

ACT 134

S. B. 179.

A Bill for an Act Relating to Taxation and Amending Chapters 115, 116, and 121, Revised Laws of Hawaii 1955, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The heading and subsections (a) and (b) of section 115-43, Revised Laws of Hawaii 1955, are hereby amended to read as follows:

“Section 115-43. Additions to taxes for noncompliance or evasion; interest on underpayments and overpayments. (a) Except as otherwise provided, this section shall apply to every tax or revenue law of the State that provides for the filing with the director of a return or statement of the tax or the amount taxable.

“(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

“(1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to neglect, there shall be added to the

amount required to be shown as tax on such return 5 per cent of the amount of such tax if the failure is for not more than one month, with an additional 5 per cent for each additional month or fraction thereof during which such failure continues, not exceeding 25 per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 121-31.

“(2) Failure to pay tax. (A) If any part of any underpayment is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount up to 10 per cent of the underpayment as determined by the director.

“(B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to 50 per cent of the underpayment as determined by the director.

“(C) If any penalty is assessed under subparagraph (B) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file such return) shall be assessed with respect to the same underpayment.

“(3) Interest on underpayment or nonpayment of tax. (A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent per month or fraction of a calendar month shall be paid for the period beginning with the first month following the date prescribed for payment, or if the prescribed date for payment is the end of a calendar month, and section 115-25.5 is applicable, beginning with the month on which the due date as so extended is a part, to the date paid.

“(B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 121, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.

“(C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.

“(D) No interest under this paragraph shall be imposed on interest provided by this paragraph.

“(E) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

“(F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

“(G) This paragraph shall not apply to any failure to pay estimated tax required by section 121-31.”

SECTION 2. Section 115-28 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding thereto a new subsection after subsection (d) which shall be designated as subsection (e) and which shall read as follows:

“(e) The provisions of this subsection shall apply to a refund for an overpayment of a tax.

“(1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not the basis of installments exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of such overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection 115-28(d). Such interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with the first month after the due date of the return and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within 90 days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within 45 days from the date of the director's approval as aforesaid, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the due date of the return as aforesaid until the date that the comptroller sends the refund warrant to the taxpayer.

“(2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first month after the due date of the original return to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within 45 days after the director's approval as aforesaid, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.

“(3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises. To the extent that such carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of such underpayment shall not be applicable with respect to that amount or amounts which are carried back as aforesaid.

“(4) In the case of credit, interest shall be allowed and paid from the due date of the return or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of

any credit to a taxpayer where such taxpayer has no underpayment against which to apply the credit.”

SECTION 3. Section 116-21 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by substituting the word “eight” for the word “two” which appears in the second sentence thereof.

SECTION 4. Subsection (f) of section 121-31, Revised Laws of Hawaii 1955, is hereby deleted in its entirety and subsections (g) and (h) of section 121-31 shall be renumbered (f) and (g), respectively, and the introductory paragraph of subsection (f), as renumbered, of section 121-31, beginning with the words “If an estimate or return is filed” and ending with the words “That is:”, is hereby amended to read as follows:

“(f) In the case of any underpayment of estimated tax, except as provided by paragraph (3) of this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of 8 per cent per annum upon the amount of the underpayment (determined under paragraph (1) of this subsection) for the period of the underpayment (determined under paragraph (2) of this subsection).”

SECTION 5. This Act shall take effect on January 1, 1968.

(Approved May 29, 1967.)