place of hearing.

*(Amended February 20, 2007, effective July 1, 2007.)*

**Rule 5. ANSWER.**

Within 20 days after a notice of appeal has been served, the party upon whom it has been served shall file an answer or appropriate motion and serve a copy on the appellant and every other party. The answer shall be drawn so that it will advise the appellant and the court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation set forth in the notice of appeal and a statement of any facts upon which the answering party relies for defense or for affirmative relief. The answer shall contain the signature of the answering party or his counsel. Every material allegation set forth in the notice of appeal not expressly denied in the answer shall be deemed to be admitted. Every material allegation of fact set out in the answer shall be deemed to be denied.

**Rule 6. EXTENSIONS OF TIME.**

The court may upon a timely motion setting forth good and sufficient cause or upon its own motion extend the time for filing of any pleadings or other documents, except the notice of appeal. Any extension of time for filing a brief shall correspondingly extend the time for filing all other briefs to be filed in the case, unless the court rules otherwise.

**Rule 7. DISMISSAL.**

A case may be dismissed for cause upon the motion of any party or of the court.

**Rule 8. SERVICE UPON PARTIES.**

Where service of any document is required, service shall be made pursuant to Rule 5(a) and (b) of the Hawai'i Rules of Civil Procedure.

**Rule 9. SUBSTITUTION OF PARTIES.**

In the event any party to the case has been changed due to death, reorganization, succession, or other reason, the successor shall file an appropriate motion, supported by a certificate of the proper court or official, showing the appointment and qualification of the party who seeks to be substituted.

**Rule 10. PRE-TRIAL CONFERENCES.**

In appropriate cases the court will undertake to confer with the parties in pre-trial conferences with a view to narrowing issues, stipulating facts,

simplifying presentation of evidence or otherwise assisting in preparation for trial or possible disposition of the case without trial. Either party may request or move for a pre-trial conference, stating the reasons therefor. As far as is practicable, Rule 16 of the Hawai'i Rules of Civil Procedure shall govern the conduct of pre-trial conferences.

**Rule 11. SUBMISSION WITHOUT TRIAL.**

The parties by stipulation may, where sufficient facts have been admitted, stipulated, established by deposition or included in the record in other ways, submit any case for judgment without trial.

**Rule 12. EVIDENCE.**

The rules of evidence applicable in the circuit courts shall govern the admission or exclusion of evidence before the court.

**Rule 13. TRANSCRIPTS OF PROCEEDINGS.**

Hearings before the court shall be stenographically reported or preserved on tape or by such other device as may be appropriate. It is the responsibility of the court to see to it that the record so made (i) is sufficiently clear to permit full transcription, (ii) truly discloses what occurred in the court, and (iii) that a log is kept with particularity and with such references to the record made on tape or by other device as will enable the record to be reviewed and transcribed as occasion arises. A transcript of a hearing shall be made if in the opinion of the court a permanent record of the hearing is deemed necessary. Transcripts shall be supplied to the parties and to the public by the official reporter at rates fixed by HRS, section 606-13.

*(Amended August 22, 1994, effective August 22, 1994.)*

**Rule 14. DOCUMENTARY EVIDENCE.**

When books, records, papers or documents have been received in evidence, a copy thereof, or so much thereof as may be material or relevant, may in the discretion of the court be substituted therefor. After the decision of the court in any proceedings becomes final, the court may, upon motion of either party, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits introduced in evidence before the court; or the court may, on its own motion, make such disposition as it deems advisable.

**Rule 15. SUBPOENAS, DEPOSITIONS, STIPULATIONS, MOTIONS.**

The issuance of subpoenas and the taking of depositions, the approval of stipulations and the filing and hearing of motions shall be in accordance with the rules of practice then prevailing before the Circuit Courts of the State of Hawai'i.

*(Amended March 6, 1981, effective March 6, 1981.)*

**Rule 16. BRIEFS.**

When briefs are requested by the court, an original and one copy shall be filed. Unless otherwise directed by the court, briefs shall contain in the following order:

(a) A statement of the nature of the tax and how the proceeding comes before the court.

(b) A concise statement of the facts, which should contain references to the pages of the transcript, if any, or to the exhibits relied upon in support thereof.

(c) A concise statement of the points upon which the party relies.

(d) The argument.

Unless allowed by the court, no brief shall exceed 40 pages, including appendices. Every brief of more than 20 pages shall contain on its front flyleaf a table of contents with page references, supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

**Rule 17. through 28. RESERVED.**

**Rule 29. GENERAL PROCEDURE.**

In procedural matters not specifically provided for by the foregoing rules, the court will be guided, to the extent applicable, by the Rules of the Circuit Courts of the State of Hawai'i, and the Hawai'i Rules of Civil Procedure.

