

ACT 154

H.B. NO. 1121

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 234-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The claimant, 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

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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 by deducting:

- (1) 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) The portion of the losses resulting from insurable property in excess of \$100,000;
 - (3) Tax benefits from the [Federal] federal Internal Revenue Service; [and]
 - (4) Any federal grant or loan received by the claimant as a result of the natural disaster;
 - (5) Any state grant or loan received by the claimant as a result of the natural disaster; and
- [(4)] (6) Any other recoveries.

The balance remaining after the foregoing 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 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, by proper rules, may prescribe the procedure to be followed in these appeals, and shall give 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 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 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 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] county or of the [county,] State, as appropriate, or forgive[.];

- (1) First, real property taxes for that year and thereafter due from the claimant on account of any real property located on the island on which the losses were incurred under the county real property tax ordinance; provided that, for each year after the first year, no real property tax remittance or refund may be claimed unless a claim for general excise tax remittance or refund, if applicable, was previously made; and

- (2) Second, 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;

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 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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall take effect retroactive to September 1, 1992.

(Approved June 9, 1993.)