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IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In re DEPARTMENT OF TAXATION, ADMINISTRATIVE DIRECTIVE NO. 2021-01. TAX FOUNDATION OF HAWAII, a Hawaii nonprofit corporation, Plaintiff-Appellant, vs. DEPARTMENT OF TAXATION, STATE OF HAWAII Defendant-Appellee	Civil No. 1CCV-24-0000661 APPEAL FROM FINAL JUDGMENT, FILED DECEMBER 31, 2024 FIRST CIRCUIT COURT HONORABLE KARIN L. HOLMA

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B. RULES

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§1-16 Laws in pari materia. Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another. [CC 1859, §11; RL 1925, §11; RL 1935, §12; RL 1945, §11; RL 1955, §1-21; HRS §1-16]

§40-35 Payment to State under protest. (a) Any disputed portion of moneys representing a claim in favor of the State may be paid under protest to a public accountant of the department, board, bureau, commission, or other agency of the State with which the claimant has the dispute. The protest shall be in writing, signed by the person making the payment, or by the person's agent, and shall set forth the grounds of protest. If any payment, or any portion of any payment, is made under protest, the public accountant to whom the payment is made shall hold that portion of the moneys paid under protest in a trust account in the state treasury for a period of thirty days from the date of payment.

(b) Action to recover moneys paid under protest or proceedings to adjust the claim may be commenced by the payer or claimant against the public accountant to whom the payment was made, in a court of competent jurisdiction, within thirty days from the date of payment. If no suit or proceeding is brought within the thirty-day period, the money paid under protest shall be deposited into the appropriate account in the treasury of the State by the accountant and the amount deposited shall thereupon become a government realization. Any action to recover payment of taxes under protest shall be commenced in the tax appeal court.

(c) If action to recover the money paid under protest or a proceeding to adjust the claim is commenced within the thirty-day period, the amount paid under protest shall, pending final decision of the cause, be deposited by the public accountant into the state treasury, in a fund to be known as the "litigated claims fund", together with subsequent payments or portions thereof, made to the accountant under the same protest. If judgment is rendered in favor of the claimant, the claimant shall be paid the amount of the judgment out of the litigated claims fund by warrants signed by the comptroller upon vouchers approved by the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute. If the amount of money in the litigated claims fund is insufficient to pay the judgment the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute shall include in their respective budget requests to the department of budget and finance an amount necessary to pay the judgment, plus interest, as provided herein. Interest at the rate of two per cent a year from the date of each payment under protest shall also be paid out of the amount appropriated for the judgment payable to the claimant; provided that if the claim is for the recovery of taxes paid

under protest by the claimant, the rate of interest and the overpayment of taxes shall be refunded in the manner provided in section 231-23(c) and (d). The amount of the judgment to be paid to the claimant shall be ascertained by the head of the department, board, bureau, commission, or other agency with which the claimant had the dispute from a certified copy of the judgment, which shall be the authority for making payment to the claimant. If judgment is rendered against the claimant, the amount of money paid by the claimant under protest which is in the litigated claims fund shall be deposited into the appropriate account in the treasury of the State and the amount shall become a government realization. [L 1907, c 45, §1; RL 1925, §1444; RL 1935, §571; RL 1945, §1575; am L 1951, c 224, §1; RL 1955, §34-24; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; am L 1967, c 231, §7 and c 251, §1; HRS §40-35; am L 1978, c 174, §1; am L 1980, c 51, §1; am L 1981, c 169, §1; gen ch 1985]

§91-1 Definitions. For the purpose of this chapter:

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

"Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

"Party" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.

"Persons" includes individuals, partnerships, corporations, associations, agencies, or public or private organizations.

"Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda. [L 1961, c 103, §1; Supp, §6C-1; HRS §91-1; am L 2017, c 110, §1]

§91-7 Declaratory judgment on validity of rules. (a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) by bringing an action against the agency in the circuit court or, if applicable, the environmental court, of the county in which the petitioner resides or has its principal place of business. The action may be maintained whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions, or exceeds the statutory authority of the agency, or was adopted without compliance with statutory rulemaking procedures. [L 1961, c 103, §7; Supp, §6C-7; HRS §91-7; am L 2014, c 218, §3]

§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

(1) Assessment: To make any assessment by law required to be made by the department;

(2) Collections: To be responsible for the collection of all taxes imposed under title 14, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;

(3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under those laws, or by an interested person;

(4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws administered by the department;

(5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;

(6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;

(7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or

irregularity in taxation or to facilitate the assessment of taxes;

(8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and any other matters of information concerning taxation as may be deemed of general interest;

(9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;

(10) Compromises: With the approval of the governor, to compromise any claim where the tax exceeds $50,000 (exclusive of penalties and interest) arising under any tax law the administration of which is within the scope of the department's duties, and to compromise any tax claim where the tax is $50,000 or less (exclusive of penalties and interest) without seeking the approval of the governor; provided that the director shall have the discretion to seek the approval of the governor to compromise any tax claim where the director deems it appropriate; and in each case the department shall post each proposed compromise, as set forth in subparagraphs (A) to (D), on the department's internet website for five calendar days before the director signs the compromise, and there shall be placed on file in the department's office a statement of:

(A) The name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed;

(B) The amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department;

(C) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and

(D) The reasons for the compromise.

Notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file and included in the department's internet

website in respect of compromises shall be open to public inspection;

(11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;

(12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;

(13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of the taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(A) The matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State; and

(B) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;

(14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in other chapters of the law under title 14 administered by the department for levying, assessing,

collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner. [L 1932 2d, c 40, §§18, 20, 57, 58; RL 1935, §1907; RL 1945, §5104; am L 1945, c 79, §2 and c 196, §1; am L 1951, c 133, §1; am L 1953, c 125, §1 and c 223, §2; RL 1955, §115-4; am L Sp 1959 2d, c 1, §16; HRS §231-3; am L 1983, c 217, §3; am L 1985, c 16, §2; gen ch 1985; am L 1986, c 340, §2; am L 1989, c 14, §4(2); am L 1990, c 320, §2; am L 1991, c 263, §3; am L 1995, c 66, §2; am L 2003, c 136, §3]

[§231-10.6] Rules or administrative guidance. Rules, including temporary rules, providing examples and safe harbors shall be implemented to explain in clear and unambiguous terms the penalties and fines provided under any provision of title 14 that may be imposed against a return preparer or taxpayer for understatement of tax liabilities, promotion of abusive tax shelters, erroneous claims for refund or credit, or substantial understatements or misstatements of tax. Federal laws and administrative guidance may be used to interpret this section. Any such penalties or fines shall first be approved by the director before assessment. [L 2009, c 166, pt of §16]

§231-39 Additions to taxes for noncompliance or evasion; interest on underpayments and overpayments. (a) Except as otherwise provided, this section shall apply to every tax or revenue law of the State that provides for the filing with the director of taxation of a return or statement of the tax or the amount taxable.

(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

(1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five per cent of the amount of the tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 235-97.

(2) Failure to pay tax.

(A) If any part of any underpayment is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director.

(B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty per cent of the underpayment as determined by the director.

(C) If any penalty is assessed under subparagraph (B) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file the return) shall be assessed with respect to the same underpayment.

(3) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within sixty days of the prescribed filing date, there shall be added to the unpaid tax an amount up to twenty per cent as determined by the director.

(4) Interest on underpayment or nonpayment of tax.

(A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent a month or fraction of a month shall be paid for the period beginning with the first calendar day after the date prescribed for payment, section 231-21 to the contrary notwithstanding, to the date paid.

(B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 235, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.

(C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.

(D) No interest under this paragraph shall be imposed on interest provided by this paragraph.

(E) If any portion of a tax is satisfied by credit of any overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.

(F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected.

(G) This paragraph shall not apply to any failure to pay estimated tax required by section 235-97.

