

ACT 153

H.B. NO. 2568

A Bill for an Act Relating to the Collection of Taxes.

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

SECTION 1. The purpose of this Act is to assist the department of taxation in the collection of state taxes by:

- (1) Expanding the department's current authority to ascertain the fair market value of sales between affiliated companies or persons when the consideration paid is not indicative of the fair market value of sales and all taxes administered under title 14, Hawaii Revised Statutes;
- (2) Providing a continuous levy on the salary or wages of a delinquent taxpayer;
- (3) Indemnifying a person from the claims of third parties when the person honors a state tax levy; and
- (4) Expanding the authority for recovering unpaid withholding taxes.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Consideration paid not indicative of fair market value. Where sales are made by a taxpayer, taxable under title 14, to other affiliated companies or persons, or under other circumstances where the relation between the taxpayer and the buyer is such that the consideration paid, if any, is not indicative of the fair market value, the taxpayer shall pay the taxes imposed under title 14, measured by the fair market value, corresponding as nearly as possible to the gross proceeds of sales of like quality and character by other persons, where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar. If no such comparable sales exist between nonaffiliated buyers and sellers, the department may prescribe equitable and uniform rules for ascertaining the fair market value of the sale.

As used in this section, “affiliated companies or persons” means two or more organizations, trades, or businesses (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests, including companies or persons described in section 237-23.5.”

SECTION 3. Section 231-25, Hawaii Revised Statutes, is amended to read as follows:

“§231-25 Payment, enforcement of by assumpsit action or by levy and distraint upon all property and rights to property. (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

- (1) By action in assumpsit, in the director's own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for

the amount of taxes, costs, penalties, and interest, in any district court, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant[-]; and

- (2) By levy upon all property and rights to property (except such property as is exempt under ~~[paragraph (b)(5) of this section]~~ subsection (b)(6)) belonging to such taxpayer or on which there is a lien, as the director may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.
- (b) The following rules are applicable to the levy as provided for in ~~[paragraph]~~ subsection (a)(2):
 - (1) Seizure and sale of property. The term "levy" as used in this section includes the power of distraint and seizure by any means. ~~[A] Except as provided in paragraph (2), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or the director's representative may levy upon property or ~~[right] rights~~ rights to property, the director may seize and sell the property or rights to property (whether real or personal, tangible or intangible);~~
 - (2) The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date the levy is first made until the levy is released. The levy on salary or wages shall attach to twenty-five per cent of any salary or wages payable or received by the taxpayer;
 - ~~[(2)]~~ (3) Successive seizures. Whenever any property or ~~[right] rights~~ rights to property upon which levy has been made is not sufficient to satisfy the claim of the State for which levy is made, the director or the director's representative, thereafter, and as often as may be necessary, may proceed to levy in like manner upon any other property liable to levy of the person against whom a claim exists, until the amount due from the person, together with all expenses, is fully paid;
 - ~~[(3)]~~ (4) Surrender of property subject to levy.
 - (A) Requirement. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made, upon demand of the director or the director's representative, shall surrender the property or rights (or discharge the obligation) to the director or the director's representative, except that part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process;
 - (B) Extent of personal liability. Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or the director's representative, shall be liable in the person's own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which the levy has been made, together with costs and interest on the sum at the rate of eight per cent a year from the date of the levy. Any amount (other than costs) recovered under this subparagraph shall be credited against the tax liability for the collection of which the levy was made;
 - (C) Penalty for violation. In addition to the personal liability imposed by subparagraph (B), if any person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, the person shall be

- liable for a penalty equal to fifty per cent of the amount recoverable under subparagraph (B). No part of the penalty shall be credited against the tax liability for the collection of which the levy was made;
- (D) Effect of honoring levy. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or the director's representative, surrenders the property or rights to property (or discharges the obligation) to the director or the director's representative (or who pays a liability under subparagraph (B)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to the property or rights to property arising from the surrender or payment; and
- (E) Person defined. The term "person," as used in subparagraph (A), includes an officer or employee of a corporation or a member or employee of a partnership, who as an officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation;
- [(4)] (5) Production of books. If a levy has been made or is about to be made on any property, or ~~right~~ rights to property, any person having custody or control of books or records, containing evidence or statements relating to the property or ~~right~~ rights to property subject to levy, upon demand of the director or the director's representative, shall exhibit those books or records to the director or the director's representative;
- [(5)] (6) Property exempt from levy. Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:
- (A) Wearing apparel and school books. Those items of wearing apparel and those school books that are necessary for the taxpayer or for members of the taxpayer's family;
- (B) Fuel, provisions, furniture, and personal effects. If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value;
- (C) Books and tools of a trade, business, or profession. So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value;
- (D) Unemployment benefits. Any amount payable to an individual with respect to the individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the State; and
- (E) Undelivered mail. Mail, addressed to any person, which has not been delivered to the addressee; and
- [(6)] (7) Sale of the seized property.
- (A) Notice of sale. The director shall take possession and keep the levied property until the sale. After taking possession, the director shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time

- and place of the sale in the district, and by posting the notice in at least three public places in the district where the sale is to be held;
- (B) Assistance in seizure and sale. The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy;
 - (C) Time and place of sale. The sale shall take place within thirty days after seizure; provided that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for one week. Any further extension of the sale shall be with the consent of the delinquent taxpayer. The sale, in any event, shall be completed within forty-five days after seizure of the property;
 - (D) Manner and conditions of sale. Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner; and
 - (E) Redemption of property. If the owner of the property seized desires to retain or regain possession thereof, the owner may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs, and expenses."

SECTION 4. Section 235-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the liability imposed by subsection (a), if any employer [~~which is a corporation~~] fails, neglects, or refuses to deduct and withhold from the wages paid to any employee, or to pay over, the amount of tax required, any person [~~or corporate officer~~] excluding those who have only ministerial duties, who is under a duty [~~to the corporation~~] to deduct and withhold or to pay over, the amount of tax required, and who wilfully fails to perform such duty, shall be liable to the State for the amount of the tax. The liability may be assessed and collected in the same manner as the liability imposed by subsection (a); provided that two or more persons may be assessed under this subsection jointly or in the alternative, but the tax shall be collected only once with respect to the same wages. The voluntary or involuntary dissolution of the [~~corporation,~~] employer, or the withdrawal and surrender of its right to engage in business within this State shall not discharge the liability hereby imposed."

SECTION 5. Section 237-19, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval; provided that:

- (1) Section 3 is applicable to a levy made on or after July 1, 2002; and
- (2) Section 4 is applicable to withholding requirements for payroll periods beginning on or after July 1, 2002.

(Approved June 7, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.