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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2016-03

RE: New Appeals Program to Resolve Tax Disputes Quicker

The Department of Taxation (DOTAX) is launching the pilot phase of the Administrative Appeals and Dispute Resolution Program (AADR). AADR is a streamlined method to quickly and fairly resolve tax disputes involving audit assessments without litigation.

I. WHAT IS THE ADMINISTRATIVE APPEALS AND DISPUTE RESOLUTION PROGRAM?

AADR is an informal appeals process that uses a neutral intermediary, the Administrative Appeals Office, to resolve tax disputes between DOTAX and a taxpayer or return preparer that involve a proposed, final, or return preparer penalty assessment.

The Administrative Appeals Office (AAO) is an independent body within DOTAX headed by the Administrative Appeals Officer who reports directly to the Director of Taxation. AAO works with the Compliance Division and the taxpayer or return preparer by phone, mail, or in person to understand and resolve tax disputes based on the law. When the solution to a dispute is not clear, the Administrative Appeals Officer is authorized to settle the dispute based on the hazards of litigation, equally considering the positions of the Compliance Division and the taxpayer or return preparer.

Program Benefits:

- Simple application process.
- Fair and neutral evaluation of tax disputes.
- Timely resolution. Complete the process within 6-12 months upon acceptance.
- Save time, money, and resources. AADR is a quicker and less costly alternative to litigation.
- Free. There are no fees to apply to AADR.

II. ELIGIBILITY AND CRITERIA

Before seeking help from AAO, taxpayers and return preparers must try to resolve all issues with the Compliance Division. This includes, but is not limited to:

- Providing the auditor or examiner with all the requested information;
- Providing the auditor or examiner a written explanation of the disputed items; and
- Providing the auditor or examiner with evidence to support your position.

The goal of AADR is to resolve tax disputes fairly, quickly, and without litigation. Since piecemeal resolutions do not provide these benefits, any settlement reached must resolve the entire case.

Generally, AAO will not raise new issues or examine issues where the parties are in agreement. AAO will only accept cases where:

- The issues and facts are fully developed and documented;
- There are a limited number of issues in dispute; and
- The parties are willing to resolve all of the disputed issues and act in good faith to find a resolution.

AAO may at its discretion determine that AADR is not appropriate for certain cases. AADR is not available for:

- Issues designated for litigation by the Attorney General;
- Issues for which there are no legal precedent;
- Industry specialization issues;
- Disputing an adjustment letter or billing notice that is unrelated to an audit;
- Collection issues; and
- Jeopardy assessments.

III. WHO MAY APPLY

If you were audited by DOTAX and issued a Proposed Notice of Assessment, Final Notice of Assessment, or a Notice and Demand of Penalty that you believe is incorrect, you may apply. A taxpayer can apply to AADR for either a proposed assessment or final assessment, but not both.

IV. HOW TO APPLY

Submit Form AA-1, Appeal Application, with a copy of each DOTAX assessment that you dispute to AAO and provide a copy of the application to the auditor or examiner assigned to your case. Please see the instructions for Form AA-1 for more information. AAO will inform you and the assigned auditor or examiner in writing whether your case is accepted. The decision to not accept a case into AADR is not appealable.

V. DEADLINE TO APPLY

If you are appealing a proposed assessment, the deadline to apply is 20 calendar days after the mailing date of the proposed assessment. If you are appealing a final assessment or preparer penalty assessment, the deadline to apply is 30 calendar days after the mailing date of the final assessment. There are no extensions of time to apply.

VI. INTEREST

Interest on any unpaid balance will continue to accrue while your case with AAO is pending. To stop the interest from accruing while your case is with AAO, you may pay the assessment in full or submit a cash bond deposit. For information on cash bond deposits, see Tax Information Release No. 2008-03.

VII. REPRESENTATION

You may represent yourself or choose someone to represent you. Usually, a representative is a certified public accountant (CPA), attorney, or other tax professional.

VIII. TYPES OF APPEALS

This section provides general information about three jurisdictions (Administrative Appeals Office (AAO), Board of Review (BOR), and Tax Appeal Court (TAC)) where tax appeals may be filed. If you are thinking about filing an appeal, discuss your case with a trusted tax advisor and the auditor or examiner to see which option works best for you.