(c) No taxpayer shall be exempt from any penalty or interest by reason of having contested the tax, but only to the extent that the tax is adjudged to be excessive or contrary to

law. [L 1953, c 125, §4; RL 1955, §115-43; am L 1967, c 134, §1; HRS §231-39; am L 1974, c 138, §1; am L 1988, c 386, §1; am L 1991, c 136, §2; am L 1992, c 102, §2; am L 1994, c 15, §1]

§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 the state taxation 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 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 shall be 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, county, or 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, county, or assessor to be delivered to the other, and, in case of default, the judge shall preclude the person 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; gen ch 1985; am L 1986, c 339, §17; am L 1989, c 14, §7; am L 2021, c 118, §5]

§232-15 Appeal to taxation board of review. (a) The notice of appeal to the taxation board of review shall be lodged with the board and assessor no later than the date fixed by law for the taking of the appeal. An appeal to the taxation board of review shall be deemed to have been taken in time if the notice thereof shall have been postmarked and properly addressed to the board and assessor, on or before that date.

(b) The notice of appeal shall be in writing and any 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.

(c) 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. If any objection involving the Constitution or laws of the United States is included by the taxpayer in the notice of appeal, the objection may be heard and determined by the tax appeal court on appeal from a decision of the taxation board of review; provided that this subsection shall not be construed to confer upon the board the power to hear or determine the objection. Any notice of appeal may be amended at any time before the board's decision; provided that 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; gen ch 1985; am L 1989, c 14, §8; am L 2021, c 118, §8]

§232-16 Appeal to tax appeal court. (a) A taxpayer or county may appeal directly to the tax appeal court without appealing to the state taxation board of review or any equivalent administrative body established by county ordinance; provided that a taxpayer appealing a real property tax assessment shall first obtain a decision from an administrative body established by county ordinance, before appealing to the tax appeal court, if county ordinance requires a taxpayer to do so. 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.

(b) 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 taxation board of review and may be amended at any time; provided that it sets forth a brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

(c) The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer's social security number from any accompanying tax return.

If a county ordinance requires a taxpayer appealing a real property tax assessment to first obtain a decision from an administrative body established by county ordinance prior to appealing to the tax appeal court, the notice of appeal shall be accompanied by a copy of the decision from the administrative body.

(d) 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.

(e) 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; am L 2009, c 166, §19; am L 2011, c 106, §1; am L 2021, c 118, §9]

§232-17 Appeals from taxation board of review to tax appeal court. An appeal shall lie to the tax appeal court from the decision of the state taxation board of review, or equivalent administrative body established by county ordinance. An appeal to the tax appeal court shall be properly commenced by the filing, by the taxpayer, county, or 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 taxation board of review or an 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 taxation board of review, or an 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 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 time 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; am L 2007, c 154, §2; am L 2021, c 118, §10]

§232-19 Appeals; procedure. 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; am L 2006, c 94, §1; am L 2010, c 109, §1]

§632-1 Jurisdiction; controversies subject to. [(a)] In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for; provided that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

[(b)] Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present. [L 1921, c 162, §1; RL 1925, §2918; RL 1935, §4220; RL 1945, §9971; am L 1945, c 74, §1; RL 1955, §228-1; HRS §632-1; am L 1972, c 89, §1(a) to (c); gen ch 1985]

26 U.S.C.§ 7421, I.R.C. § 7421

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax.--Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c),7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary.-- No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue
tax, or

(2) the amount of the liability of a fiduciary under section 3713(b) of title 31, United States Code, in respect of any such tax.

