

ACT 102

H.B. NO. 3152

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

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

SECTION 1. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) This subsection shall apply to a refund for an overpayment of a tax.
- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (c). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each [calendar] month or fraction thereof, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the [date¹] first month following the month the return is

received, and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director's approval, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the [date] first month following the month the return is received by the director if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.

- (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first calendar day after the due date of the original return or, if the original return is filed after the prescribed due date, the [date] first month following the month the return is received, to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed [not] to have been made [prior to] at the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
- (4) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the [date] first month following the month the return is received by the director, or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 2. Section 231-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

- (1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five per cent of the amount of the tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which the failure continues, not

exceeding twenty-five per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 235-97.

- (2) Failure to pay tax.
 - (A) If any part of any underpayment is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director.
 - (B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty per cent of the underpayment as determined by the director.
 - (C) If any penalty is assessed under subparagraph (B) (relating to fraud) for [any] an underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file the return) shall be assessed with respect to the same underpayment.
- (3) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within sixty days of the prescribed filing date, there shall be added to the unpaid tax an amount up to twenty per cent as determined by the director.
- (4) Interest on underpayment or nonpayment of tax.
 - (A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent a month or fraction of a [calendar] month shall be paid for the period beginning with the first calendar day following the date prescribed for payment, or if the prescribed date for payment is the end of a calendar month, and section 231-21 is applicable, beginning with the [month on which] first calendar day after the due date [as] so extended [is a part], to the date paid.
 - (B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 235, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.
 - (C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.
 - (D) No interest under this paragraph shall be imposed on interest provided by this paragraph.
 - (E) If any portion of a tax is satisfied by credit of any overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.
 - (F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within

ACT 102

- which the tax to which the interest relates may be collected.
- (G) This paragraph shall not apply to any failure to pay estimated tax required by section 235-97.”

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

SECTION 4. This Act shall take effect on January 1, 1993.

(Approved May 27, 1992.)

Note

1. So in original.