

COUNCIL OF THE COUNTY OF MAUI

BUDGET AND FINANCE COMMITTEE

July 6, 2012

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget and Finance Committee, having met on June 12, 2012, makes reference to County Communication 12-24, from the Director of Finance, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX".

The purpose of the proposed bill is to provide for payment of interest on the taxes refunded to a taxpayer when the taxpayer receives a favorable final determination from the tax appeal court; and to ensure that all earnings, derived from tax overpayments made by property taxpayers who file appeals, are properly refunded or credited.

Your Committee notes that the Administration initiated the proposed bill as a result of a lawsuit filed against the County. The lawsuit alleged that the County erred when the interest that had been earned on the appealing taxpayer's overpayment had not been refunded to the taxpayer who was successful in the taxpayer's appeal.

A Deputy Corporation Counsel informed your Committee that the proposed bill seeks to conform the Maui County Code to a U.S. Supreme Court decision that requires the County to refund the interest earned to taxpayers who are successful in their tax appeal.

Your Committee notes that the proposed bill provides that interest payments to a successful appealing taxpayer be calculated at a rate based on the average rate of return earned on County investments during the previous fiscal year, "rounded down to the nearest quarter per cent." Due to restrictions placed on the investments held by the County's treasury, the interest earned by the County's investments is often less than one per cent. Therefore, rounding down to the nearest quarter per cent could result in a relatively large variance between the interest earned by the County and the interest actually paid to an appealing taxpayer who was successful in the taxpayer's appeal.

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

July 6, 2012
Page 2

Committee
Report No. _____


Your Committee requested that the Department of the Corporation Counsel review this matter and propose revised language, if necessary, for consideration at first reading.

Your Committee voted 7-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Pontanilla, Vice-Chair Hokama, and members Baisa, Cochran, Couch, Mateo, and White voted "aye". Committee members Carroll and Victorino were excused.

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill _____ (2012), as attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 12-24 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



JOSEPH PONTANILLA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48,
MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 3.48.670, Maui County Code, is amended to
read as follows:

"3.48.670 Taxes paid pending appeal. A. The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director into the litigated claims account. If the final determination is in whole or in part in favor of the appealing taxpayer, the director shall repay the appealing taxpayer out of the account, or if investment of the account should result in a deficit therein, out of the general fund of the County, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable[, together with interest]. Interest at a rate based on the average rate of return earned on County investments during the previous [calendar] fiscal year, rounded down to the nearest quarter per cent[.] , shall be paid to the appealing taxpayer who has made payment unless otherwise agreed to by the appealing taxpayer and the director. Interest shall be calculated from the date [of each payment into the litigated claims account.] taxes are paid in full as provided in section 3.48.195. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, paid into the litigated claims account, in case the decision is wholly in favor of the assessor, shall, upon the final determination of the appeal, become a realization of the general fund.


B. In a case of an appeal to a board of review, the tax paid upon the amount of the assessment actually in dispute, and in excess of that admitted by the taxpayer, shall, during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director in a special [deposit.] account. In the event of final determination of the appeal in the board of review, the director shall repay

to the appealing taxpayer out of the [deposit] special account the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable[, if any, the]. Interest at a rate based on the average rate of return earned on County investments during the previous fiscal year, rounded down to the nearest quarter per cent, shall be paid to the appealing taxpayer who has made payment unless otherwise agreed to by the appealing taxpayer and the director. Interest shall be calculated from the date taxes are paid in full as provided in section 3.48.195. Interest shall only be paid upon adjustments that result in an overpayment refund due to a board of review hearing decision. No interest shall be paid on adjustment refunds that are the result of a stipulation unless otherwise agreed to by the appealing taxpayer and the director. The balance, if any, of the payment made by the appealing taxpayer and paid into the special account or the whole of the [deposit,] payment paid into the special account, in case the decision is wholly in favor of the director [to] shall, upon the final determination of the appeal, [to] become a realization of the general fund."

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance, upon its approval, shall be effective for tax years beginning on or after July 1, 2012.

APPROVED AS TO FORM
AND LEGALITY:


ADRIANNE N. HEELY
Deputy Corporation Counsel
County of Maui

S:\ALL\ANH\ORDs.RESOs\3.48.670.031711.wpd