

ACT 237

H.B. NO. 3295

A Bill for an Act Relating to Tax Relief for Natural Disaster Losses.

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

SECTION 1. Section 234-1, Hawaii Revised Statutes, is amended by amending the definition of “director” to read as follows:

“(3) “Director” means the state director of taxation[,] or county director of finance, as appropriate, unless specifically indicated.”

SECTION 2. Section 234-4, Hawaii Revised Statutes, is amended to read as follows:

"§234-4 Tax relief, claim and allowance. (a) In case of losses due to damage or destruction of real or personal property of a claimant resulting from a natural disaster and certified by the natural disaster claims commission or adjudged by the court, the director [of taxation] may remit, refund, or forgive the taxes hereafter mentioned, due or to become due from the claimant suffering such losses, in the manner provided in subsections (b) and (c) [of this section].

(b) The claimant [shall], on or before December 31, of the year in which the disaster occurred or such other date as may be prescribed by the commission, but not to exceed six months from the date of occurrence of the natural disaster, shall file a claim, under oath with the commission setting forth the amount of the claimant's losses. The commission shall thereupon investigate the claim and determine the total loss suffered by reason of the damage or destruction of the real or personal property based on the market value on the date of the natural disaster. The total loss shall be determined by taking the difference between the market value immediately prior to the date of the natural disaster and the market value immediately after the date of the natural disaster. The losses to be certified to the director of taxation from the total losses recognized by the commission shall be computed by the commission [as follows:] by deducting:

- (1) [Deduct all] All insurance benefits received or to be received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster;
- (2) [Deduct the] The portion of the losses resulting from insurable property in excess of \$100,000;
- (3) [Deduct tax] Tax benefits from the Federal Internal Revenue Service; and
- (4) [Deduct any] Any other recoveries.

The balance remaining after the foregoing [deductions] have been deducted from the total losses recognized shall be the loss certified to the director of taxation.

The finding of the commission shall be final, unless within thirty days after receipt of a copy of the commission's certification to the director[, of taxation], the claimant files a notice of appeal to the circuit court in the county for which the commission was appointed. In all [cases of such appeal,] appeals, the commission and the director of taxation shall be notified of the pendency thereof by the clerk of the court. On appeal to the circuit court, the claimant shall be entitled to trial by jury. The right to trial by jury shall be deemed to be waived unless claimed within ten days from the date the notice of appeal is filed. The court [may], by proper rules, may prescribe the procedure to be followed in [such] these appeals, and shall give [such] these appeals precedence over all other civil cases. Upon determination of the appeal, the court shall enter judgment as to the amount of the claimant's loss, which judgment shall be final. The clerk of the court shall certify the judgment of the court to the director[, of taxation].

The finding of the commission or the judgment of the court as to the amount of the loss suffered by the claimant shall be final for the purposes of chapters 235[, and 237[, and 246] notwithstanding section 235-7[. or any real property tax ordinance].

Whenever the market value for the purpose of the total losses of any real property is determined under this subsection, the market value utilized as the value of the property immediately after the disaster shall be prima facie evidence of the value of [such] that real property as of the time immediately after the natural disaster whenever the real property is thereafter condemned, exchanged, or

purchased by the State or any [of its political subdivisions.] county.

(c) Upon receipt of the certification from the commission or the clerk of the circuit court, the director shall remit or refund from the current general revenues of the State or of the county, as appropriate, or forgive, for a period not to exceed five consecutive years commencing January 1 of the year in which the disaster occurred, until the amount of the loss certified or adjudged is recovered up to but not in excess of the limits provided in section 234-8 or until the claimant recovers the full amount of the claimant's certified or adjudged loss, or until the expiration of the five year period, whichever shall first occur:

- (1) Real property taxes for that year and thereafter as provided above, due from the claimant on account of any real property located on the island on which the losses were incurred under [chapter 246,] the county real property tax ordinance, and
- (2) Taxes due from the claimant under chapter 237 on account of any trade or business conducted by the claimant on the island on which the losses were incurred for the year in which the disaster occurred and thereafter as provided above.

In no event shall taxes due and payable under chapter 235 by a public utility as defined in section 269-1, be remitted, refunded, or forgiven."

SECTION 3. Section 234-5, Hawaii Revised Statutes, is amended to read as follows:

"§234-5 Review of claims, adjustment. The amount of loss certified by the natural disaster claims commission or adjudged by the court pursuant to section 234-4 shall be subject to review by the commission or the court in the event substantial and new evidence should show more accurately the amount of losses suffered from damage by destruction of real or personal property resulting from the natural disaster, provided that any [such] substantial and new evidence shall only be acceptable if applicable as of the date the losses were incurred. In [such] this event, the taxpayer, within six months from the filing of the original claim, may file an amended claim with the commission, or with the court if an appeal is pending or the court has rendered a judgment, and the commission or the court shall receive further proof of the amount of the loss initially claimed by the taxpayer. The determination of the loss by the commission on the amended claim may be appealed by the claimant to the circuit court in the same manner as an appeal in the case of a determination of loss by the commission on the original claim. The judgment of the circuit court shall be final in all cases. In the event of any change in the amount of the certification or judgment furnished to the director of taxation, the commission or the clerk of the court shall notify the director of taxation of [such] the adjustments, and the director of taxation shall make appropriate adjustments in the remitting, refunding, or forgiveness of taxes [above] provided[; in] in this chapter. In case any adjustments are made, any tax refund which exceeds the amount of adjusted loss recoverable may be collected in the same manner as a tax due and payable under [chapters] chapter 237 or [246.] county real property tax ordinance."

SECTION 4. Section 234-8, Hawaii Revised Statutes, is hereby amended to read as follows:

"§234-8 Amount of relief, maximum limits. No claimant shall recover against total losses certified by the natural disaster claims commission or adjudged by the court, remittances, refunds, or forgiveness of taxes in excess of

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\$25,000 for all taxes due under chapter 237, nor shall any claimant recover remittances, refunds, or forgiveness of taxes in excess of \$35,000 for all taxes due under [chapters] chapter 237 and [246.] any real property tax ordinance. Whenever a claimant has deducted in the claimant's chapter 235 returns for any of the five years stated in section 234-4(c) any portion of the losses suffered by reason of the disaster as permitted by section 235-7(f), there shall be deemed as having been due from such claimant under chapter 235 and as having been remitted, refunded, or forgiven an additional amount of tax equal to the difference between the taxes due as returned and the taxes which would have been due if computed without deducting the losses so that the amount of the claimant's recovery shall not exceed that amount recoverable under this chapter if the deduction were not taken. In no event shall any claimant recover through the foregoing taxes any amount whatsoever in excess of the claimant's losses certified by the commission or adjudged by the court, nor recover any amounts in excess of the limits set forth in this section; provided that the claimant may use any one or more of the foregoing taxes as a basis for the claimant's remittance, refund, or forgiveness of the taxes so long as it does not exceed any of the limits as herein set forth, and the taxes became due for real property, trade, or business, conducted on the island on which the losses were incurred."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 1992.)