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 876; Pub.L. 89-719, Title I, § 110(c), Nov. 2, 1966, 80 Stat. 1144; Pub.L. 94-455, Title XII, § 1204(c)(11), Oct. 4, 1976, 90 Stat. 1699; Pub.L. 95-628, § 9(b)(1), Nov. 10, 1978, 92 Stat. 3633; Pub.L. 97-258, § 3(f)(13), Sept. 13, 1982, 96 Stat. 1065; Pub.L. 105-34, Title XII, §§ 1222(b)(1), 1239(e)(3), Title XIV, § 1454(b)(2), Aug. 5, 1997, 111 Stat. 1019, 1028, 1057; Pub.L. 105-206, Title III, § 3201(e)(3), July 22, 1998, 112 Stat. 740; Pub.L. 105-277, Div. J, Title IV, § 4002(c)(1), (f), Oct. 21, 1998, 112 Stat. 2681-906, 2681-907; Pub.L. 106-554, § 1(a)(7) [Title III, §§ 313(b)(2)(B), 319(24)], Dec. 21, 2000, 114 Stat. 2763, 2763A-642, 2763A-647; Pub.L. 114-74, Title XI, § 1101(f)(10), Nov. 2, 2015, 129 Stat. 638; Pub.L. 115-141, Div. U, Title IV, § 401(a)(324), Mar. 23, 2018, 132 Stat. 1199.)

28 U.S.C. § 2201

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; Pub.L.85-508, § 12(p), July 7, 1958, 72 Stat. 349; Pub.L. 94-455, Title XIII, § 1306(b)(8), Oct. 4, 1976, 90 Stat. 1719; Pub.L. 95-598, Title II, § 249, Nov. 6, 1978, 92 Stat. 2672; Pub.L. 98-417, Title I, § 106, Sept. 24, 1984, 98 Stat. 1597; Pub.L. 100-449, Title IV, § 402(c), Sept. 28, 1988, 102 Stat. 1884; Pub.L. 100-670, Title I, § 107(b), Nov. 16, 1988, 102 Stat. 3984; Pub.L. 103-182, Title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147; Pub.L. 111-148, Title VII, § 7002(c)(2), Mar. 23, 2010, 124 Stat. 816; Pub.L. 116-113, Title IV, § 423(b), Jan. 29, 2020, 134 Stat. 66.)

LAWS

OF THE

TERRITORY OF HAWAII

PASSED BY THE

TWENTY-THIRD LEGISLATURE

REGULAR SESSION
1945

Convened on Wednesday, the Twenty-first Day of February, and
Adjourned Sine Die on Friday, the Fourth Day of May

Published by Authority under the
Direction of the Secretary of Hawaii
Honolulu, Hawaii

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1945

FOREWORD

§§ 2-3, REVISED LAWS OF HAWAII 1945, PROVIDE AS FOLLOWS:

"Sec. 2. **Laws published by secretary.** The secretary of the Territory shall promulgate all the laws enacted by the legislature, except general or special appropriation acts, loan fund acts, pension acts and franchise acts, by publishing the same once in the English language in a newspaper of general circulation published daily in Honolulu in the English language. Any of such excepted acts may, however, be published when the governor so directs. After such publication, the secretary shall cause the same, together with all other laws duly enacted at any session of the legislature, to be printed, indexed and bound in book form. The index to any volume of the laws enacted at any regular session shall be cumulative and shall include an index of all laws enacted at every preceding regular or special session of the legislature since the publication of the last revision of the laws of the Territory. Before publishing any act in book form, the secretary is directed to conform the style thereof as near as may be with that of the latest revision of the statute law of the Territory. He is directed, before publishing them in book form, to classify all acts by serial letters or numbers or both and to insert appropriate supplementary chapter and section numbers and headnotes together with section histories, wherever necessary to aid in placing amendments or new sections or chapters in an appropriate supplementary sequence with the latest revision of the laws; and such amendments, new sections and new chapters may be cited by reference to such supplementary chapter and section numbers of such latest revision."

"Sec. 3. **Certain acts not obligatory until published.** No written law, unless otherwise specifically provided by legislative enactment, except general or special appropriation acts, loan fund acts, pension acts and franchise acts, shall be obligatory without first being printed and made public. General or special appropriation acts, loan fund acts, pension acts and franchise acts, whether affecting territorial funds or the funds of county or other municipal subdivisions or commissions, shall become operative according to their respective terms merely by being passed and approved in the manner provided by sections 44 to 54, inclusive, of the Organic Act without the necessity of any other promulgation than the ultimate inclusion thereof in the bound volume of respective session laws as provided in section 69 of the Organic Act."

