

ACT 19

S.B. NO. 2970

A Bill for an Act Relating to Administrative Tax Refunds.

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

SECTION 1. Section 236D-13, Hawaii Revised Statutes is amended to read as follows:

“~~[[§236D-13]] Refund for overpayment.~~ Whenever the tax due under this chapter is proved to have been overpaid, the department shall refund the amount of the overpayment, together with interest at the then existing statutory rate of interest in the manner provided in section 231-23(d). No claim for refund may be initiated more than two years after the date the federal tax has been finally determined.

As to all tax payments 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 by section 40-35 are exclusive.”

SECTION 2. Section 237D-10, Hawaii Revised Statutes, is amended to read as follows:

“§237D-10 Overpayment; refunds. Upon application by an operator, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty shall be credited by the director on any taxes then due from the operator under this chapter. The director shall refund the balance to the operator or the operator’s successors, administrators, executors, or assigns in accordance with section 231-23. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund [shall be filed within three years

after the annual return was filed, or in any case of payment of tax without the filing of an annual return, within three years after payment of tax, or within three years of the date prescribed for the filing of the annual return, whichever is later.] is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return,whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section 237D-11.

As to all tax payments 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 by section 40-35 are exclusive."

SECTION 3. Section 243-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the three year period. As to all tax payments 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 by section 40-35 are exclusive."

SECTION 4. Section 247-8, Hawaii Revised Statutes, is amended to read as follows:

"§247-8 Refunds. The director of taxation may order the refund in whole or in part of any tax which has been erroneously or unjustly paid. The order shall be made in accordance with section 231-23. As to all tax payments 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 by section 40-35 are exclusive."

SECTION 5. Section 251-9, Hawaii Revised Statutes, is amended to read as follows:

"[§251-9] Overpayment; refunds. Upon application by a person, if the director determines that any surcharge tax, interest, or penalty has been paid

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more than once, or has been erroneously or illegally collected or computed, the surcharge tax, interest, or penalty shall be credited by the director on any surcharge taxes then due from the person under this chapter. The director shall refund the balance to the person or the person's successors, administrators, executors, or assigns in accordance with section 231-23(d). No credit or refund shall be allowed for any surcharge tax imposed by this chapter, unless a claim for the credit or refund [shall be filed within three years after the annual return was filed, or in any case of payment of surcharge tax without the filing of an annual return, within three years after payment of surcharge tax, or within three years of the date prescribed for the filing of the annual return, whichever is later.] is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return,whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section 251-10.

As to all tax payments 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 by section 40-35 are exclusive."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 15, 1994.)