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# A BILL FOR AN ACT

RELATING TO TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 235-11, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§235-111 Limitation period for assessment, levy,**  
4 **collection, or credit; net operating loss carrybacks.** (a)

5 General rule. The amount of income taxes imposed by this  
6 chapter (also the amount of income taxes imposed by any  
7 preceding law of the State) and the liability of any employer in  
8 respect of wages, shall be assessed or levied and the  
9 overpayment, if any, shall be credited within three years after  
10 filing of the return for the taxable year, or within three years  
11 of the due date prescribed for the filing of the return,  
12 whichever is later. No proceeding in court without assessment  
13 for the collection of the taxes or the enforcement of the  
14 liability shall be begun after the expiration of the period.

15           (b) Internal Revenue Service adjustment. No assessment or  
16 levy of the tax or liability after the expiration of the three-



1 year period shall be made because of subsequent Internal Revenue  
2 Service adjustments to a taxpayer's federal tax return.

3 (c) Ten-year limitation. If the assessment of any tax  
4 imposed by this chapter has been properly made within the period  
5 of limitation, the tax may be collected by levy or by a  
6 proceeding in court, but only if the levy is made or the  
7 proceeding begun:

- 8 (1) Within ten years after the assessment of the tax; or  
9 (2) There is an agreement between the taxpayer and the  
10 department that provides otherwise.

11 ~~[(b)]~~ (d) Limitations on credit or refund. Claim for  
12 credit or refund of an overpayment of any tax imposed by this  
13 chapter shall be filed by the taxpayer or employer within three  
14 years from the time the return was filed or from the due date  
15 prescribed for the filing of the return, or within two years  
16 from the time the tax was paid, whichever is later. For the  
17 purposes of this section, taxes paid before the due date of the  
18 return shall be deemed to have been paid on the due date of the  
19 return determined without regard to any extensions.

- 20 (1) If the claim was filed by the taxpayer during the  
21 three-year period prescribed in this subsection, the  
22 amount of the credit or refund shall not exceed the



1           portion of the tax paid within the period, immediately  
2           preceding the filing of the claim, equal to three  
3           years plus the period of any extension of time for  
4           filing the return.

5           (2) If the claim was not filed within the three-year  
6           period, the amount of the credit or refund shall not  
7           exceed the portion of the tax paid during the two  
8           years immediately preceding the filing of the claim.

9           (3) If no claim was filed, the credit or refund shall not  
10          exceed the amount which would be allowable under  
11          paragraph (1) or (2), as the case may be, if the claim  
12          was filed on the date the credit or refund is allowed.

13          [~~(e)~~] (e) Exceptions; fraudulent return or no return. In  
14          the case of a false or fraudulent return with intent to evade  
15          tax or liability, or of a failure to file return, the tax or  
16          liability may be assessed or levied at any time; provided that  
17          in the case of a return claimed to be false or fraudulent with  
18          intent to evade tax or liability, the determination as to the  
19          claim shall first be made by a judge of the circuit court for or  
20          in the circuit within which the taxpayer or employer has the  
21          taxpayer's or employer's residence or principal place of  
22          business, or if none in the State then in the first circuit,



1 upon petition filed by the department of taxation. The petition  
2 and other pleadings and proceedings in the matter shall be  
3 governed and conducted in accordance with statutory and other  
4 requirements relating to proceedings in equity, including all  
5 rights to appeal allowed in the proceedings. No assessment or  
6 levy of the tax or liability after the expiration of the three-  
7 year period shall be made unless so provided in the final decree  
8 entered in the proceedings.

9        [~~d~~] (f) Extension by agreement. Where, before the  
10 expiration of the time prescribed in subsection (a) for the  
11 assessment, levy, and collection of the tax or liability, or in  
12 subsection [~~b~~] (d) for the credit or refund of an overpayment,  
13 both the department and the taxpayer or employer have consented  
14 in writing to its assessment or levy after that date, the tax or  
15 liability may be assessed or levied or the overpayment, if any,  
16 may be credited at any time prior to the expiration of the  
17 period previously agreed upon. The period so agreed upon may be  
18 extended by the subsequent agreements in writing made before the  
19 expiration of the period previously agreed upon.

20        [~~e~~] (g) Overpayment of carrybacks. If an overpayment  
21 results from a net operating loss carryback, the statute of  
22 limitations in subsections (a) and [~~b~~] (d) shall not apply.



1 The overpayment shall be credited within three years of the due  
2 date prescribed for filing the return (including extensions  
3 thereof) for the taxable year of the net operating loss, or the  
4 period agreed to under subsection ~~[(d)]~~ (f) with respect to the  
5 taxable year, whichever expires later."

6 SECTION 2. Section 237-40, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) General rule. The amount of excise taxes imposed by  
9 this chapter shall be assessed or levied within three years  
10 after the ~~[annual return was filed,]~~ filing of any periodic  
11 return, or within three years of the due date prescribed for the  
12 filing of ~~[said]~~ the return, whichever is later, and no  
13 proceeding in court without assessment for the collection of any  
14 such taxes shall be begun after the expiration of the period.

15 No assessment or levy of the tax or liability after the  
16 expiration of the three-year period shall be made because of  
17 subsequent Internal Revenue Service adjustments to a taxpayer's  
18 federal tax return."

19 SECTION 3. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun, before its effective date.



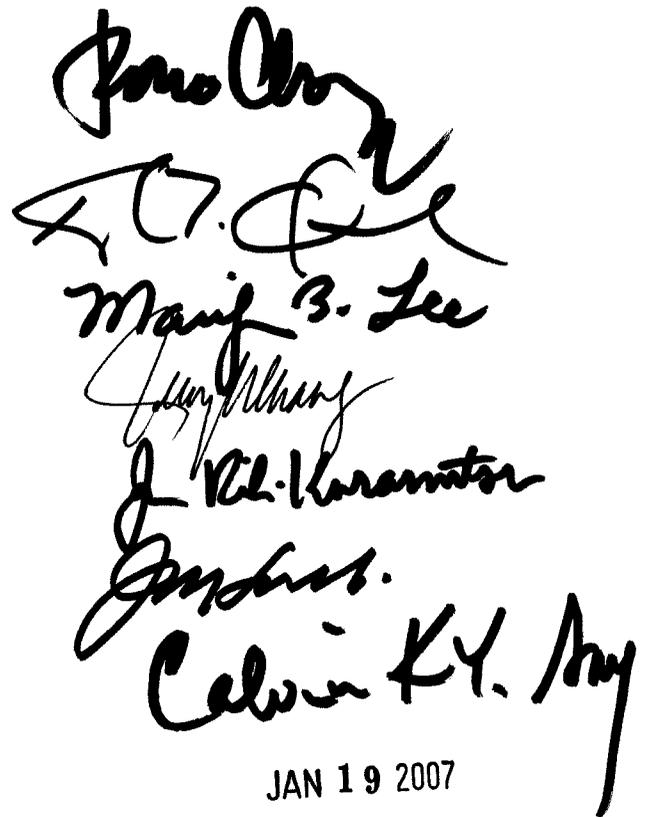
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1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: Kirk Caldwell


  
 Paul [unclear]
   
 F. D. [unclear]
   
 Manj B. Lee
   
 [unclear]
   
 J. R. Karamator
   
 [unclear]
   
 Calvin K. [unclear]

JAN 19 2007



**Report Title:**

Taxation; Statute of Limitation

**Description:**

Prohibits the re-opening of expired statute of limitations tax cases because of a related federal audit or review and also changes the method of determining the statute of limitations with respect to general excise tax assessments.