§§ 2-3, JOINT RESOLUTION NO. 4, 1945, PROVIDE AS FOLLOWS:

"Section 2. That the secretary of the Territory be and he is hereby authorized, in complying with the provisions of section 2 of said Revised Laws, before publishing any Act in book form, to change or correct any chapter or section numbers contained as a part of or referred to in any such Act, whenever necessary to carry out the intent of said section 2. Such changes shall be made on the engrossed copy of each such Act and shall be initialed by the secretary thereon."

"Section 3. That any Act of the legislature may be cited by reference to the chapter and section numbers as inserted or added or changed by the secretary of Hawaii pursuant to the provisions of said section 2 and the provisions of this resolution as the same are set forth in the printed volume of the laws enacted at any regular session of the legislature, published in book form by said secretary pursuant to the provisions of said section 2 and of this resolution."

THE LATEST REVISION OF THE STATUTE LAW WAS ENACTED IN 1945 BY ACT 1, SERIES A1, AND IS PUBLISHED IN A VOLUME ENTITLED "REVISED LAWS OF HAWAII 1945."

(The valuable assistance of Hon. A. M. Cristy in the compilation of the material in this volume is acknowledged.)

CERTIFICATE

Territory of Hawaii

Office of the Secretary

I, Gerald R. Corbett, Secretary of the Territory of Hawaii, do hereby certify that the printed Acts and Joint Resolutions set forth herein are, except as otherwise specifically noted, true and correct copies of the original Acts and Resolutions enacted by the Twenty-third Legislature of the Territory of Hawaii at its regular session of 1945, which was convened in Honolulu on Wednesday, the twenty-first day of February, 1945, and adjourned sine die on Friday, the fourth day of May, 1945; that all such Acts and Resolutions, except as otherwise specifically noted, were approved by the Governor of Hawaii in accordance with the provisions of the Organic Act.

I further certify that the classification of such Acts and Resolutions and the addition of supplementary chapter and section numbers and headnotes, section histories and footnotes has been done under my direction pursuant to applicable provisions of law.

I further certify that all of such Acts and Resolutions required to be promulgated by publication have been duly published in accordance with law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Territory of Hawaii on the 10th day of October, 1945.

Gerald R. Corbett
Secretary of Hawaii

Section 4. If any provision of this Act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 5. This Act shall take effect upon its approval.
(Approved May 14, 1945.) S.B. 92, Act 148.

[Compare § 12739, as amended by Act 53, D-208, post.]

Title 26. PLEADINGS AND PROCEDURE.
Chapter 202. DECLARATORY JUDGMENTS.

Series D-172: ACT 74

An Act to Amend Section 9971 of the Revised Laws of Hawaii 1945, Relating to Declaratory Judgments.

Be it Enacted by the Legislature of the Territory of Hawaii:

Section 1. Section 9971 of the Revised Laws of Hawaii 1945 is hereby amended by adding a new paragraph thereto to read as follows:

"Relief by declaratory judgment or decree may be granted in all civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, or an equitable remedy, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the

privilege of obtaining a declaratory judgment or decree in any case where the other essentials to such relief are present; but proceeding by declaratory judgment shall not be permitted in any case where a divorce or annulment of marriage is sought."

Section 2. This Act shall take effect upon its approval.
(Approved May 1, 1945.) **H.B. 363, Act 74.**

[Note: The first part of § 9971 reads:
"**Sec. 9971. Jurisdiction; controversies subject to.** In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right."]

Title 27. CIVIL REMEDIES AND DEFENSES.
Chapter 207. EXECUTION.

Series D-173: ACT 132

An Act to Add to the Revised Laws of Hawaii 1945 a New Section Relating to the Requirement of a Bond as a Condition to the Issuance of an Execution.

