



TAX FACTS 2001-1

Hawaii Tax Appeals

Taxpayers who do not agree with tax assessments or denial of refund claims by the Department of Taxation (Department) have appeal rights. The requirements are stated in the statutes and must be followed to perfect an appeal. Appeal choices are the taxpayers' decisions, and this publication is not intended to influence these decisions in any way. Taxpayers requiring additional guidance on appeals are advised to consult with their tax advisors.

The following answers general information about Hawaii tax appeals.

1 Can I appeal my proposed assessment?

You have 30 days from the date the proposed assessment is mailed to submit additional information or documents to dispute the proposed assessment or request an informal conference with the examiner, collector, or auditor. If you are unable to resolve your dispute, you may apply to the Administrative Appeals & Dispute Resolution Program (AADR) or you may wait until a final assessment is issued.

An appeal of a proposed assessment to AADR must be made within 20 days after the date the proposed assessment is mailed (the date on the notice). If your appeal of the proposed assessment is accepted into AADR, you will not be able to appeal the final assessment, if any, to AADR. A proposed assessment cannot be appealed to the Board of Review (BOR) or Tax Appeal Court (TAC).

2 If I am issued a final assessment, what are my options for appeal?

You may appeal a final assessment to the BOR, TAC, or AADR. Appeals must be made within 30 days after the date the final assessment is mailed (the date on the notice). If your appeal of the proposed assessment was accepted into AADR, you will not be able to appeal the final assessment through the AADR.

3 Can I appeal a denial of my claim for a tax refund?

Yes. You may appeal a denial of a tax refund claim to the BOR or TAC within 30 days after the date the notice of denial is mailed.

4 What are the differences between the BOR, TAC, and AADR?

The **BOR** is an informal forum. The BOR consists of ten members, who are residents of the state who are appointed by the governor. There must be at least three BOR members present to hear an appeal. You can represent yourself or be represented by

another person before the BOR. All information needed by the BOR to make a decision may be obtained through informal exchanges or hearings. There is no cost to you for filing an appeal to the BOR.

The **TAC** is a court of record, and all filings, proceedings, etc., follow established court procedures and rules. You can represent yourself or be represented by an attorney. Corporations, however, cannot represent themselves before the TAC. Unlike an appeal to the BOR, there are filing fees that you must pay to the TAC to initiate your appeal.

The **AADR** is an informal, streamlined process with the goal of resolving tax disputes quickly without litigation. An appeal to AADR is administered by the Administrative Appeals Office, an independent body within the Department. There is no fee to apply to AADR. See tax.hawaii.gov/appeals/ for more information.

5 Can I file an appeal of a tax assessment with the federal court?

Taxpayers who have exhausted their appeal rights with the state courts may appeal their case to the United States Supreme Court, but only if there is a federal question involved.

6 How do I file an appeal with the BOR?

You must submit a written notice of appeal to the assessor of your taxation district or the First Taxation District (Oahu). The assessor will notify the appropriate BOR and forward the notice of appeal to the BOR.

7 Is the BOR associated with the Department?

The BOR is attached to the Department for administrative support only and is an independent body that conducts all hearings and makes decisions independently. The members are appointed by the governor and approved by the senate for a four year term. See tax.hawaii.gov/geninfo/a9_4boards/ for more information.

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For more information, visit the Department of Taxation's website at tax.hawaii.gov

8 How do I file an appeal with the TAC?

You must file a written notice of appeal and pay the appropriate filing fees. After filing the notice of appeal, an official, court-stamped copy must also be served on the Director of Taxation. See the TAC's rules at www.courts.state.hi.us/docs/court_rules/rules/rtac.pdf for more information.

9 Is there an alternative method for handling my appeal in TAC?

Yes. A taxpayer with an assessment of taxes of less than \$1,000, excluding penalties and interest, can elect to use the small claims procedure instead of the regular procedure. The small claims procedure is less formal than the regular procedure. If you elect to use the small claims procedure, the decision of the TAC cannot be appealed. In contrast, the TAC's decision under the regular procedure can be appealed to the Intermediate Court of Appeals.

10 How do I file an appeal with AADR?

You must file an appeal application (Form AA-1) with the Administrative Appeals Office to apply to AADR. You must also file a copy of your appeal application with the auditor or examiner assigned to your case. See the AAO's website at tax.hawaii.gov/appeals for an appeal application or apply online through Hawaii Tax Online at hitax.hawaii.gov.

11 What if I am not satisfied with the outcome of my appeal to the BOR, TAC, or AADR?

A written decision by the BOR can be appealed to the TAC within 30 days of the BOR's decision. You must file a written notice of appeal with the TAC and pay the required court costs. Additionally, the tax assessment plus interest must be paid to file your second appeal. In income tax cases, however, the TAC may allow an individual taxpayer to file a second appeal without payment of the tax assessed if the total tax liability does not exceed \$50,000 and the taxpayer proves that payment of the tax will cause irreparable harm.

A decision by the TAC can be appealed within 30 days of the court's ruling to the Intermediate Court of Appeals. You must file a written notice of appeal with the TAC and pay the required court costs. Additionally, the tax assessment plus interest must be paid to file the second appeal.

