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# A BILL FOR AN ACT

RELATING TO COLLECTION OF DELINQUENT TAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. Section 231-33, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "§231-33 Tax debt due the State; lien. (a) Within the  
4 meaning of this section:

5       (1) The terms "mortgagee", "pledgee", and "purchaser" do  
6 not include any person to whom property or an interest  
7 in property is conveyed (A) as security for or in  
8 satisfaction of an antecedent or pre-existing debt of  
9 a debtor who is insolvent within the meaning of the  
10 Bankruptcy Act, or (B) as trustee, assignee, or agent  
11 for the benefit of one or more creditors, other than  
12 mortgage bondholders.

13       (2) The term "motor vehicle" means any self-propelled  
14 vehicle to be operated on the public highways.

15       (3) The interest of a party, if required to be recorded or  
16 entered of record in any public office in order to be  
17 valid against subsequent purchasers, does not arise



1 prior to the time of such recording or entry of  
2 record.

3 (4) An employer or other person who is required by any tax  
4 law to withhold tax at the source, or to collect a  
5 tax, and who is made liable for the tax if the  
6 employer or other person does not fulfill the  
7 employer's or other person's duties in that regard,  
8 shall be deemed a person liable for the tax.

9 (5) The term "real property" includes leasehold or other  
10 interest in real property and also any personal  
11 property sold or mortgaged with real property if  
12 affixed to the real property and described in the  
13 instrument of sale or mortgage.

14 (b) Any state tax [~~which~~] that is due and unpaid is a debt  
15 due the State and constitutes a lien in favor of the State upon  
16 all property and rights to property, whether real or personal,  
17 belonging to any person liable for the tax. The lien for the  
18 tax, including penalties and interest thereon, arises at the  
19 time the tax is assessed, or at the time a return thereof is  
20 filed, or at the time of filing by the department of taxation of  
21 the certificate provided for by subsection (f) whichever first



1 occurs. From and after the time the lien arises it is a  
2 paramount lien upon the property and rights to property against  
3 all parties, whether their interest arose before or after that  
4 time, except as otherwise provided in this section.

5 (c) The lien imposed by subsection (b) is not valid as  
6 against:

7 (1) A mortgagee or purchaser of real property, or the lien  
8 of a judgment creditor upon real property, whose  
9 interest arose prior to the recording by the  
10 department of the certificate provided for by  
11 subsection (f); or

12 (2) A mortgagee or purchaser of a motor vehicle who  
13 becomes the legal owner or owner at a time when the  
14 tax lien and encumbrance record provided for by  
15 section 286-46 does not show the lien.

16 (d) As to tangible personal property, possession of which  
17 is held by a person liable for tax for the purpose of sale to  
18 the public in the ordinary course of the person's business, the  
19 lien imposed by subsection (b) is extinguished as to any such  
20 property sold in the ordinary course of the business by or under  
21 the direction of the person to any purchaser for valuable



1 consideration. As to securities, negotiable instruments, and  
2 money, the lien imposed by subsection (b):

3 (1) Is extinguished as to such property upon passage of  
4 title to a person without notice or knowledge of the  
5 existence of the lien, for an adequate and full  
6 consideration in money or money's worth; and

7 (2) Is not valid as against a mortgagee or pledgee for an  
8 adequate and full consideration in money or money's  
9 worth, who is located outside the State and takes  
10 possession of the property, if at the time of taking  
11 possession of the property the mortgagee or pledgee is  
12 without notice or knowledge of the existence of the  
13 lien. The mere recording or filing of the certificate  
14 provided for by subsection (f) does not constitute  
15 notice for the purposes of this subsection.

16 (e) Subject to the provisions of this subsection, the lien  
17 imposed by subsection (b) is not valid as against a mortgagee,  
18 pledgee, or purchaser who gives notice to the department on a  
19 form prescribed by it of the mortgage, pledge, or purchase made  
20 or about to be made, with a description of the property  
21 encumbered or conveyed or proposed to be encumbered or conveyed



1 thereby, and whose interest in the property arises prior to the  
2 recording or filing by the department of the certificate  
3 provided for by subsection (f) or within ten days after the  
4 filing. If the notice is given the lien imposed by subsection  
5 (b) is valid against the party giving the notice, as to any  
6 taxes set forth in a certificate filed as provided in subsection  
7 (f) within the period of fifteen days after the notice. The  
8 department may waive all or any part of the period herein  
9 allowed.

10 (f) The department may record in the bureau of conveyances  
11 at Honolulu, or in respect of a lien on a motor vehicle, file  
12 with the county director of finance, a certificate setting forth  
13 the amount of taxes due and unpaid, which have been returned,  
14 assessed, or as to which a notice of proposed assessment has  
15 issued. The certificate shall identify the taxpayer, the  
16 taxpayer's last known address, and the tax or taxes involved.  
17 The recording or filing of the certificate has the effect set  
18 forth in this section, but nothing in this section shall be  
19 deemed to require that a certificate recorded or filed by the  
20 department must include the amount of any penalty or interest,  
21 in order to protect the lien therefor. The certificate, if



1 recorded or filed with the county director of finance, shall be  
2 entered of record as provided by law. Recordation of the  
3 certificate in the bureau of conveyances shall be deemed, at  
4 such time, for all purposes and without any further action, to  
5 procure a lien on land registered in the land court under  
6 chapter 501. Any cost incurred in the filing of the certificate  
7 shall be a part of the lien for the tax therein set forth.

8 (g) The department may issue a certificate of discharge of  
9 any part of the property subject to the lien imposed by this  
10 section, upon payment in partial satisfaction of such lien, of  
11 an amount not less than the value as determined by the  
12 department of the lien on the part to be so discharged, or if  
13 the department determines that the lien on the part to be  
14 discharged has no value. Any such discharge so issued shall be  
15 conclusive evidence of the discharge of the lien as therein  
16 provided.

17 (h) The lien imposed by subsection (b) may be foreclosed  
18 in a court proceeding or by distraint under section 231-25.

19 (i) This section shall not apply to a tax levied by a  
20 chapter [~~which~~] that contains a specific provision for a lien



1 for the tax levied by the chapter, any provision in this section  
2 to the contrary notwithstanding.

3 (j) If a lien imposed by subsection (b) is properly  
4 recorded as authorized under subsection (f), and three hundred  
5 sixty-five days have elapsed from the date of recording with no  
6 response or action by the taxpayer against whom the lien was  
7 recorded, the director may apply to the circuit court to have  
8 the lien converted into a civil judgment. The circuit court  
9 shall issue a civil judgment for an amount equivalent to the  
10 value of the lien. If a lien is converted to a civil judgment  
11 under this subsection, interest under section 231-39(b)(4) shall  
12 cease to accrue after the period to collect the unpaid amount  
13 has expired under the applicable statute of limitations or  
14 agreement."

15 SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.



**Report Title:**

Collection of Delinquent Taxes; Tax Liens; Civil Judgments

**Description:**

Authorizes the Director of Taxation to apply to the circuit court to convert certain tax liens into enforceable civil judgments. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