Be it Enacted by the Legislature of the Territory of Hawaii:

Section 1. There is hereby added to the Revised Laws of Hawaii 1945 a new section, to be numbered section 10163.01, reading as follows:

"**Sec. 10163.01. Bond for expenses on execution.** Upon the petition of the high sheriff, any sheriff, deputy sheriff or other police officer to whom an execution has been directed, showing that the levy and sale required by such execution will involve unusual expense to such officer and that he may be unable to collect such expense from the proceeds of the sale or from the defendant, the judge of the court or the magistrate issuing such execution may upon a hearing of said petition direct the person beneficially interested in said execution to tender to such officer a cash or surety bond in an amount determined as proper by said judge or magistrate, conditioned that, if the levying officer is unable to collect his reasonable charges and expenses from

ACT 103

A Bill for an Act Concerning Procedure of Administrative Agencies and Review of Their Determinations.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Definitions.** For the purpose of this Act:

(a) "Agency" means each state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(b) "Persons" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

(c) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.

(d) "Rule" means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 8, nor intra-agency memoranda.

(e) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

(f) "Agency hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 14.

SECTION 2. **Public Information.**

(a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.

(2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.

(3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.

(4) Make available for public inspection all final opinions and orders.

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof.

(c) Nothing in this section shall affect the confidentiality of records as provided by statute.

SECTION 3. **Procedure for Adoption, Amendment or Repeal of Rules.** Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(a) Give at least twenty days' notice for a public hearing. Such notice shall include a statement of the substance of the proposed rule, and of the date, time and place where interested persons may be heard thereon. The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rule-making proceedings, and published at least once in a newspaper of general circulation in the state for state agencies and in the county for county agencies.

(b) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.

(c) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than twenty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

SECTION 4. **Filing and Taking Effect of Rules.**

(a) Each agency adopting, amending, or repealing a rule shall file forthwith certified copies thereof with the lieutenant governor in the case of the State, or with the clerk of the county in the case of a county. In addition the clerks of all of the counties shall file forthwith certified copies thereof with the lieutenant governor. A permanent register of such rules open to

public inspection shall be kept by the lieutenant governor and the clerks of the counties.

(b) Each rule hereafter adopted, amended, or repealed shall become effective ten days after filing with the lieutenant governor in the case of the state, or with the respective county clerks in the case of the counties.

(1) If a later effective date is required by statute or specified in the rule, such later date shall be the effective date, provided, however, that no rule shall specify an effective date in excess of thirty days after the filing of the rule as provided herein.

(2) An emergency rule shall become effective upon filing with the lieutenant governor in the case of the state, or with the respective county clerks in the case of the counties for a period of not longer than one hundred twenty days without renewal unless extended in compliance with the provisions of subsections (a) and (b) of section 3, if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety or morals. The Agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the state for state agencies and in the county for county agencies within five days from the date of filing of such rule.

SECTION 5. **Publication of Rules.**

(a) Each agency shall, as soon as practicable after the effective date of this Act, compile, index and publish all rules adopted by such agency and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years.

(b) Compilations and supplements shall be made available free of charge upon request by the state officers in the case of a state agency and by the county officers in the case of a county agency. As to other persons each agency may fix a price to cover mailing and publication costs.

SECTION 6. **Petition for Adoption, Amendment or Repeal of Rules.** Any interested person may petition an agency requesting the adoption, amendment, or repeal of any rule stating reasons therefor. Each agency shall adopt rules prescribing the form for such petitions and the procedure for their submission, consideration and disposition. Upon submission of such petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for such denial or initiate proceedings in accordance with section 3.

