



Collection Law Section

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February 14, 2011

Representative Gilbert S.C. Keith-Agaran, Chair
Representative Karl Rhoads, Vice Chair
Senate Judiciary Committee
State of Hawaii

TESTIMONY IN SUPPORT OF SB 1489

RE: SB 1489 / RELATING TO ATTORNEY'S LIENS
HEARING 3/15/11 @ 2:00 PM

Dear Representative Keith-Agaran and Committee Members:

The Collection Law Section of the Hawaii State Bar Association supports passage of SB 1139.¹ SB 1139 amends HRS 507-81 to delete the one year deadline for filing the lien with the court or arbitrator and generally improves the section by offering a more consistent use of terms.

For background, HRS 507-81 was enacted in 2004 in response to a taxation issue concerning individuals who had obtained a settlement or judgment, and then found that the Internal Revenue Service ("IRS") was taking the position that certain parts of certain settlements or judgments recovered by those individuals could be taxed without a deduction for the attorney's fees those individuals paid to obtain the settlement or judgment in the first place. Moreover, after taxing those individuals, the IRS again taxed those same attorney's fees on the *attorney's personal income tax return*; thereby amounting to what could effectively be called, double taxation. HRS 507-81 clearly defines the attorney's portion of the recovery as belonging to the attorney and therefore provides assistance to the individual who has obtained a settlement or judgment and does not want to pay taxes on the amount his or her attorney received for their services (please keep in mind, the attorney pays taxes on his or her fees for services rendered no matter if HRS 507-81 exists or not).

¹ The opinions of the Collection Law Section are not necessarily the opinions of the Hawaii State Bar Association proper.

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HRS 507-81, as currently written, states that the attorney has, at the outside, a one year period after entry of the settlement or judgment, to file the HRS 507-81 notice of lien. If however, the attorney forgets to file a lien with the court or arbitrator, or if the attorney does not know about HRS 507-81, or if an individual needs to hire another attorney to collect on the judgment a few years later, or if the judgment is older than 2003, the lien never is perfected; causing obvious taxation problems for the individual/client. SB 1489 corrects this by eliminating the one year time limit.

Lastly, SB 1489 cleans up HRS 507-81 so that it reads more clearly. HRS 507-81 became a Hawaii statute as a "cut and paste" of an Oregon statute. With all due respect to the Oregon Legislature, legal terms of art in the Oregon law were not used with great consistency. Further, litigation trends are favoring a move towards using arbitration. SB 1489 clarifies and states without any doubt that HRS 507-81 includes settlements and judgments obtained through arbitration.

Thank you.

Respectfully,

/s/ Bill Plum

Bill Plum
Vice Chair

cc: Steve Guttman
Lyn Flanigan

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