

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature enacted Act 231, Session Laws of Hawaii 1981, to provide a tax credit against income taxes for resident taxpayers as a refund of excess revenues and as required by the state constitution. The legislature chose to use as a method of implementing this credit the provisions of section 235-55.5, Hawaii Revised Statutes, allowing persons an excise tax credit. The legislature notes that the excise tax credit was enacted to offset in part the general excise taxes paid in the State by state residents. In order to assure that residents paid these general excise taxes a nine-month residency requirement was placed in section 235-55.5(c), Hawaii Revised Statutes.

The legislature notes that Act 231, however, was not merely enacted to offset general excise taxes paid, but all taxes paid by residents including income taxes. While persons in the military and students are not physically in the State for nine months, if they wish to retain residency in the State they pay income taxes to the State and are included in the definition of resident in chapter 235, Hawaii Revised Statutes. As such they are taxpayers who deserve to share in the refund provided by Act 231. The legislature notes that in interpreting Act 231, the department of taxation has required all individuals claiming the credit thereunder to have physically resided in the State for nine months. The legislature did not intend that those persons in the military or others who for state income tax purposes are residents, to be disallowed the tax credit allowed under Act 231. These persons paid their fair share of taxes and therefore deserve the refund provided through the mechanism of Act 231.

It is, therefore, the purpose of this Act to allow residents of the State, whether or not they have been physically in the State for nine months, to claim the tax credit under Act 231. The legislature notes that many persons have already filed their income tax returns and are being disallowed this credit and that many more persons will be filing in the coming months. Therefore, the legislature finds that this Act is an emergency measure in need of immediate passage.

SECTION 2. Act 231, Session Law of Hawaii 1981, is amended by amending section 1 to read as follows:

"SECTION 1. In addition to the excise tax credit allowed under section 235-55.5, Hawaii Revised Statutes, and in addition to any other credit allowed under chapter 235, Hawaii Revised Statutes, there shall be allowed each resident individual taxpayer who qualifies under section 235-55.5(a), Hawaii Revised Statutes, a general income tax credit of \$100 which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes. The general income tax credit of \$100 shall be multiplied by the number of qualified exemptions as defined in section 235-55.5(c), Hawaii Revised Statutes, to which the taxpayer is entitled, regardless of adjusted gross income[; provided that for]. Section 235-55.5(c), Hawaii Revised Statutes, to the contrary notwithstanding, such qualified exemption shall have been a resident of the State as defined in section 235-1, Hawaii Revised Statutes, for at least nine months whether or not such qualified

exemption was physically in the State for nine months. For the purposes of this section multiple exemptions shall not be granted for this credit because of age, or deficiencies in vision, hearing, or other disability. The general income tax credit allowed under this section shall be deducted from income tax liability for the taxable year 1981. Section 235-55.5(d) and (e), Hawaii Revised Statutes, is applicable to this section and incorporated herein to the extent not in conflict with this section.

This section implements the provisions of Article VII, Section 6 of the State of Hawaii Constitution enacted by the 1978 Constitutional Convention, which states as follows:

“DISPOSITION OF EXCESS REVENUES

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.””

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act, upon approval, shall apply to taxable years beginning after December 31, 1980.

(Approved May 27, 1982.)