SECTION 7. **Declaratory Judgment on Validity of Rules.**

(a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) herein by bringing an action against the agency in the circuit court of the county in which petitioner resides or has its principal place of business. Such action may be maintained whether or not petitioner has first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

SECTION 8. **Declaratory Rulings by Agencies.** Any interested person may petition an agency for a declaratory order as to the applicability of any

statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of such petitions and the procedure for their submission, consideration and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

SECTION 9. **Contested Cases; Notice; Hearing; Records.**

(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) The date, time, place and nature of hearing;

(2) The legal authority under which the hearing is to be held;

(3) The particular sections of the statutes and rules involved;

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided, however, that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if he so desires.

(c) Opportunity shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of agency decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;

(3) Offers of proof and rulings thereon;

(4) Proposed findings and exceptions;

(5) Report of the officer who presided at the hearing;

(6) Staff memoranda submitted to members of the agency in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided herein.

SECTION 10. **Rules of Evidence; Official Notice.** In contested cases:

(a) Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

SECTION 11. **Examination of Evidence by Agency.** Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

SECTION 12. **Decisions and Orders.** Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivery or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to his attorney of record.

SECTION 13. **Consultation by Officials of Agency.** No official of an agency who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

SECTION 14. **Judicial Review of Contested Cases.**

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of such nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this Act; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to the provisions of the Hawaii rules of civil procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court. The court in its discretion, may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the agency decisions; but the agency or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the designation of the record on appeal, or within such further time as the court may allow, the agency shall transmit to the reviewing court the designated record of the proceeding under review.

The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings, decision and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record, except that in the cases where a trial de novo, including trial by jury, is provided by law and also in cases of alleged irregularities in procedure before the agency not shown in the record, testimony thereon may be taken in court. The court shall, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions or orders are:

(1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) Upon a trial de novo, including a trial by jury as provided by law, the court shall transmit to the agency its decision and order with instructions to comply with the order.

SECTION 15. **Appeals.** An aggrieved party may secure a review of any final judgment of the circuit court under this Act by appeal to the supreme court. Such appeal shall be taken in the manner provided in the Hawaii rules of civil procedure.

SECTION 16. **Severability.** If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 17. **Repeal and Pending Proceedings.**

(a) Sections 7-28 through 7-41 inclusive of the Revised Laws of Hawaii 1955 are hereby repealed as of the time this Act shall take effect.

(b) Provisions of Act 261, Session Laws of Hawaii 1959 which are inconsistent with the provisions of this Act are hereby repealed as of the time this Act shall take effect.

(c) All rules and regulations adopted prior to the time of taking effect of this Act shall continue in full force and effect; however, all statutes in-

cluding those provided in the aforesaid subsections (a) and (b), rules and regulations, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed, and such repeal shall not affect any rights or obligations enjoyed or arising prior to the time of taking effect of this Act. Any proceeding commenced prior to the time of taking effect of this Act shall conform to the procedure as much as possible under the provisions of this Act after the Act becomes effective if the proceeding is still pending. All petitions, hearings and other proceedings pending before any agency whose procedure has been changed by this Act, and all legal proceedings or investigations by or against any agency not completed at the time this Act shall take effect, shall continue and remain in full force and effect before such agency, its successor as to its powers and functions, or court where the matter may be or has been commenced or is then pending.

SECTION 18. Section 116-11, Revised Laws of Hawaii 1955 is hereby amended to read as follows:

"Section 116-11. Rules and Forms. (a) The supreme court shall have power, consistently with the provisions of this chapter, 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 or members thereof. Such 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, consistently with the provisions of this chapter and the Administrative Procedure Act, 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. Such rules shall have the force and effect of law."

SECTION 19. **Federal Aid.** The provisions of Section 14 shall not be applicable where such applicability would jeopardize federal aid or grants of assistance.

SECTION 20. **Short Title.** This Act may be cited as the Hawaii Administrative Procedure Act.

SECTION 21. **Time of Taking Effect.** This Act shall take effect on January 2, 1962.

(Approved May 23, 1961.) **H.B. 5.**

Rule 57. DECLARATORY JUDGMENTS.

The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate, except that declaratory relief may not be obtained in any controversy with respect to taxes. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

(*Amended December 7, 1999, effective January 1, 2000.)*