
A BILL FOR AN ACT

RELATING TO THE PROCEDURE FOR PAYMENT UNDER PROTEST LAWSUITS.

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

1 SECTION 1. The legislature finds that the case *Grace*
2 *Business Development Corporation v. Kamikawa*, 92 Hawai'i 608, 994
3 P.2d 540 (2000), held that if a taxpayer pays money under
4 protest but then sues for a refund before the defendant agency
5 has formally taken a position on whether the money is due, the
6 appeal is to be dismissed. If the agency later decides that the
7 money is indeed due, it is usually too late for the suit to be
8 refiled, potentially allowing the agency to keep the disputed
9 moneys as a government realization without allowing the taxpayer
10 to obtain a judicial ruling on the merits of the exaction. To
11 prevent the possibility of injustice, this Act adds procedural
12 safeguards to ensure that the courts will be able to reach the
13 merits of the dispute.

14 Accordingly, the purpose of this Act is to:

15 (1) Allow for the interest earned on payments under
16 protest in the litigated claims fund to be paid in
17 nontaxation cases if the claimant prevails; and



(2) Establish a procedure for the disposition of moneys and refiling of actions when a payment under protest suit is filed prematurely.

SECTION 2. Section 40-35, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Action to recover moneys paid under protest or proceedings to adjust the claim may be commenced by the payer or claimant against the public accountant to whom the payment was made, in a court of competent jurisdiction, ~~[within]~~ no later than thirty days from the date of payment. If no suit or proceeding is brought within ~~[the thirty-day period,]~~ that time, the money paid under protest shall be deposited into the appropriate account in the treasury of the State by the accountant and the amount deposited shall thereupon become a government realization. Any action to recover payment of taxes under protest shall be commenced in the tax appeal court.

(c) If action to recover the money paid under protest or a proceeding to adjust the claim is timely commenced ~~[within the thirty-day period]~~, the amount paid under protest shall, pending final decision of the cause, be deposited by the public accountant into the state treasury, in a fund to be known as the



1 "litigated claims fund", together with subsequent payments or
2 portions thereof, made to the accountant under the same protest.
3 If judgment is rendered in favor of the claimant, the claimant
4 shall be paid the amount of the judgment out of the litigated
5 claims fund by warrants signed by the comptroller upon vouchers
6 approved by the head of the department, board, bureau,
7 commission, or other agency with which the claimant had the
8 dispute. If the amount of money in the litigated claims fund is
9 insufficient to pay the judgment the head of the department,
10 board, bureau, commission, or other agency with which the
11 claimant had the dispute shall include in their respective
12 budget requests to the department of budget and finance an
13 amount necessary to pay the judgment, plus interest, as provided
14 herein. Interest [~~at the rate of two per cent a year~~] earned on
15 the payment by the litigated claims fund from the date of each
16 payment under protest shall also be paid out of the amount
17 appropriated for the judgment payable to the claimant; provided
18 that if the claim is for the recovery of taxes paid under
19 protest by the claimant, the rate of interest and the
20 overpayment of taxes shall be refunded in the manner provided in
21 section 231-23(c) and (d). The amount of the judgment to be



1 paid to the claimant shall be ascertained by the head of the
2 department, board, bureau, commission, or other agency with
3 which the claimant had the dispute from a certified copy of the
4 judgment, which shall be the authority for making payment to the
5 claimant. If judgment is rendered against the claimant~~[7]~~ on
6 the merits, the amount of money paid by the claimant under
7 protest ~~[which]~~ that is in the litigated claims fund shall be
8 deposited into the appropriate account in the treasury of the
9 State and the amount shall become a government realization. If
10 the claimant's suit is determined to have been brought
11 prematurely because the agency had not rendered a final
12 decision, then the claimant's payment may be retained in the
13 litigated claims fund and:

- 14 (1) If the agency then renders a final decision, the
15 claimant may, within thirty days after notice of the
16 decision, refile the action for a refund of the
17 payment that is in the litigated claims fund,
18 whereupon the court shall have jurisdiction over the
19 refiled action; provided that if the agency decides
20 against the claimant and no suit or proceeding is
21 brought within thirty days after notice of the



1 decision, the money paid under protest shall be
2 deposited into the appropriate account in the treasury
3 of the State and the amount shall become a government
4 realization; or

5 (2) If the agency has not rendered a final decision within
6 one hundred eighty days after the date of the
7 claimant's payment, or decides in favor of the
8 claimant, the agency shall refund the payment to the
9 claimant with interest the same as if judgment had
10 been rendered for the claimant, and certify to the
11 court that it has done so."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Payments Under Protest; Procedure

Description:

Allows for the interest earned on payments under protest in the litigated claims fund to be paid in nontaxation cases if the claimant prevails. Establishes a procedure for the disposition of moneys and refiling of actions when a payment under protest suit is filed prematurely. (SD1)

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