

S.B. NO. 2923

JAN 27 2016

A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§231- Interest on penalties and fines. Interest shall
5 be imposed on any penalty or fine under this title at the rate
6 of two-thirds of one per cent a month or fraction of a month for
7 the period beginning with the first calendar day after the date
8 prescribed for payment of the fine or penalty, section 231-21 to
9 the contrary notwithstanding, to the date paid. Unless
10 otherwise provided, interest prescribed under this section shall
11 be assessed, collected, and paid in the same manner as taxes.
12 This section shall not apply to penalties and fines that become
13 part of the tax and penalties and fines imposed upon conviction
14 of a misdemeanor or felony."

15 SECTION 2. Section 232-7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§232-7 Boards of review; duties, powers, procedure
18 **before.** (a) The board of review for each district shall hear

S.B. NO. 2923

1 informally all disputes between the assessor and any taxpayer in
2 all cases in which appeals have been duly taken and the fact
3 that a notice of appeal has been duly filed by a taxpayer shall
4 be conclusive evidence of the existence of a dispute; provided
5 that this provision shall not be construed to permit a taxpayer
6 to dispute an assessment to the extent that it is in accordance
7 with the taxpayer's return.

8 (b) Each board shall hold public meetings at some central
9 location in its taxation district, at least once annually and
10 shall hear, as speedily as possible, all appeals presented for
11 each year. A taxpayer's identity and final documents submitted
12 in support or opposition of an appeal shall be public
13 information; provided that an individual taxpayer is authorized
14 to redact all but the last four digits of the taxpayer's social
15 security number from any accompanying tax return. Each board
16 shall have the power and authority to decide all questions of
17 fact and all questions of law, excepting questions involving the
18 Constitution or laws of the United States, necessary to the
19 determination of the objections raised by the taxpayer in the
20 notice of appeal; provided that no board shall have power to
21 determine or declare an assessment illegal or void. Without
22 prejudice to the generality of the foregoing, each board shall
23 have power to allow or disallow exemptions pursuant to law

1 whether or not previously allowed or disallowed by the assessor
2 and to increase or lower any assessment.

3 (c) The board shall base its decision on the evidence
4 before it, and, as provided in section 231-20, the assessment
5 made by the assessor shall be deemed prima facie correct. The
6 board shall file with the assessor concerned its decision in
7 writing on each appeal decided by it, and a certified copy of
8 the decision shall be furnished by the assessor to the taxpayer
9 concerned by delivery or by mailing the copy addressed to the
10 taxpayer's last known place of residence.

11 (d) Each board and each member thereof in addition to all
12 other powers shall also have the power to subpoena witnesses,
13 administer oaths, examine books and records, and hear and take
14 evidence in relation to any subject pending before the board.
15 The tax appeal court shall have the power, upon request of the
16 boards, to enforce by proper proceedings the attendance of
17 witnesses and the giving of testimony by them, and the
18 production of books, records, and papers at the hearings of the
19 boards.

20 (e) If there exists more than one board of review in a
21 taxation district, the chair of one board, administratively and
22 without requirement of any formal action, may assign a member of
23 that board to serve as a temporary member of the requesting

S . B . NO . 2923

1 board for purposes of establishing a quorum at a designated
2 meeting of the requesting board. The temporary member shall
3 serve only for the specific board meeting for which the
4 assignment is made and only for the period necessary to
5 establish and maintain a quorum. A temporary member may
6 participate in discussion and vote on all matters before the
7 board. Nothing herein shall prevent a member from being
8 assigned multiple times under this subsection.

9 (f) When a taxpayer elects to transfer its tax appeal to
10 the tax appeal court under section 235-114, it shall notify the
11 chairperson of the board in writing of such election. Within
12 thirty days of such written notification, the chairperson of the
13 board shall file a notice of transfer with the tax appeal
14 court."

15 SECTION 3. Section 232-24, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§232-24 Taxes paid pending appeal.** The tax paid upon the
18 amount of any assessment, actually in dispute and in excess of
19 that admitted by the taxpayer, and covered by an appeal to the
20 tax appeal court duly taken, shall, pending the final
21 determination of the appeal, be paid by the director of finance
22 into the "litigated claims fund". If the final determination is
23 in whole or in part in favor of the appealing taxpayer, the

S.B. NO. 2923

1 director of finance shall repay to the taxpayer out of the fund,
2 or if investment of the fund should result in a deficit therein,
3 out of the general fund of the State, the amount of the tax paid
4 upon the amount held by the court to have been excessive or
5 nontaxable, together with from the date of each payment into the
6 litigated claims fund, the interest to be paid from the general
7 fund of the State. For purposes of this section, the rate of
8 interest shall be [~~computed by reference to section 6621(a)~~
9 ~~(with respect to interest rate determination)~~ of the Internal
10 Revenue Code of 1986, as of January 1, 2010.] _____ per
11 cent a month or fraction of a month. The balance, if any, of
12 the payment made by the appealing taxpayer, or the whole of the
13 payment, in case the decision is wholly in favor of the
14 assessor, shall, upon the final determination become a
15 realization under the tax law concerned.

16 In a case of an appeal to a board of review, the tax paid,
17 if any, upon the amount of the assessment actually in dispute
18 and in excess of that admitted by the taxpayer, shall during the
19 pendency of the appeal and until and unless an appeal is taken
20 to the tax appeal court, be held by the director of finance in a
21 special deposit. In the event of final determination of the
22 appeal in the board of review, the director of finance shall
23 repay to the appealing taxpayer out of the deposit the amount of

1 the tax paid upon the amount held by the board to have been
2 excessive or nontaxable, if any, the balance, if any, or the
3 whole of the deposit, in case the decision is wholly in favor of
4 the assessor, to become a realization under the tax law
5 concerned."