A. Pre-Assessment Appeals

A taxpayer that disagrees with a Proposed Notice of Assessment issued as a result of a DOTAX audit may appeal to AAO, but not to the BOR or TAC. If the case is unresolved or not accepted by AAO, DOTAX will issue a final assessment. A taxpayer may appeal a final assessment to either the BOR or TAC (section 235-114, Hawaii Revised Statutes (HRS)).

B. Post-Assessment Appeals

1. **Single appeal.** A taxpayer that disagrees with a Final Notice of Assessment issued as a result of a DOTAX audit may appeal to the AAO, BOR, or TAC. Alternatively, a taxpayer may file multiple appeals as discussed below.
2. **AAO and BOR.** A taxpayer may appeal to both AAO and BOR. However, if AAO accepts the case, the taxpayer must choose either AAO or BOR to hear its case. If the taxpayer chooses AAO, the taxpayer must withdraw its appeal from the BOR and vice versa.
3. **AAO and TAC.** A taxpayer may appeal to both AAO and TAC. If AAO accepts the case, the taxpayer must obtain permission from the Director of Taxation and TAC to participate in AADR. A taxpayer does not have to withdraw its appeal from TAC to participate in AADR.
4. **Post-AAOR appeal options.** If AAO does not resolve the case, then the taxpayer may proceed with an existing TAC appeal as described in section VIII.B.3 or if no TAC appeal exists, the taxpayer may pay the disputed portion of the final assessment under written protest and seek to recover the taxes by filing an action in TAC within 30 calendar days from date of payment (section 40-35, HRS).

C. Other Types of Appeals

A return preparer that disagrees with a Notice and Demand of Penalty (return preparer penalty assessment) may appeal to AAO and/or TAC, but not the BOR. If the return preparer appeals to both AAO and TAC and AAO accept the case, then the return preparer must obtain permission from the Director of Taxation and TAC to participate in AADR. A return preparer does not have to withdraw its appeal from TAC to participate in AADR. If AAO does not resolve the case, then the return preparer may proceed with its appeal before TAC.

D. BOR and TAC Filing Deadlines Are Not Affected by AADR

Applying or participating in AADR does not toll the statute of limitations for filing an appeal with the BOR or TAC. The deadline to appeal a final assessment to the BOR or TAC is 30 calendar days after the final assessment mailing date (section 235-114, HRS). Alternatively, if an appeal is not filed with the BOR or the TAC by the deadline, a taxpayer may pay the disputed portion of the final assessment under written protest and seek to recover the taxes by filing an action in TAC within 30 calendar days from date of payment (section 40-35, HRS).

E. Withdrawal or Termination from AADR

AAADR is optional for taxpayers and return preparers. A taxpayer or return preparer may withdraw its case from AADR by submitting written notification to the Administrative Appeals Officer. If AAO determines that meaningful progress towards resolution has stopped, it may terminate a case with AADR by notifying the auditor or examiner and the taxpayer or return preparer in writing. Taxpayers and return preparers retain all applicable appeal rights as provided for under the law, provided that the time to file an appeal has not expired. For more information, see:

- Tax Information Release No. 2002-01, Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights, Claims for Refund; and Payment to State Under Protest.
- Hawaii Taxpayer Bill of Rights

IX. DECISIONS

The Administrative Appeals Officer will provide a written decision to the parties in the case. The decision applies only to the taxpayer or return preparer in the case and cannot be used or cited as precedent or as the basis for new or alternative applications of the law. Decisions do not change or modify DOTAX policies and practices and the Administrative Appeals Officer's decisions cannot be appealed.

X. EFFECTIVE DATE

The Administrative Appeals Office will accept applications for the pilot phase of AADR beginning February 1, 2016.

XI. QUESTIONS AND COMMENTS

The purpose of the pilot phase is to test and evaluate the program's effectiveness and efficiency in resolving tax disputes. Your comments are an important part of evaluating AADR and will help us consider ways to improve the program. If you have any comments or questions about AADR, please email us at tax.appeals@hawaii.gov. For more information, visit our website at tax.hawaii.gov/appeals.

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