

TAX FOUNDATION OF HAWAII

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SUBJECT: TAX APPEALS, Procedure for Payments Under Protest when Suit Brought Prematurely

BILL NUMBER: HB 1174 HD 1

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs

EXECUTIVE SUMMARY: Allows for the interest earned on payments under protest in the litigated claims fund to be paid in nontaxation cases if the claimant prevails. Establishes a procedure for the disposition of moneys and refiling of actions when a payment under protest suit is filed prematurely.

SYNOPSIS: Amends section 40-35, HRS, to provide that if a payment under protest suit is brought prematurely and the claimant's suit is dismissed, the claimant's payment may be retained in the litigated claims fund. If the agency then renders a final decision, the claimant has 30 days to refile the suit. If the agency does not render a final decision within 180 days after the date of the claimant's payment, the payment is to be refunded to the claimant with interest while the litigants await the agency's final decision.

Also provides that the interest to be paid is the interest earned on the payment by the litigated claims fund, as opposed to the flat 2% under current law.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: *Grace Business Development Corporation v. Kamikawa*, 92 Haw. 608, 994 P.2d 540 (2000), held that if a taxpayer pays money under protest but then sues for a refund before the defendant agency has formally taken a position on whether the money is due, the appeal is to be dismissed. If the agency later decides that the money is indeed due, it is generally too late for the suit to be refiled (it needs to be filed within 30 days after the payment), potentially allowing the agency to keep the money whether or not the payment to the agency was legal. This bill prevents the Catch-22 situation described.

As an example, suppose a taxpayer is being audited. The auditor sends an email to the taxpayer directing him to pay \$10,000 in additional tax. The taxpayer pays the amount with a protest letter and files suit under HRS section 40-35. The Department responds that the auditor's email was not a formal agency determination, and the court dismisses the lawsuit. Assuming that 30 days have passed, under present law it appears that the taxpayer loses the money whether or not the taxpayer would have prevailed on the merits. Under the bill, the taxpayer's money is retained in the litigated claims fund for 180 days. If a Notice of Final Assessment is then issued, the taxpayer can refile the lawsuit with no additional payment (except for the court filing fee) within 30 days after the Notice. And if the agency does not decide within the 180 days, it must refund the money to the taxpayer; if the agency then issues a final assessment the taxpayer can then pay under protest and sue within 30 days.

The bill changes the interest rate payable when the taxpayer wins from a flat rate of 2% to the actual earnings on the special deposit, following the rule in *Hawaiian Trust Co. v. Smith*, 32 Haw. 38 (1931)., where the court held that when the taxpayer wins, the money in the special account is the taxpayer's money and the taxpayer should be entitled to the earnings on it.

Digested: 2/23/25

HB-1174-HD-1

Submitted on: 2/24/2025 12:12:44 PM

Testimony for FIN on 2/25/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Matson	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and Committee Members,

I am writing in strong support of any bills that will help strengthen the Payment Under Protest options for our citizens that find themselves up against deadlines for payment with dire consequences and little to no recourse. I am on a personal crusade to end predatory practices of extorting our citizens from years old medical bills from deceased family members and about to explore using this option for the first time. This is an issue I only recently became aware of, being in the midst of it myself. I currently am being penalized \$20,000 on a house sale that had no liens on it when I began the process of escrow, and has since been subject to old medical bills from my deceased father, with no option to receive any additional info. about when or how or where these charges came from. As the new owners were already occupying the property and escrow has already been extended multiple times, I find myself forced to pay these charges to the State while also investigating and attempting to navigate how to potentially contest these charges. The property has not been under my father's name for over 18 months, so I believe the State's claim is directly in opposition to HRS 527-15, but as there is no formal way to contest their claim other than obtaining an attorney and addressing it in court, I am grateful for the additional 30 days to try to reclaim my money.

The entire division of civil recoveries in the State Attorney General's office needs to be investigated, audited, and reformed to actually serve our people and provide help and guidance in cases like this rather than corporate interests. Why is the State fighting our most income constrained individuals for bills their dead relatives may or may not have accrued at the benefit of Hawai'i Health Systems Corporation? My guess is that this money is overhead/admin expenses/insurance premiums and is in no way making us as a society healthier or happier. It is increasing the income divide and harming those who have already suffered the loss of a loved one. Please pass this bill and look into additional ways you can help address this predatory practice of collections on outdated medical bills, of which the Deputy Attorney General mistakenly informed me that there is no statute of limitations on. There is absolutely a statute of limitations once a property has been transferred, as laid out in HRS 527-15 and I recommend that the 18 months be shortened to 30 days. If our citizens only have 30 DAYS to try to fix a potentially mistaken taking of funds, then why does the State and Corporations get 18 MONTHS to attempt to claim funds from dead people who cannot defend themselves and whose families may have no resources or wherewithal to begin to navigate how to contest these takings? Or amend this bill to give me 18 months to attempt to reclaim my funds, as would be another way to correct this inequity. Oh and OUR LEGAL FEES SHOULD ALSO BE AUTOMATICALLY

COVERED IF WE SUCCEED in reclaiming our funds. Otherwise, how else is the average person expected to navigate this tangle and even have a fair shot at reclaiming funds when the State makes a mistake?

Mahalo for your time and consideration,

Shannon Matson

Hawai'i Island Resident

Daughter of Robert Northrop, killed by dogs on the street in Oceanview, August 1st, 2023