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Supreme Court  
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SCRU-13-0005988

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the  
RULES OF THE TAX APPEAL COURT OF THE STATE OF HAWAI'I

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ORDER AMENDING THE RULES OF THE  
TAX APPEAL COURT OF THE STATE OF HAWAI'I  
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 1, 2, 8, 13, 16, 17, 31, 34, and 40 of the Rules of the Tax Appeal Court of the State of Hawai'i are amended, Rule 29 is repealed, and new Rule 1 is adopted, effective November 17, 2019, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 1. ELECTRONIC FILING AND CONSTRUCTION OF RULES.**

**(a) Registration Required.** As provided by the Hawai'i Electronic Filing and Service Rules, unless exempted by the court, each attorney representing a party to a case maintained in the Judiciary Information Management System (JIMS) shall register as a Judiciary Electronic Filing and Service (JEFS) User and shall file all documents electronically. A self-represented natural person party may file documents conventionally at the Tax Appeal Court or may register as a JEFS User for the case in which the self-represented party is a party.

**(b) Interpretation.** These Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. These Rules shall be read and construed with reference to each other, the Hawai'i Electronic Filing and Service Rules, the Hawai'i Rules of Civil Procedure, the Rules of the Circuit Courts of the State of Hawai'i, and the Hawai'i Court

Records Rules. The Rules of the Tax Appeal Court of the State of Hawai‘i shall apply unless an issue is not covered by these Rules, in which case the Hawai‘i Rules of Civil Procedure and the Rules of the Circuit Courts of the State of Hawai‘i shall apply, in that order. To the extent there is any conflict between these Rules and the Hawai‘i Court Records Rules or the Hawai‘i Electronic Filing and Service Rules, the latter shall prevail.

**(c) Effect of Hawai‘i Electronic Filing and Service Rules.**

Documents filed and notices given in accordance with the Hawai‘i Electronic Filing and Service Rules shall be deemed to comply with the filing, mailing, certified mailing, and notice and service requirements of any part of these Rules.

**(d) Effects of automation on processes and procedure.** Duties set out in these Rules may be performed by automation.

**(e) Definition.** Definitions set forth in Rule 1 of the Hawai‘i Electronic Filing and Service Rules shall be applied to these Rules.

## **PART I. REGULAR PROCEDURE**

### **Rule 1.1 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,~~]Hawai‘i Revised Statutes, Section 40-35, the pleadings shall be pursuant to Rule 7[~~, HRC~~]]of the Hawai‘i Rules of Civil Procedure, and the complaint shall state that action is being taken under said [~~HRS,~~]Hawai‘i Revised Statutes, Section 40-35.

Documents electronically filed in the Tax Appeal Court that receive the file stamp of the Circuit Court of the First Circuit of the State of Hawai‘i’s seal, certification, signature, or any other automatically affixed mark shall be deemed to have been filed, sealed, certified or signed in the Tax Appeal Court of the State of Hawai‘i, as required by statute.

### **Rule 2. APPEALS.**

**(a) Filing.** An appeal shall be initiated by filing, electronically or conventionally 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~~]Hawai‘i Revised Statutes, Section 232-22.

The appellant shall [~~file~~]serve a copy of such notice electronically or conventionally upon [~~with~~] the director of taxation or[~~;~~] the state taxing authority that issued the state tax assessment[~~;~~] if not the director of taxation, upon the [~~taxpayer, and~~] real property assessment division of the county, in the case of an appeal from a decision involving the county as a party, and upon the taxpayer, as the case may be, pursuant to [~~HRS~~]Hawai‘i Revised Statutes, Sections 232-16 and 232-17 and Rule 3 of these Rules.[~~;~~]

All of the above shall be done 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, electronically filing, or mailing ~~[it]~~the notice to the clerk of the Tax Appeal Court. The notice shall be ~~[considered]~~deemed filed on the date when it is received by the court clerk if personally delivered [in the Tax Appeal Court] and file-marked accordingly, or when a notice of electronic filing is generated for the notice of appeal if electronically filed, or ~~[it]~~on the postmarked date when conventionally 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."

~~Service of t[he] copy of the notice of appeal [to the director of taxation the state taxing authority that issued the state tax assessment, if not the director of taxation, taxpayer, and county, as the case may be, may be filed by similar mailing]~~ may be accomplished by hand delivery, electronic means, if allowed by law, or by conventional mail.

(1) In the case of ~~[all other]~~ taxes other than real property 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.

(2) 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.

(3) Where an action is brought under ~~[HRS]~~Hawai'i Revised Statutes, 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.

(4) Where the denial of a tax refund claim is appealed pursuant to Hawai'i Revised Statutes, Sections 232-14.5, the notice of appeal must be both filed and served no later than the date fixed by law for taking the appeal.

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

(1) CAPTION.

(A) The space at the top left of the center of the page shall contain the name of the attorney or self-represented natural person party, the attorney number, if applicable, the street and mailing address, telephone number or contact number, party name or name of client and party status;

(B) The space at the top right of the center of the page shall contain at least a 3-inch top margin to be left blank for use of the clerk of court, including for affixing the electronic file stamp; and

(C) The name of the court shall be centered and at least 3 inches from the top of the page.

**IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII**

In the Matter of the Tax Appeal	)	ITX _____
	)	[CASE NO. _____]
of	)	
	)	_____
[(Name of Taxpayer)]	)	_____
_____,	)	_____
	)	
Appellant,	)	
vs.	)	
_____,	)	
	)	
Appellee.	)	
_____	)	

**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]~~ sending 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 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 wet-ink or electronic signature of the taxpayer or that of ~~his~~ the taxpayer's counsel or of the tax assessor or tax assessor's 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, or submit to the court electronically, 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.

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**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 and the Hawai‘i Electronic Filing and Service Rules, as applicable.

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**Rule 13. TRANSCRIPTS OF PROCEEDINGS.**

Hearings before the court shall be [~~stenographically~~] reported or preserved on [~~tape or by~~] such devices 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 devices 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. Upon request or order, [F]transcripts shall be supplied, at the requester’s expense, to the parties and to the public by the official reporter at rates fixed by [HRS,]Hawai‘i Revised Statutes, [§]Section 606-13 and Rule 19 of the Rules Governing Court Reporting in the State of Hawai‘i.

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**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 requested by the court 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]30. 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.]~~

## **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 of these Rules, a taxpayer may elect to appeal under the small claims procedure. By such election, the taxpayer waives ~~[his]the~~ 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]the taxpayer’s~~ 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.

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**Rule 34. APPEALS.**

(a) **Filing.** An appeal, including an appeal from the decision of the board of review, shall be initiated by filing, electronically or conventionally with the clerk of the Tax Appeal Court ~~[three]~~3 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 of the State of Hawai‘i 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, or the real property assessment division of the

county involved. 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 schedule the date and time for the hearing on the case's electronic docket and issue a notice of a court hearing. A notice of electronic filing will be generated notifying the parties [of the place, date and time for the hearing] that a hearing has been scheduled. The clerk shall transmit notification of the hearing by ordinary mail to any self-represented party who is without JEFS access. 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, or submit to the court electronically, a certificate similar to that required under Rule 2(d) of these Rules.

**(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.

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#### **Rule 40. FINDINGS OF COURT.**

The findings, conclusions, and judgment of the court shall also be electronically filed by the clerk.

The clerk shall electronically serve or conventionally mail a copy of the findings and judgment of the court to each party or ~~[his authorized representative]~~ the party's attorney 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.]~~

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DATED: Honolulu, Hawai'i, November 6, 2019.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

