

ACT 174

H.B. NO. 1909-78

A Bill for an Act Relating to Interest Payment on Refund of Taxes.

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

SECTION 1. Section 40-35, Hawaii Revised Statutes, is amended to read:

“Sec. 40-35 Payment to State under protest. Any disputed portion of moneys representing a claim in favor of the State may be paid to a public accountant of the State under protest in writing signed by the person making the payment, or by his agent, setting forth the grounds of protest, in which event the public accountant to whom payment is made shall hold the money paid under protest for a period of thirty days from the date of payment. The director of finance shall, at the request of the public accountant, make an administrative determination of the amount of the payment which is actually in dispute and the

amount which is not in dispute. Upon the determination the public accountant shall deposit the amounts not deemed in dispute by the director into the appropriate fund.

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 thirty days from the date of payment and in default of bringing the suit or proceeding within the thirty-day period, 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, provided, that any action to recover payment of taxes under protest shall be commenced in the tax appeal court.

If action to recover the money paid under protest or a proceeding to adjust the claim is commenced within the thirty-day period, the amount paid under protest or determined by the director to be the disputed portion of a claim shall be transmitted by the public accountant to the director, together with the entire or comparable portions of subsequent payments, if any, when and as made with respect to the same claim if made under a protest referring to the original protest for the grounds thereof, but if subsequent payments are made under protest in any other manner these subsequent payments shall be held by the public accountant and treated as if no previous protest had been made. The director shall pay all moneys so transmitted by the public accountant into a fund to be known as the "litigated claims fund" pending the final decision of the cause, which may, if the court is satisfied that subsequent payments were made with respect to the same claim and under the same protest, in the manner above set forth, include the disposition of such subsequent payments. If judgment is rendered in favor of the claimant, the director shall pay the claimant, out of the litigated claims fund, the amount of the judgment. If the amount of money in the litigated claims fund is insufficient or if investment of the litigated claims fund results in a deficit, the general fund of the State shall be liable for the deficiency. Interest at the rate of two per cent a year from the date of each payment under protest shall also be paid out of the general fund of the State on the amount of the payment under protest adjudged to be payable to the claimant[.]; provided that, if the claim is for the recovery of taxes paid under protest, the rate of interest and the overpayment of taxes shall be refunded in the manner provided in section 231-23(d) and (e). The amount to be paid shall be ascertained by the director from a certified copy of the judgment which shall be his authority [and warrant] for making payment to the claimant."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1978.

(Approved June 2, 1978.)