

ACT 45

A Bill for an Act Relating to Taxation, Amending Chapters 115, 117, 118, 119, 121, 122, 123, 124, 125, 126 and 127 of the Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. Chapter 115 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended:

(a) By amending section 115-26 to read as follows:

**“Sec. 115-26. Changes, etc., in assessment lists.** Except as specifically provided in chapter 115 and chapter 128, no changes in, additions to or deductions from, the real property tax assessments on the assessment lists prepared as provided in section 128-28 shall be made except to add thereto property or assessments which may have been omitted therefrom, or to deduct therefrom adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors and errors in calculation.”

(b) By repealing section 115-27.

(c) By amending section 115-28 to read as follows:

**“Sec. 115-28. Adjustments and refunds.**

(a) The provisions of this subsection shall apply to taxes assessed and collected under chapter 128.

(1) In the event of adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors and errors in calculations, the adjustments may be entered upon the records although the full amount appearing on the records prior to such adjustment has been paid.

(2) There may be refunded in the manner provided in subsection (c) of this section any amount collected in excess of the amount appearing on the records as adjusted, or any amount constituting a duplication of payment in whole or in part.

(3) No such adjustment shall be entered on the records nor refund made except within two years after the end of the calendar year in which the amount to be refunded was due and payable, unless a written application for such adjustment or refund has been filed within such period.

(b) The provisions of this subsection shall apply to all taxes except those collected under chapter 128 and those collected under a chapter containing a provision for credit and refund of the amount of tax paid in excess of the tax imposed by such chapter. As to all tax payments for which a refund or credit is not authorized by this subsection (including without prejudice to the generality of the cases of unconstitutionality hereinafter mentioned in (1)(iii)) the remedies provided by appeal or under section 34-24 are exclusive.

(1) If the amount already paid exceeds that which should have been paid under the provisions of the chapter imposing a particular tax, or if the amount already paid results in duplication of payment in whole or in part, the excess so paid shall be refunded in the manner provided in subsection (c) of this section, subject however to the following limitations:

(i) No refund shall be made unless an application for such refund shall have been made within five years after the amount to be refunded was paid;

(ii) No recourse may be had except under section 34-24 or by appeal for refunds of taxes paid pursuant to an assessment by the director, provided, that if the assessment by the director shall contain clerical errors, transposition of figures, typographical errors and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refund procedures shall apply.

(iii) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally.

(2) In any case where a taxpayer is entitled to a refund, he may, at his election, apply the amount of such refund as an overpayment credit to taxes subsequently accruing under the same chapter as that under which the refundable amount was collected.

(c) The provisions of this subsection shall apply to all taxes.

(1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. Such refund vouchers shall

set forth all the details of each transaction, shall be approved by the director and shall be forwarded to the comptroller from time to time. The comptroller shall issue his warrant, in the form prescribed by section 34-48, for the payment of any such refund out of the tax reserve fund hereinafter created; provided, that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to such delinquent taxpayer, shall withhold the amount of such delinquent taxes, together with penalties and interest thereon, from the amount of such refund and pay the same to the collector.

(2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 117, 118, 119, 121, 122, 123, 124, 125, 126, 127, and 128, Revised Laws of Hawaii 1955, as amended, heretofore made out of the reserve funds in chapters 117, 121 and 122 or from the general fund shall be made out of the tax reserve fund. The director of taxation may, from time to time, deposit taxes collected by him under the provisions of the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. Such amounts deposited shall be made from the taxes with respect to which a particular refund is made, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated.

(3) The tax reserve funds in sections 117-32, 121-44 and 122-33 are hereby abolished. All unexpended balances remaining in the said funds shall be deposited into the general fund of the State."

SECTION 2. Chapter 117 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending section 117-32 to read as follows:

**"Sec. 117-32. Refunds and credits.** If the amount already paid exceeds that which should have been paid on the basis of the tax recomputed as provided in the preceding section, the excess so paid shall be immediately refunded to the taxpayer in the manner provided in section 115-28(c). The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder. All refunds and the details thereof, including the names of the persons receiving the refund and the amount refunded shall be accessible for the inspection of the public in the office of the assessor of the taxation division in which the person receiving the refund made his returns.

