

ACT 66

S.B. NO. 1573

A Bill for an Act Relating to Chapter References in Chapter 231, Hawaii Revised Statutes.

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

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

“§231-1 Definitions. Whenever used in [chapters 231 to 249, 236D, 237D, 244D, and 251:] chapters of the law under title 14 administered by the department:

“Assessor” or “assistant assessor” means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district “assessor” or “assistant assessor” means the assessor or assistant assessor for a particular tax.

“Comptroller” means the comptroller of the State.

“Department” means the department of taxation, unless the context clearly indicates otherwise.

“Property” or “real property” has the meaning defined herein, and, to the extent [required by provisions making] applicable to other chapters[, this chapter, or chapters 232, 233, 235 to 239, 241 to 245, 236D, 237D, 244D, and 251, also means and] of the law under title 14 administered by the department includes other subjects or measures of tax. “Real property” includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to [such] the land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use [thereof] is necessary to the utility of [such] the land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to [such] the land, buildings, structures, fences, and improvements, excluding, however, any growing crops.”

SECTION 2. Section 231-3, Hawaii Revised Statutes, is amended to read as follows:

“§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To make any assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed [by chapters 231 to 249, 236D, 237D, 244D, and 251.] under title 14,

except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;

- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under those laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in each case there shall be placed on file in the department's office a statement of:
 - (A) [the] The name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed[.];
 - (B) [the] The amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department[.];
 - (C) [the] The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof[.]; and
 - (D) [the] The reasons for the compromise[; and notwithstanding].

Notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file in respect of compromises shall be open to public inspection;

- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of [such] the taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact[.];
- (A) [the] The matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State[.]; and
- (B) [in] In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in [chapters 235, 237 to 239, 243 to 245, 236D, 237D, 244D, and 251,] other chapters of the law under title 14 administered by the department for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

SECTION 3. Section 231-3.5, Hawaii Revised Statutes, is amended to read as follows:

“§231-3.5 Suspension of running of the period of limitation during bankruptcy proceedings. The running of the [period] periods of limitation provided [in chapters 235 to 239, 241 to 245, 236D, 237D, 244D, and 251,] under chapters of the law under title 14 administered by the department to the contrary

notwithstanding, shall be suspended for the period during which the director of taxation is prohibited from making an assessment of taxes by reason of title 11 (with respect to bankruptcy) of the United States Code and for sixty days after the prohibition is lifted.”

SECTION 4. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

“**§231-6 Oath, power to administer.** The department of taxation may administer all oaths or affirmations required to be taken or be administered under [chapters 231 to 249, 236D, 237D, 244D, and 251,] chapters of the law under title 14 administered by the department, with respect to any matters coming within the scope of the duties of the department.”

SECTION 5. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

“**§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections.** Except as otherwise specifically provided [by chapters 231 to 249, 236D, 237D, 244D, and 251,] under chapters of the law under title 14 administered by the department, the several district judges shall have jurisdiction to try misdemeanors arising under [such chapters] chapters of the law under title 14 administered by the department and all complaints for [the violation] violations of [such chapters] chapters of the law under title 14 administered by the department and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.”

SECTION 6. Section 231-15.6, Hawaii Revised Statutes, is amended to read as follows:

“**§231-15.6 Returns of corporations or partnerships.** The returns, statements, or answers required [by chapter 235, 236D, 237, 237D, 238 to 243, 244D, 245, 247, or 251,] under chapters of the law under title 14 administered by the department, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership, by any one of the partners.”

SECTION 7. Section 231-15.7, Hawaii Revised Statutes, is amended to read as follows:

“**§231-15.7 Returns by fiduciaries.** The returns, statements, or answers required [by chapter 235, 236D, 237, 237D, 238 to 243, 244D, 245, 247, or 251,] under chapters of the law under title 14 administered by the department shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required.”

SECTION 8. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) This subsection shall apply to all taxes.
- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth

all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.

- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected by the department under [chapters 235 to 239, 241, 243 to 245, 236D, 237D, 244D, and 251, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund,] chapters of the law under title 14 administered by the department shall be made out of the tax reserve fund. The director of taxation, from time to time, may deposit taxes collected under [the chapters enumerated in the immediately preceding sentence] chapters of the law under title 14 administered by the department in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made.”

SECTION 9. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“§231-29 Joinder of party defendant when State claims tax liens. The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under [chapters 233, 235, 236D, 237 to 239, 237D, 241, 243, 244D, 245, 251, and 383;] chapters of the law under title 14 administered by the department or chapter 383; provided that the jurisdiction [herein] conferred by this section shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action [herein] contemplated[,] under this section, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 25, 1995.)