6 SECTION 4. Section 235-114, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§235-114 Appeals.** (a) Any person aggrieved by any
9 assessment of the tax or liability imposed by this chapter may
10 appeal from the assessment in the manner and within the time
11 hereinafter set forth. Appeal may be made either to the
12 district board of review or to the tax appeal court. The first
13 appeal to either the district board of review or to the tax
14 appeal court may be made without payment of the tax so
15 assessed[-], unless the assessment exceeds \$50,000, in which
16 case the aggrieved person shall pay the assessed taxes,
17 penalties, and interest, subject to subsection (c). Either the
18 taxpayer or the assessor may appeal to the tax appeal court from
19 a decision by the board or to the intermediate appellate court
20 from a decision by the tax appeal court; provided that if the
21 decision by the board or the tax appeal court is appealed by the
22 taxpayer, or the decision by the board in favor of the
23 department is not appealed, the taxpayer shall pay the tax so

1 assessed plus interest as provided in section 231-39(b)(4).

2 (b) If the appeal is first made to the board, the appeal
3 shall either be heard by the board or be transferred to the tax
4 appeal court for hearing at the election of the taxpayer or
5 employer[-] pursuant to section 232-7(f). If heard by the
6 board, an appeal shall lie from the decision thereof to the tax
7 appeal court and to the intermediate appellate court, subject to
8 chapter 602, in the manner and with the costs provided by
9 chapter 232. The supreme court shall prescribe forms to be used
10 in the appeals. The forms shall show:

- 11 (1) The amount of taxes or liability upon the basis of the
12 taxpayer's computation of the taxpayer's taxable
13 income or the employer's computation of the employer's
14 liability;
- 15 (2) The amount upon the basis of the assessor's
16 computation;
- 17 (3) The amount upon the basis of the decisions of the
18 board of review and tax appeal court, if any; and
- 19 (4) The amount in dispute.

20 If or when the appeal is filed with or transferred to the
21 tax appeal court, the court shall proceed to hear and determine
22 the appeal, subject to appeal to the intermediate appellate
23 court as is provided in chapter 232.

1 (c) Any taxpayer or employer appealing from any assessment
2 of income taxes or liability shall lodge with the assessor or
3 assistant assessor a notice of the appeal in writing, stating
4 the ground of the taxpayer's or employer's objection to the
5 additional assessment or any part thereof. The taxpayer or
6 employer also shall file the notice of appeal with the board or
7 the tax appeal court at any time within thirty days subsequent
8 to the date when the notice of assessment was mailed, properly
9 addressed to the taxpayer or employer at the taxpayer's or
10 employer's last known residence or place of business. Except as
11 otherwise provided, the manner of taking the appeal, the costs
12 applicable thereto, and the hearing and disposition thereof,
13 including the distribution of costs and of taxes paid by the
14 taxpayer pending the appeal, shall be as provided in chapter
15 232.

16 The tax appeal court may allow an individual taxpayer to
17 file a subsequent appeal without payment of the net income tax
18 in cases where the total tax liability does not exceed \$50,000
19 in the aggregate for all tax years, upon proof that the taxpayer
20 would be irreparably injured by payment of the tax."

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

S.B. NO. 2923

1 SECTION 6. This Act shall take effect upon its approval;
2 provided that section 3 shall apply to amounts deposited in the
3 litigated claims fund after December 31, 2015.

INTRODUCED BY: *M. D. M.*
BY REQUEST

S.B. NO. 2923

Report Title:

Tax Administration

Description:

Imposes interest on unpaid penalties and fines; requires filing with tax appeal court a notice of transfer upon transfer of appeal to tax appeal court; amends rate of interest on amounts paid out of litigated claims fund; and requires full payment of assessed taxes, penalties, and interest for the first appeal where the assessment exceeds \$50,000.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAX ADMINISTRATION.

PURPOSE: Impose interest on unpaid penalties and fines; require the chairperson of the board of review to file a notice of transfer with the tax appeal court upon the transfer of an appeal from the board of review to the tax appeal court; amend the interest rate on amounts paid out of the litigated claims fund; and require full payment of assessed taxes, penalties, and interest for the first appeal to either the district board of review or to the tax appeal court in which the assessment exceeds \$50,000.

MEANS: Add a new section to chapter 231, Hawaii Revised Statutes, and amend sections 232-7, 232-24, and 235-114, Hawaii Revised Statutes.

JUSTIFICATION: The department finds that adding a new section that specifies that interest will be imposed on unpaid penalties and fines will bring consistency to the treatment of penalties and fines within Title 14, Hawaii Revised Statutes, and promote compliance with the tax laws. The department finds that requiring the chairperson of the board of review to file a notice of transfer with the tax appeal court will add clarity to the status of tax appeals that are transferred from the board of review to the tax appeal court. The department finds that amending the language regarding interest rate on amounts paid out of the litigated claims fund will add clarity and consistency to the law and greater ease of administration for the department. The department finds that payment of taxes prior to appeal for

taxpayers in which the assessments exceed \$50,000 will reduce frivolous appeals and prevent abuse of the tax appeal system by persons attempting to delay payment of taxes.

Impact on the public: There is no significant impact to the general public. For taxpayers with assessments under \$50,000, there is no impact. The public will benefit from the increased clarity in the law regarding interest rates on amounts paid out of the litigated claims fund.

Impact on the department and other agencies: The department will benefit from a reduction in frivolous appeals or abuse of the tax appeal system. The department and the judiciary will benefit from the added clarity in appeal proceedings provided by the filing of a notice of transfer.

GENERAL FUND: Indeterminate.

OTHER FUNDS: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.