No recourse may be had except under section 34-24 or by appeal for refunds of taxes paid pursuant to an assessment by the director, provided, that if the assessment by the director shall contain clerical errors, transposition of figures, typographical errors and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refunds procedures shall apply. No refund or overpayment credit may be had under this section in any event unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally.

As to all tax payment for which a refund or credit is not authorized by this section (including without prejudice to the generality of the foregoing cases of unconstitutionality) the remedies provided by appeal or under section 34-24 are exclusive.”

SECTION 3. Chapter 118 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending section 118-2(a) to read as follows:

“(a) If the purchaser is licensed under chapter 117 and is (1) a wholesaler or jobber purchasing for purposes of resale, or (2) a manufacturer purchasing material or commodities which are to be incorporated by such manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as such manufacturer and not as a retailer, there shall be no tax, provided, that if such wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 117), paragraph (b) shall apply to him, but the director shall refund to him in the manner provided in section 115-28(c), such amount of tax as he shall, to the satisfaction of the director, establish to have been paid by him to the director or to a person required or authorized to collect such tax, with respect to property which has been used by him for the purposes stated in this paragraph.”

SECTION 4. Chapter 121 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended:

(a) By adding to section 121-36(a) the following sentence:

“All books of account required to be kept by this chapter shall be preserved for a period of five years, except that the director may, in writing, consent to their destruction within such period or may require that they be kept longer.”

(b) By amending the second sentence of section 121-44(a) to read in full as follows:

“If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the amount of the credit shall be refunded in the manner provided in section 115-28(c).”

(c) By amending section 121-44(c) to read as follows:

“(c) Any refund earned under this section shall be made in the manner provided in section 115-28(c).”

(d) By repealing section 121-44(d).

SECTION 5. Chapter 122 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending section 122-33 to read in full as follows:

“**Sec. 122-33. Refunds.** There shall be refunded, without interest, in the manner provided in section 115-28(c) and subject to the time limitation hereinafter provided, any amount of tax paid to the director in excess of the amount due under sections 122-2 to 122-6, whether such overpayment was due to a mistake of fact or a mistake of law, or arose out of a payment or payments made to the director based upon an estimate of the amount of tax in advance of the actual calculation of the

tax. An application for such refund must be made within five years after the payment; provided that, prior to the expiration of such period, the court, upon the petition of any interested person, may extend the time allowed for such application, where, through necessary litigation or other unavoidable cause of delay, the tax has not been finally determined. Unless the application is supported by the determination by the circuit judge of the amount of the tax, which determination has become final, no such refund shall be made unless the application is approved by the director."

SECTION 6. Chapter 123 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by substituting for the words "three years" whenever they appear in the first paragraph of section 123-6 the words "five years".

SECTION 7. Chapter 124 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended:

(a) By substituting for the words "three years" whenever they appear in sections 124-8(b), 124-8(c) and 124-9(a) the words "five years".

(b) By substituting for the words "out of any moneys in the general fund not otherwise appropriated" in section 124-8(c) the words "in the manner provided in section 115-28(c)".

SECTION 8. Chapter 125 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended:

(a) By substituting for the words "three years" whenever they appear in sections 125-7(b), 125-7(c) and 125-8(a) the words "five years".

(b) By substituting for the words "out of any moneys in the general fund not otherwise appropriated" in section 125-7(c) the words "in the manner provided in section 115-28(c)".

SECTION 9. Chapter 127 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending the last sentence of section 127-6 to read as follows:

"Any tax refund payable under section 121-44, hereby made applicable to the taxes imposed by this chapter, shall be made in the manner provided in section 115-28(c)."

SECTION 10. This Act shall take effect on January 1, 1964.

(Approved May 18, 1963.) **H.B. 51.**