

**ACT 199**

S.B. NO. 2946

A Bill for an Act Relating to Taxation Appeals.

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

SECTION 1. Section 232-24, Hawaii Revised Statutes, is amended to read as follows:

**“§232-24 Taxes paid pending appeal.** The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director of finance into the ‘litigated claims fund’. If the final determination is in whole or in part in favor of the

appealing taxpayer, the director of finance shall repay to the taxpayer out of the fund, or if investment of the fund should result in a deficit therein, out of the general fund of the State, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with interest at the rate of eight per cent a year from the date of each payment into the litigated claims fund, the interest to be paid from the general fund of the State. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization under the tax law concerned.

In a case of an appeal to a board of review, the tax paid, if any, upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director of finance in a special deposit. In the event of final determination of the appeal in the board of review, the director of finance shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, to become a realization under the tax law concerned.”

SECTION 2. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

**“§235-114 Appeals.** Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth[; provided the tax so assessed shall have been paid]. Appeal may be made either to the district board of review or to the tax appeal court[.]; provided that, for appeals other than to the board, the tax so assessed shall have been paid. Either the taxpayer or the assessor may appeal to the tax court from a decision by the board upon which the tax so assessed shall have been paid. If the taxpayer chose not to pay the tax when appealing to the board, and the decision by the board is appealed by the taxpayer or the decision by the board in favor of the department is not appealed, the taxpayer must pay the tax so assessed plus interest as provided in section 231-39(b)(4).

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the supreme court in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show the amount of taxes or liability upon the basis of the taxpayer’s computation of the taxpayer’s taxable income or the employer’s computation of the employer’s liability, the amount upon the basis of the assessor’s computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and the amount in dispute. If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the supreme court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer’s or employer’s objection to the additional assessment or any part thereof. The taxpayer or employer shall also file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed properly addressed to the taxpayer or employer at the taxpayer’s or employer’s last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the

distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The [board or the] tax appeal court may allow an individual taxpayer to file an appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax.”

SECTION 3. Section 237-42, Hawaii Revised Statutes, is amended to read as follows:

“**§237-42 Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114, provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid.”

SECTION 4. Section 237D-11, Hawaii Revised Statutes, is amended to read as follows:

“[[§237D-11]] Appeals. Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid.”

SECTION 5. Section 238-8, Hawaii Revised Statutes, is amended to read as follows:

“**§238-8 Appeal, correction of assessment.** If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon the person by the director of taxation, the person may, provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid, appeal the assessment in the manner and within the time and in all other respects as provided in section 235-114, for which purpose the word “income” shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 6. Section 243-14.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§243-14.5]] Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 7. Section 244D-12, Hawaii Revised Statutes, is amended to read as follows:

“[[§244D-12]] Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and

within the time and in all other respects as provided in the case of income tax appeals by section 235-114, provided that<sup>1</sup>, for appeals other than to the district board of review, the taxes<sup>2</sup> so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 8. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

“**§245-10 Appeals.** Any person aggrieved by any assessment of the taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 9. Section 247-4.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§247-4.5] Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.”

SECTION 10. Section 251-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§251-10] Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the surcharge tax so assessed shall have been paid.”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 8, 2000.)

Notes

1. “That” should be underscored.
2. Prior to amendment “tax” appeared here.