***** FOR PUBLICATION in WEST'S HAWAI'I REPORTS and PACIFIC REPORTER *****

DISSENTING OPINION
BY LEVINSON, J., IN WHICH MOON, C.J., JOINS

In my view, the question central to this appeal is whether "the requirement [set forth] in [Hawai'i Revised Statutes] [(]HRS[)]§ 232-17 [(2001)] and [Rules of the Tax Appeal Court] [(]RTAC[)] Rule 2(a) that an appealing taxpayer file a copy of his or her 'Notice of Appeal to Tax Appeal Court' with the assessor is a jurisdictional requirement." Majority opinion at 25. Narmore -- the appealing taxpayer in the present matter -- having neglected to do so, I agree with the majority opinion that an affirmative answer to the foregoing question "would divest the tax [appeal] court of jurisdiction to hear an appeal and thus also divest this court of jurisdiction to hear a secondary appeal." Id. at 25-26. I part company with the majority opinion, however, because the plain and unambiguous language of HRS § 232-17 establishes that the timely filing of a copy of the taxpayer's notice of appeal with the director of the Department of Taxation (the Department) is a jurisdictional requirement. Accordingly, I would affirm the tax appeal court's July 8, 2004 order granting the Department's motion to dismiss and its final judgment of the same date entered in the Department's favor and against Narmore.

"The requirement that a party timely file a notice of appeal has been held to be jurisdictional by this court. See, e.g., Bacon v. Carlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) . . . ." Majority opinion at 28. Tautologically, then,

"[t]he requirement that Narmore timely file his '[n]otice of [a]ppeal . . .' was clearly jurisdictional . . . ." Id. at 42.

HRS § 232-17, entitled "Appeals from boards of review to tax appeal court," provides in relevant part:

> An appeal shall lie to the tax appeal court . . . by the filing, by the taxpayer, . . . 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 board of review, or equivalent administrative body . . . . The taxpayer shall also file a copy of the notice of appeal in the assessor's [i.e., the director of the Department's] office . . . .
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> An appeal shall be deemed to have been taken in time if the notice thereof . . . and the copy . . . of the notice shall have been deposited in the mail . . . properly addressed to the tax appeal court [and] tax assessor, . . . respectively, within the period provided by this section.

(Emphases added.) It is uncontested that Narmore neither filed a copy of the notice with, nor mailed it to, the Department at any time, much less "within the period provided by" HRS § 232-17.

As the majority opinion recognizes, HRS § 232-17 envisages two modes of timely notices of taxpayer appeals: (1) pursuant to the first paragraph of HRS § 232-17 (the first paragraph), by direct filing, i.e., personal delivery, of the notice "within thirty days after the filing of the decision" appealed from; and (2) pursuant to the third paragraph of the same statute (the third paragraph), by mailing the notice "within the period provided by this section." However, the majority opinion would have it that timely notice is accomplished by filing with the tax appeal court alone, the filing of a copy of the notice with the director of the Department pursuant to the first paragraph or the mailing of the copy to the Department's director pursuant to the third paragraph being merely "directory"

(as opposed to "mandatory") and therefore nonjurisdictional. Majority opinion at 33-39.

I submit that the view reflected in the majority opinion is at odds with both the plain language of HRS § 232-17 and this court's orthodox canons of statutory construction. Both the first and third paragraphs clearly require notice within thirty days of the triggering event as a prerequisite to timeliness, and both require formal notice to the tax appeal court as well as to the Department. There is simply no principled basis for concluding that the jurisdictional prerequisite that a taxpayer effect a timely notice of appeal extends only to the tax appeal court and not to the Department.

We have repeatedly intoned that

> our statutory construction is guided by established rules:
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> When construing a statute, our foremost obligation is to ascertain and give affect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.
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> Gray [v. Administrative Director of the Court], 84 Hawai'i [138,] 148, 931 P.2d [580,] 590 [(1997)] (quoting State v. Toyomura, 80 Hawai'i 8, 18-19, 904 P.2d 893, 903-04 (1995)) (brackets and ellipsis points in original) (footnote omitted). . . . "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 upon in aid to explain what is doubtful in another." HRS § 1-16 (1993). [State v.] Kaua, 102 Hawai'i[, 1,] 7-8, 72 P.3d [473,] 479-480 [(2003)].

State v. Koch, 107 Hawai'i 215, 220-21, 112 P.3d 69, 74-75 (2005) (some citations omitted) (emphasis added). Equally ingrained is the proposition that "[t]he legislature is presumed not to intend

an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality." Kamalu v. ParEn, Inc., 110 Hawai'i 269, 278, 132 P.3d 378, 387 (2006) (citations and internal quotation signals omitted).

As I have noted, paragraph three of HRS § 232-17 provides in relevant part that "[a]n appeal shall be deemed to have been taken in time if . . . the copy . . . of the notice shall have been deposited in the mail, . . . properly addressed to the . . . tax assessor, . . . within the period provided by this section," i.e., "within thirty days after the filing of the decision of the state board of review," as provided in paragraph one. (Emphasis added.) Obviously, then, the timely mailing of a copy of the notice of appeal to the Department, as prescribed by paragraph three, is a prerequisite to the timeliness of an appeal (that is, "an appeal . . . deemed to have been taken in time") to the tax appeal court, which, as discussed above, is a jurisdictional appellate prerequisite, both in the tax appeal court as a primary matter and secondarily in this court. Reading the first and third paragraphs in pari materia, it would be inconsistent, contradictory, illogical, and absurd for the filing of a copy of the notice of appeal with the director of the Department, as prescribed by paragraph one, within the same thirty-day period to be any less a jurisdictional prerequisite to the prosecution of a tax appeal.[1]

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[1] This is why the majority opinion's jam session on the circumstances under which the word "shall" may be deemed to be directory, as opposed to mandatory, see majority opinion at section X, is beside the point.

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Narmore having failed to perfect a timely notice of appeal to the tax appeal court, I would affirm the circuit court's order and judgment.