

JAN 26 2022

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# A BILL FOR AN ACT

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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

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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  
22 occurs. From and after the time the lien arises it is a

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

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

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

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

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

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

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

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

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

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

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1 such time, for all purposes and without any further action, to  
2 procure a lien on land registered in the land court under  
3 chapter 501. Any cost incurred in the filing of the certificate  
4 shall be a part of the lien for the tax therein set forth.

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

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

16 (i) This section shall not apply to a tax levied by a  
17 chapter ~~[which]~~ that contains a specific provision for a lien  
18 for the tax levied by the chapter, any provision in this section  
19 to the contrary notwithstanding.

20 (j) If a lien imposed by subsection (b) is properly  
21 recorded as authorized under subsection (f), and three hundred  
22 sixty-five days has elapsed from the date of recording with no

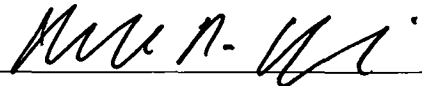
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1 response or action by the taxpayer against whom the lien was  
2 recorded, the director may apply to the circuit court to have  
3 the lien converted into a civil judgment. The circuit court  
4 shall issue a civil judgment for an amount equivalent to the  
5 value of the lien. If a lien is converted to a civil judgment  
6 under this subsection, interest under section 231-39(b)(4) shall  
7 cease to accrue after the period to collect the unpaid amount  
8 has expired under the applicable statute of limitations or  
9 agreement."

10 SECTION 2. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect upon its approval.  
13  
14

INTRODUCED BY:



BY REQUEST

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**Report Title:**

Collection of Delinquent Taxes

**Description:**

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

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



JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO COLLECTION OF DELINQUENT TAXES.

PURPOSE: To amend chapter 231, Hawaii Revised Statutes (HRS), to authorize the Director of Taxation to apply to the circuit court to convert certain tax liens into enforceable civil judgments.

MEANS: Amend section 231-33, HRS.

JUSTIFICATION: There are several current delinquent tax cases that are essentially uncollectible despite the existence of tax liens. When a delinquent taxpayer deliberately ignores the department's communications and the lien remains uncontested, the collection process cannot move forward. This legislation would allow the Director to seek judicial enforcement of tax liens that were properly recorded and for which at least 365 days have elapsed since official notice with no response or action from the lienee taxpayer.

Impact on the public: There will be minimal impact on the general public. The only impact on the general public will be to incentivize delinquent taxpayers to proactively respond to lien notices instead of ignoring them.

Impact on the department and other agencies: The Department will benefit from greater flexibility in seeking judicial enforcement of tax laws, and an additional tool to use against delinquent taxpayers will improve efficiency and economy of tax administration. The State will also likely benefit from increased tax compliance due to expanded enforcement options.

GENERAL FUND: Indeterminate revenue gain.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.