

ACT 78

H.B. NO. 2179

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

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

SECTION 1. Section 231-33, Hawaii Revised Statutes, is amended to read as follows:

“§231-33 Tax debt due the State; lien. (a) Within the meaning of this section:

- (1) The terms “mortgagee”, “pledgee”, and “purchaser” do not include any person to whom property or an interest in property is conveyed (A) as security for or in satisfaction of an antecedent or pre-existing debt of a debtor who is insolvent within the meaning of the Bankruptcy Act, or (B) as trustee, assignee, or agent for the benefit of one or more creditors, other than mortgage bondholders.
- (2) The term “motor vehicle” means any self-propelled vehicle to be operated on the public highways.
- (3) The interest of a party, if required to be recorded or entered of record in any public office in order to be valid against subsequent purchasers, does not arise prior to the time of such recording or entry of record.
- (4) An employer or other person who is required by any tax law to withhold tax at the source, or to collect a tax, and who is made liable for the tax if the employer or other person does not fulfill the employer’s or other person’s duties in that regard, shall be deemed a person liable for the tax.
- (5) The term “real property” includes leasehold or other interest in real property and also any personal property sold or mortgaged with real property if affixed to the real property and described in the instrument of sale or mortgage.

(b) Any state tax ~~[which]~~ that is due and unpaid is a debt due the State and constitutes a lien in favor of the State upon all property and rights to property, whether real or personal, belonging to any person liable for the tax. The lien for the tax, including penalties and interest thereon, arises at the time the tax is assessed, or at the time a return thereof is filed, or at the time of filing by the department of taxation of the certificate provided for by subsection (f) whichever first occurs. From and after the time the lien arises it is a paramount lien upon the property and rights to property against all parties, whether their interest arose before or after that time, except as otherwise provided in this section.

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

- (1) A mortgagee or purchaser of real property, or the lien of a judgment creditor upon real property, whose interest arose prior to the recording by the department of the certificate provided for by subsection (f); or
- (2) A mortgagee or purchaser of a motor vehicle who becomes the legal owner or owner at a time when the tax lien and encumbrance record provided for by section 286-46 does not show the lien.

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

- (1) Is extinguished as to such property upon passage of title to a person without notice or knowledge of the existence of the lien, for an adequate and full consideration in money or money’s worth; and
- (2) Is not valid as against a mortgagee or pledgee for an adequate and full consideration in money or money’s worth, who is located outside the State and takes possession of the property, if at the time of taking possession of the property the mortgagee or pledgee is without notice or knowledge of the existence of the lien. The mere

recording or filing of the certificate provided for by subsection (f) does not constitute notice for the purposes of this subsection.

(e) Subject to the provisions of this subsection, the lien imposed by subsection (b) is not valid as against a mortgagee, pledgee, or purchaser who gives notice to the department on a form prescribed by it of the mortgage, pledge, or purchase made or about to be made, with a description of the property encumbered or conveyed or proposed to be encumbered or conveyed thereby, and whose interest in the property arises prior to the recording or filing by the department of the certificate provided for by subsection (f) or within ten days after the filing. If the notice is given the lien imposed by subsection (b) is valid against the party giving the notice, as to any taxes set forth in a certificate filed as provided in subsection (f) within the period of fifteen days after the notice. The department may waive all or any part of the period herein allowed.

(f) The department may record in the bureau of conveyances at Honolulu, or in respect of a lien on a motor vehicle, file with the county director of finance, a certificate setting forth the amount of taxes due and unpaid, which have been returned, assessed, or as to which a notice of proposed assessment has issued. The certificate shall identify the taxpayer, the taxpayer's last known address, and the tax or taxes involved. The recording or filing of the certificate has the effect set forth in this section, but nothing in this section shall be deemed to require that a certificate recorded or filed by the department must include the amount of any penalty or interest, in order to protect the lien therefor. The certificate, if recorded or filed with the county director of finance, shall be entered of record as provided by law. Recordation of the certificate in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.

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

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

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

(j) If a lien imposed by subsection (b) is properly recorded as authorized under subsection (f), and three hundred sixty-five days have elapsed from the date of recording with no response or action by the taxpayer against whom the lien was recorded, the director may apply to the circuit court to have the lien converted into a civil judgment. The circuit court shall issue a civil judgment for an amount equivalent to the value of the lien. If a lien is converted to a civil judgment under this subsection, interest under section 231-39(b)(4) shall cease to accrue after the period to collect the unpaid amount has expired under the applicable statute of limitations or agreement."

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

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 2022.)