

ACT 22

S.B. NO. 1228

A Bill for an Act Relating to Net Operating Losses.

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

SECTION 1. Section 235-111, Hawaii Revised Statutes, is amended to read as follows:

“§235-111 Limitation period for assessment, levy, collection, or credit[.]; net operating loss carrybacks. (a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the final return for the taxable year, or within three years of the due date prescribed for the filing of [said] the return, whichever is later, and no proceeding in court without assessment for the collection of such taxes or the enforcement of such liability shall be begun after the expiration of such period.

(b) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to such claim must first be made by a judge of the circuit

court for or in the circuit within which the taxpayer or employer has the taxpayer's or employer's residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation[, which]. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in such proceedings[, and no]. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.

(c) Extension by agreement. Where, before the expiration of the time prescribed in subsection (a) [of this section] for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer or employer have consented in writing to its assessment or levy after such date, the tax or liability may be assessed or levied or the overpayment, if any, may be credited at any time prior to the expiration of the period previously agreed upon. The period so agreed upon may be extended by the subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) Overpayment of carrybacks. If an overpayment results from a net operating loss carryback, the statute of limitations in subsection (a) shall not apply. The overpayment shall be credited within three years of the due date prescribed for filing the return (including extensions thereof) for the taxable year of the net operating loss, or the period agreed to under subsection (c) with respect to such taxable year, whichever expires later."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1990.

(Approved April 17, 1991.)