
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 in *Grace Business*
2 *Development Corporation v. Kamikawa*, 92 Haw. 608, 994 P.2d 540
3 (2000), the supreme court of Hawaii held that if a taxpayer pays
4 money to the State under protest but sues for a refund before
5 the applicable agency has formally taken a position on whether
6 the money is due, there is no actual dispute for purposes of
7 section 40-35, Hawaii Revised Statutes, and the appeal must be
8 dismissed.

9 The legislature recognizes that, as result of this
10 interpretation of section 40-35, Hawaii Revised Statutes, after
11 it is too late for the person to refile the claim, situations
12 may arise in which a person's lawsuit is dismissed, but the
13 agency subsequently decides that the person does indeed owe tax
14 to the State. This potentially allows the State to keep the
15 disputed money without allowing the person an opportunity to
16 obtain a judicial ruling on the merits of the person's claim.



1 The legislature believes that action is necessary to
2 prevent the possibility of these injustices from occurring, and
3 to ensure that courts can evaluate the merits of payments made
4 to the State under protest, even if a claim for a refund is
5 filed prior to the agency's final determination.

6 Accordingly, the purpose of this Act is to clarify and add
7 procedural safeguards for payments made to the State under
8 protest.

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

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



1 (c) If action to recover the money paid under protest or a
2 proceeding to adjust the claim is timely commenced [~~within the~~
3 ~~thirty-day period~~], the amount paid under protest shall, pending
4 final decision of the cause, be deposited by the public
5 accountant into the state treasury, in a fund to be known as the
6 "litigated claims fund", together with subsequent payments or
7 portions thereof, made to the accountant under the same protest.
8 If judgment is rendered in favor of the claimant, the claimant
9 shall be paid the amount of the judgment out of the litigated
10 claims fund by warrants signed by the comptroller upon vouchers
11 approved by the head of the department, board, bureau,
12 commission, or other agency with which the claimant had the
13 dispute. If the amount of money in the litigated claims fund is
14 insufficient to pay the judgment the head of the department,
15 board, bureau, commission, or other agency with which the
16 claimant had the dispute shall include in their respective
17 budget requests to the department of budget and finance an
18 amount necessary to pay the judgment, plus interest, as provided
19 herein. Interest [~~at the rate of two per cent a year~~] earned on
20 the payment by the litigated claims fund from the date of each
21 payment under protest shall also be paid out of the amount



1 appropriated for the judgment payable to the claimant; provided
2 that if the claim is for the recovery of taxes paid under
3 protest by the claimant, the rate of interest and the
4 overpayment of taxes shall be refunded in the manner provided in
5 section 231-23(c) and (d). The amount of the judgment to be
6 paid to the claimant shall be ascertained by the head of the
7 department, board, bureau, commission, or other agency with
8 which the claimant had the dispute from a certified copy of the
9 judgment, which shall be the authority for making payment to the
10 claimant. If judgment is rendered against the claimant, the
11 amount of money paid by the claimant under protest which is in
12 the litigated claims fund shall be deposited into the
13 appropriate account in the treasury of the State and the amount
14 shall become a government realization. If the court determines
15 that the claimant's suit has been brought prematurely because
16 the agency had not rendered a final decision when the suit was
17 filed, the claimant's payment shall be retained in the litigated
18 claims fund; provided that:

19 (1) If the agency subsequently renders a final decision,
20 the claimant may, within thirty days after notice of
21 the decision, refile the action for a refund of the



1 payment that is in the litigated claims fund,
2 whereupon the court shall have jurisdiction over the
3 action;

4 (2) If no action is filed within thirty days after notice
5 of the decision, the payment shall become a government
6 realization; or

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

13 SECTION 3. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

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



S.B. NO. 3301 S.D. 1

Report Title:

Lawsuits; Disputes; Courts; Appeals; Payment to State; Protest

Description:

Clarifies and adds procedural safeguards to section 40-35, HRS, which relates to payments to the State under protest. (SD1)

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