

ACT 236

H.B. NO. 3277

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that Hawaii has made efforts to become a financial center. The legislature enacted section 241-3.5, Hawaii Revised Statutes, to attract international banking facilities and section 237-24.5, Hawaii Revised Statutes, to attract a stock exchange or board of trade and the concomitant brokerage houses which service those institutions. The State has actively sought to attract insurance companies which would establish major offices in this State in order to better serve the citizens of Hawaii. The State has succeeded in attracting insurance companies, particularly captive insurers. Twenty-two captive insurers have been licensed since the captive insurers law was enacted in 1987. And, there are over eight hundred insurance companies operating or registered to do business in Hawaii. The taxes imposed on premiums from insurance policies sold to Hawaii residents produce substantial revenues to meet the State's public needs and programs.

The legislature finds that the business of insurance is a public necessity that deals in its own credit in exchange for a present cash consideration from the insured. Thus, the insurance industry is inextricably intertwined with the public interest. The legislature only has to consider the recent debacle in the savings and

loan industry and the numerous failures of insurance companies (both of which adversely affected our citizens) to be aware of the public's interest in regulating insurance companies.

By federal mandate, the responsibility for the oversight of the insurance industry rests with the states. The legislature finds that the growth in the number and the size of insurance companies doing business in the State makes it necessary to adopt measures that will facilitate regulation by the insurance commissioner. The legislature finds that the public's interest in insurance companies makes it mandatory for the legislature to act. The legislature finds that the public interest will be served by encouraging insurance companies to conduct their business in a way which will provide less costly, more effective oversight and, perhaps most importantly, more timely state regulation. In addition, the public interest will be served by encouraging insurers to provide better service to their customers through more convenient, accessible service centers staffed by employees resident in the community who are likely to be more sensitive to the needs of their insureds.

In order to encourage insurance companies to engage in business practices conducive to regulation, the legislature is enacting a tax credit against the insurance premium tax. The credit may be claimed by each insurer that conducts its business in the manner specified. At the same time, the premium tax rates are being amended to provide for uniform rates on insurance premiums in order to avoid potential constitutional problems with preferential rates for domestic insurers raised by Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869 (1985). The legislature finds that these amendments will achieve the goal of encouraging insurance companies to conduct their business in a way which will improve regulatory oversight without the need for differential tax rates.

The major purposes of this Act are (1) to raise revenue, (2) to provide uniform tax rates on insurance premiums in order to avoid potential constitutional problems, (3) to improve state regulation of the insurance industry by encouraging insurers to maintain in Hawaii the records and personnel necessary to provide less costly, more effective, and more timely state regulation, and (4) to ensure that insurance companies promptly service their customers.

SECTION 2. Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431:7- Additions to taxes for noncompliance or evasion; interest on underpayments and overpayments.** The provisions of section 231-39 shall apply to taxes under this article."

SECTION 3. Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431:7- Appeals.** Notwithstanding section 431:2-308, any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in section 235-114, provided the tax so assessed shall have been paid."

SECTION 4. Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431:7- Limitation period for assessment, levy, collection, or refund.** (a) The amount of insurance taxes imposed by this chapter shall be

assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period.

(b) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time.

(c) Where, before the expiration of the period prescribed in subsection (a) or (d), both the commissioner and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (a) or the credit or refund of the tax after the date fixed by subsection (d), the tax may be assessed or levied, or the overpayment, if any, may be credited or refunded, at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund shall be filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
  - (A) Three years after payment of the tax; or
  - (B) Three years after the date prescribed for the filing of the annual return, whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The limitation shall not apply to a credit or refund pursuant to an appeal provided for by section 431:7- , or to a payment under protest as provided in section 40-35."

SECTION 5. Chapter 431, Article 7, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431:7- Tax credit to facilitate regulatory oversight.** (a) Each authorized insurer that meets the requirements of subsection (b) may claim a tax credit under this section against the tax imposed by section 431:7-202(a) or (b) for the taxable year for which the credit is properly claimed. The tax credit shall be an amount equal to one per cent of the premiums taxed by section 431:7-202(a) and (b).