If you are unable to reach a settlement agreement through AADR, you may withdraw your appeal or the AAO may close your appeal with no changes to the assessments. You will retain all applicable appeal rights, provided that the time to file an appeal has not expired.

12 When can I file an appeal to the Hawaii Supreme Court?

You can request to transfer your case from the Intermediate Court of Appeals to the Hawaii Supreme Court. If your request is granted, the Hawaii Supreme Court will hear your appeal instead of the Intermediate Court of Appeals. There are strict timelines and criteria that you must meet for the Hawaii Supreme Court to accept your request to transfer. See www.courts.state.hi.us/docs/court_rules/rules/hrap.htm#Rule40.2 for more information.

In the alternative, you may file an application for a writ of certiorari with the Hawaii Supreme Court within 30 days after the Intermediate Court of Appeals issues a judgment or dismissal order. The Hawaii Supreme Court has the discretion to accept or reject your application. See www.courts.state.hi.us/docs/court_rules/rules/hrap.htm#Rule40.1 for more information.

13 If I do not appeal a final assessment or denial of refund claim within 30 days of the date the notice is mailed, what can I do?

If you failed to appeal a final assessment, you can make a payment under protest under section 40-35, Hawaii Revised Statutes (HRS), or you can request that the Department reconsider the assessment under section 18-231-3-1.1, Hawaii Administrative Rules (HAR). If you failed to appeal a denial of a refund claim, you can make a request for reconsideration under section 18-231-3-1.1, HAR, but you cannot make a payment under protest. In either case, there is no option to file an appeal with the BOR or AADR after the 30 day deadline.

If you have not yet paid the final assessment, you can make a payment under protest by paying the amount of tax in dispute with an accompanying signed writing informing the Department that the payment is made under protest and the reasons for the protest. A payment under protest can also be made in lieu of an appeal within 30 days after the date the notice of final assessment is mailed. To recover the payment made under protest, a Complaint must be filed with the TAC within 30 days of the payment of the tax. The TAC's rules are then used to decide the matter. Note, however, section 40-35, HRS, only applies when a taxpayer disputes money owed to the State; e.g., it cannot be used to challenge a denial of a refund.

A request for reconsideration under section 18-231-3-1.1, HAR, can be made by submitting to the auditor a signed writing with (1) a detailed summary of the facts; (2) a list of documents and information not previously considered by the Department; and (3) an explanation of why you did not provide the information sooner. There is no deadline to request a reconsideration of assessment, but if the time to appeal has expired, the Department may require you

to pay up to 30 percent of the disputed amount prior to granting your request.

14 Can I appeal a decision by the TAC made under the provisions of section 40-35, HRS?

Yes, the normal appeal procedures of a decision by the TAC apply. Therefore, you may appeal the TAC's decision to the Intermediate Court of Appeals by filing a written notice of appeal with the TAC within 30 days of the decision.

15 Does the filing of an appeal with the BOR or TAC suspend or stay the collection of an assessment if I do not pay the disputed amount?

The first appeal to either the BOR or TAC may be made without payment of the disputed taxes. In addition, a taxpayer who prevails before the BOR does not have to pay the assessed tax prior to an appeal by the Department to TAC. Similarly, a taxpayer who prevails before the BOR and TAC does not have to pay the assessed tax prior to an appeal by the Department to the Intermediate Court of Appeals.

If the decision by the BOR or TAC is appealed by the taxpayer, the taxpayer is required to pay the disputed taxes. An individual taxpayer, however, may appeal a decision by the BOR to the TAC without paying the net income tax provided that (1) the total tax liability does not exceed \$50,000 for all tax years and (2) the taxpayer would be irreparably injured by payment of the tax.

An appeal of disputed taxes only covers those taxes included in the notice of appeal. Therefore, if an appeal is properly filed for only one of three assessed years, the remaining years' taxes which are not appealed, if not paid within 20 days of the mailing of the final notice of assessment, are delinquent and collection actions can be taken.

16 What happens if I pay my taxes under protest?

If an appeal is not filed with the BOR, TAC or AADR within 30 days of the assessment date, you may pay under protest the disputed portions of the assessment. You may recover the taxes paid under protest if an action for recovery is commenced in the TAC within 30 days from the date of payment to which you prevailed in TAC. If no proceeding is brought within the 30 days of the payment, the taxes paid under protest is kept by the government.

17 Can I appeal my conveyance tax?

Unless there is an assessment, there is no appeal process. However, you may pay the conveyance tax under protest and file a complaint to the TAC.

18 How does the Taxpayer Advocate fit in the appeal process?

The Taxpayer Advocate has no jurisdiction within the appeals process. See "An Introduction to the Taxpayer Advocacy Program" brochure for information on the Taxpayer Advocate.

Where to Get Forms and Information

Website: tax.hawaii.gov

Telephone: 808-587-4242

Toll-Free: 1-800-222-3229

Telephone for the hearing impaired: 808-587-1418

Toll-Free for the hearing impaired: 1-800-887-8974

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