*(Amended March 6, 1981, effective March 6, 1981.)*

**PART II. SMALL CLAIMS PROCEDURE**

**Rule 31. APPEAL AND ELECTION.**

Appeal under the small claims procedure is an alternative procedure. If a case falls within the limits prescribed in Rule 32, a taxpayer may elect to appeal under the small claims procedure. By such election, the taxpayer waives his right to appeal further. The election is only as to the tax year and the tax involved in the notice of appeal. The taxpayer may withdraw his case under the small claims procedure at any time by written notice to the clerk of the Tax Appeal Court, but such withdrawal does not affect the election, and the taxpayer has no further right to appeal.

*(Amended March 6, 1981, effective March 6, 1981; further amended May 30, 2006, effective July 1, 2006.)*

**Rule 32. JURISDICTION.**

Appeals may be made under the small claims procedure in any tax case where the amount of taxes in controversy, exclusive of penalties and interest, is less than \$1,000. The court will not rule on the constitutionality of any tax law.

**Rule 33. TRANSFER.**

Once a taxpayer files a notice of appeal under the small claims procedure he cannot change his election. However, for good cause shown, the court may permit the transfer of any appeal filed under the small claims procedure to the regular procedure upon payment of the proper additional costs by the taxpayer.

**Rule 34. APPEALS.**

**(a) Filing.** An appeal, including an appeal from the decision of the board of review, shall be initiated by filing with the clerk of the Tax Appeal Court three copies of a notice of appeal upon the form provided by the court or upon a form substantially in conformity thereto, and paying a non-refundable filing fee of twenty-five dollars (\$25.00) per appealing taxpayer. The notice of appeal shall contain a statement of the facts of the case and the taxpayer's waiver of the right to appeal further. The notice shall also contain a statement that the general excise tax assessed has been paid, when applicable.

The taxpayer's signature on the notice shall be deemed made under penalties of perjury.

**(b) Time limit.** The appeal must be filed within the time set by law. See Rule 2(a) of the Rules of the Tax Appeal Court with respect to the time and place of filing of the notice.

**(c) Service of notice.** The clerk shall cause a copy of the notice of appeal, including the taxpayer's written statement of the facts and waiver, to be served on the director of taxation. The director of taxation shall not file any answer to the notice of appeal.

**(d) Docket and calendar.** Upon receipt of a notice of appeal, the clerk will enter the case upon the small claims docket, assign a number, and place all proceedings upon the calendar for hearing and disposition. Upon direction of the court, the clerk will notify the parties of the place, date and time for hearing. All cases shall be heard in Honolulu unless the court orders otherwise.

**(e) Record.** Upon the filing of a notice of appeal and payment of costs, the assessor of the division concerned shall within 15 days thereof deliver to the clerk of the court a certificate similar to that required under Rule 2(d).

**(f) Forms.** Forms of notice of appeal may be obtained from the director of taxation, any assessor, or the clerk of the Tax Appeal Court.

*(Amended March 6, 1981, effective March 6, 1981; further amended effective June 18, 1997; further amended May 30, 2006, effective July 1, 2006.)*

**Rule 35. SEPARATE APPEALS.**

A taxpayer may file all his appeals pertaining to the same kind of tax on a single notice of appeal for a single filing fee, even though the aggregate amount of taxes in controversy exceeds \$1,000. The court will hear at one time all pending notices of appeal filed by the taxpayer, unless the court determines it would not be convenient to do so.

the foregoing rules and to the extent applicable to small claims procedure.

**Rule 36. NONAPPEARANCE.**

If either party fails to appear at the place, date and time designated for hearing, the court may enter judgment against such party.

**Rule 37. PRE-TRIAL PROCEDURE.**

In its discretion the court may require the parties to attend a pre-trial conference for the purpose of informing any taxpayer not represented by an attorney of the procedures to be followed at the hearing, simplifying and formulating issues, obtaining admissions of fact and documentary evidence, and considering such matters as may aid in the disposition of the appeal.

**Rule 38. CONDUCT OF HEARING.**

To the greatest extent practicable, the hearing shall be informal. All testimony shall be given under oath. The court may waive the rules of evidence to the extent it deems advisable in the interest of justice. Unless the court requires otherwise, no stenographic record or transcript shall be taken. Argument shall be permitted only with leave of court.

**Rule 39. SUBPOENAS, ETC.**

No subpoenas shall be issued or depositions taken without the prior written approval of the court.

**Rule 40. FINDINGS OF COURT.**

The clerk shall mail a copy of the findings and judgment of the court to each party or his authorized representative before the expiration of the next business day after the judgment is entered. The findings and judgment shall be conclusive on both parties as to the matter in controversy.

**Rule 41. OTHER RULES.**

The court shall be guided by Rules 1, 8, 9, 10, 11, 14, 16, and 29 of the Rules of the Tax Appeal Court in procedural matters not specifically provided for by