(b) An insurer may claim the credit only if, at all times during the taxable year, the insurer:

- (1) Maintains in Hawaii books and records required by the commissioner sufficient to conduct the examination authorized by section 431:2-302;
- (2) Employs in Hawaii personnel knowledgeable about the insurer's financial operations and who are authorized to represent the insurer in all matters pertaining to examination; and
- (3) Maintains in Hawaii a customer service center with employees authorized to promptly adjust, settle, and pay claims and to promptly answer all questions from customers regarding their insurance policies.

(c) The commissioner shall prepare the forms necessary to claim a credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91.

(d) All claims for the tax credit under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(e) The tax credit allowed by subsection (a) may be claimed on the interim returns required by section 431:7-202(f)."

SECTION 6. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each authorized insurer, except with respect to all life insurance contracts and ocean marine insurance contracts, shall pay to the director of finance through the commissioner[, in the case of domestic insurers a tax of 2.9647 per cent, and in the case of other insurers] a tax of [4.2824 per cent.] 4.7 per cent for the period July 1, 1992, to June 30, 1993, and 4.265 per cent on July 1, 1993, and thereafter on the gross premiums received from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31, less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium:

- (1) By showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; or
- (2) By facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium.

(b) Each authorized insurer [shall], with respect to life insurance contracts, shall pay to the director of finance through the commissioner[, in the case of domestic insurers a tax of 1.918 per cent, and in the case of other insurers] a tax of [3.197] 2.75 per cent[,] on the gross premiums received from all risks resident within this State, during the year ending on the preceding December 31, less return premiums, dividends paid or credited to policyholders, and reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

The tax also shall apply to premiums for insurance written on individuals residing outside the State unless the direct writing insurer shall show the payment of a comparable tax to another appropriate taxing authority. Such showing may be required as to any premium written, procured, or received in the State."

SECTION 7. Section 431:7-203, Hawaii Revised Statutes, is amended to read as follows:

"§431:7-203 [Refunds.] Administrative refunds. (a) In the event any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner [shall], upon written request made by the person to the commissioner within [six years of the date of the payment,] the time set forth in section 431:7-, shall authorize a refund thereof out of the general funds of this State

by submitting a voucher therefor to the comptroller of this State[.] subject to the following limitations:

- (1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
- (2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect to the taxpayer concerned differently than in respect of taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive.

(b) Where a taxpayer is entitled to a refund, the taxpayer, at the taxpayer's election, may apply the amount of the refund as an overpayment credit to taxes subsequently accruing under this code.

(c) This subsection shall apply to a refund for an overpayment of 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 (a). 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 first month following the month the return is received, and continuing until the date that the commissioner approves the refund voucher. If the commissioner 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 commissioner's approval, no interest on the overpayment will be allowed or paid. However, if either the commissioner 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 first month following the month the return is received by the commissioner 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 commissioner 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 first month following the month the return is

received, to the date that the commissioner signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the commissioner's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.

- (3) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the first month following the month the return is received by the commissioner, or the date of payment, whichever is later, to the date the credit is taken; provided that the commissioner may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 8. Section 431:14-101.5, Hawaii Revised Statutes, is amended by amending the definition of "expenses" to read as follows:

"Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees[.]; provided that no tax credit received by any insurer under section 431:7- shall reduce the expenses of the insurer for purposes of determining the insurer's rate under this article for the first year of any insurer's rate which is approved pursuant to this article and for which the insurer submits before July 1, 1993, a filing pursuant to the applicable sections of this code to modify the rate in existence on June 30, 1992."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act, shall take effect on July 1, 1992, and shall apply to all gross premiums received after June 30, 1992; provided that notwithstanding anything in this Act to the contrary, the tax credit provisions enacted in Section 5 of this Act shall not apply to reduce the tax imposed on gross premiums received before July 1, 1992; provided further that eligibility for the credit enacted in Section 5 of this Act against taxes on gross premiums received after June 30, 1992, and before January 1, 1993, shall be measured from January 1, 1992.

(Approved June 17, 1992.)

**Note**

1. Edited pursuant to HRS §23G-16.5.