

ACT 12

H.B. NO. 2622-74

A Bill for an Act Relating to the Administration of Taxes.

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

SECTION 1. Section 231-23, Hawaii Revised Statutes, is amended to read:

“Sec. 231-23 Adjustments and refunds. (a) This subsection shall apply to taxes assessed and collected under chapter 246.

- (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 (d) 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) Whenever any real property is deemed by the director of taxation to be exempt from taxation under section 246-39, if there shall have been paid prior to the effective date of the exemption any real property taxes applicable to the period following the effective date of the exemption, there shall be refunded to the nonprofit or limited distribution mortgagor owning the property in the manner provided in section 231-23(d) all amounts representing the real property taxes which have been paid on account of the property and attributable to the period following the effective date of the exemption.
- (4) No such adjustment shall be entered on the records nor refund made except within two years after the end of the tax year in which the amount to be refunded was due and payable, unless a written application for the adjustment or refund has been filed within such period.
- (b) This subsection shall apply to all taxes except those collected under chapters 246 and 247 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) (C)) the remedies provided by appeal or under section 40-35 are exclusive.
 - (1) If the amount already paid exceeds that which should have been paid under 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 (d) of this section, subject however to the following limitations:
 - (A) No refund shall be made unless an application for the refund shall have been made within five years after the amount to be refunded was paid;
 - (B) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the director of taxation, 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.
 - (C) 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 the refund as an overpayment credit to taxes subsequently accruing under the same chapter as that under which the refundable amount was collected.

(c) This subsection shall apply to the taxes collected under chapter 247. There may be refunded in the manner provided in subsection (d) of this section such conveyance tax as has been erroneously or unjustly paid.

(d) 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. The 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 40-52, 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 the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the 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 235 to 239, 241, and 243 to 246 heretofore made out of the reserve funds in chapters 235, 236, and 237 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 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. The 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.

(e) 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 on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection 231-23(d). The 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 ninety 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 forty-five days from the date of the director's approval, 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 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 forty-five days after the director's approval, 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, the overpayment shall be deemed not to have been made prior to the close of the taxable year in which the net operating loss arises. To the extent that the 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 the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
- (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 the taxpayer has no underpayment against which to apply the credit."

SECTION 2. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved April 4, 1974.)

*Edited accordingly.