

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27738

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL OF HENRY F. JOHNSON
(SHAREHOLDER) AND INTERNATIONAL RESOURCE RECOVERY,
INC., Appellant-Appellant, v. DIRECTOR OF TAXATION,
STATE OF HAWAII, Appellee-Appellee

APPEAL FROM THE TAX APPEAL COURT
(Tax Appeal Case No. 05-0066)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Foley, and Fujise, J.)

In this appeal, Appellant-Appellant Henry F. Johnson (Johnson) contends that the Tax Appeal Court of the State of Hawaii (the TAC)¹ erred in dismissing his appeal from the O'ahu District Board of Review on jurisdictional grounds.

We disagree. "The right of appeal is purely statutory and therefore, the right of appeal is limited as provided by the legislature and compliance with the method and procedure prescribed by it is obligatory." In re Tax Appeal of Lower Mapunapuna Tenants Ass'n, 73 Haw. 63, 69, 828 P.2d 263, 266 (1992) (internal quotation marks and ellipsis omitted). At the time Johnson filed his appeal to the TAC, Hawaii Revised Statutes § 235-114 (Supp. 2004) provided, in relevant part, as follows:

Appeals. Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth. Appeal may be made either to the district board

¹ The Honorable Gary W. B. Chang presided.

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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of review or to the tax appeal court. The first appeal to either the district board of review or to the tax appeal court may be made without payment of the tax so assessed. Either the taxpayer or the assessor may appeal to the tax appeal court from a decision by the board or to an appellate court from a decision by the tax appeal court; provided that if the decision by the board or the tax appeal court is appealed by the taxpayer, or the decision by the board in favor of the department is not appealed, the taxpayer shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

(Emphases added.) It is undisputed that Johnson did not pay the income tax he was assessed plus interest prior to filing his appeal to the TAC. Therefore, the TAC lacked subject matter jurisdiction to consider Johnson's appeal. Lewis v. Kawafuchi, 108 Hawai'i 69, 74-75, 116 P.3d 711, 716-17 (App. 2005).

Accordingly, we affirm the Order Granting Director of Taxation, State of Hawaii's Motion to Dismiss Filed on January 9, 2003, entered by the TAC on December 30, 2005.

DATED: Honolulu, Hawai'i, April 20, 2007.

On the briefs:

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appellant-appellant, pro se.

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