

JAN 24 2013

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**A BILL FOR AN ACT**

RELATING TO COLLECTION OF TAXES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 231-25, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3           "(b) The following rules are applicable to the levy as  
4 provided for in subsection (a)(2):

5           (1) Seizure and sale of property. The term "levy" as  
6 used in this section includes the power of  
7 distraint and seizure by any means. Except as  
8 provided in paragraph (2), a levy shall extend  
9 only to property possessed and obligations  
10 existing at the time thereof. In any case in  
11 which the director or the director's  
12 representative may levy upon property or rights  
13 to property, the director may seize and sell the  
14 property or rights to property (whether real or  
15 personal, tangible or intangible);

16           (2) The effect of a levy on salary or wages payable  
17 to or received by a taxpayer shall be continuous  
18 from the date the levy is first made until the

1           levy is released. The levy on salary or wages  
2           shall attach to twenty-five per cent of any  
3           salary or wages payable or received by the  
4           taxpayer;

5           (3) Successive seizures. Whenever any property or  
6           rights to property upon which levy has been made  
7           is not sufficient to satisfy the claim of the  
8           State for which levy is made, the director or the  
9           director's representative, thereafter, and as  
10          often as may be necessary, may proceed to levy in  
11          like manner upon any other property liable to  
12          levy of the person against whom a claim exists,  
13          until the amount due from the person, together  
14          with all expenses, is fully paid;

15          (4) Surrender of property subject to levy.

16           (A) Requirement. Any person in possession of  
17           (or obligated with respect to) property or  
18           rights to property subject to levy upon  
19           which a levy has been made, upon demand of  
20           the director or the director's  
21           representative, shall surrender the property  
22           or rights (or discharge the obligation) to  
23           the director or the director's

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1 representative, except that part of the  
2 property or rights as is, at the time of the  
3 demand, subject to an attachment or  
4 execution under any judicial process;

5 (B) Extent of personal liability. Any person  
6 who fails or refuses to surrender property  
7 or rights to property, subject to levy, upon  
8 demand by the director or the director's  
9 representative, shall be liable in the  
10 person's own person and estate to the State  
11 in a sum equal to the value of the property  
12 or rights not so surrendered, but not  
13 exceeding the amount of taxes for the  
14 collection of which the levy has been made,  
15 together with costs and interest on the sum  
16 at the rate of eight per cent a year from  
17 the date of the levy. Any amount (other  
18 than costs) recovered under this  
19 subparagraph shall be credited against the  
20 tax liability for the collection of which  
21 the levy was made;

22 (C) Penalty for violation. In addition to the  
23 personal liability imposed by subparagraph

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1 (B), if any person required to surrender  
2 property or rights to property fails or  
3 refuses to surrender the property or rights  
4 to property without reasonable cause, the  
5 person shall be liable for a penalty equal  
6 to fifty per cent of the amount recoverable  
7 under subparagraph (B). No part of the  
8 penalty shall be credited against the tax  
9 liability for the collection of which the  
10 levy was made;

11 (D) Effect of honoring levy. Any person in  
12 possession of (or obligated with respect to)  
13 property or rights to property subject to  
14 levy upon which a levy has been made who,  
15 upon demand by the director or the  
16 director's representative, surrenders the  
17 property or rights to property (or  
18 discharges the obligation) to the director  
19 or the director's representative (or who  
20 pays a liability under subparagraph (B))  
21 shall be discharged from any obligation or  
22 liability to the delinquent taxpayer and any  
23 other person with respect to the property or

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1 rights to property arising from the  
2 surrender or payment; and  
3 (E) Person defined. The term "person", as used  
4 in subparagraph (A), includes an officer or  
5 employee of a corporation or a member or  
6 employee of a partnership, who as an  
7 officer, employee, or member is under a duty  
8 to surrender the property or rights to  
9 property, or to discharge the obligation;

10 (5) Production of books. If a levy has been made or  
11 is about to be made on any property, or rights to  
12 property, any person having custody or control of  
13 books or records, containing evidence or  
14 statements relating to the property or rights to  
15 property subject to levy, upon demand of the  
16 director or the director's representative, shall  
17 exhibit those books or records to the director or  
18 the director's representative;

19 (6) Property exempt from levy. Notwithstanding any  
20 other law of the State, no property or rights to  
21 property shall be exempt from levy other than the  
22 following:

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- 1 (A) Wearing apparel and school books. Those  
2 items of wearing apparel and those school  
3 books that are necessary for the taxpayer or  
4 for members of the taxpayer's family;
- 5 (B) Fuel, provisions, furniture, and personal  
6 effects. If the taxpayer is the head of a  
7 family, so much of the fuel, provisions,  
8 furniture, and personal effects in the  
9 taxpayer's household, and of the arms for  
10 personal use, livestock, and poultry of the  
11 taxpayer, as does not exceed \$500 in value;
- 12 (C) Books and tools of a trade, business, or  
13 profession. So many of the books and tools  
14 necessary for the trade, business, or  
15 profession of the taxpayer as do not exceed  
16 in the aggregate \$250 in value;
- 17 (D) Unemployment benefits. Any amount payable  
18 to an individual with respect to the  
19 individual's unemployment (including any  
20 portion thereof payable with respect to  
21 dependents) under an unemployment  
22 compensation law of the United States or the  
23 State; and

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1 (E) Undelivered mail. Mail, addressed to any  
2 person, which has not been delivered to the  
3 addressee; and

4 (7) Sale of the seized property.

5 (A) Notice of sale. The director shall take  
6 possession and keep the levied property  
7 until the sale. After taking possession,  
8 the director shall sell the taxpayer's  
9 interest in the property at public auction  
10 after first giving fifteen days public  
11 notice of the time and place of the sale in  
12 the district, and by posting the notice in  
13 at least three public places in the district  
14 where the sale is to be held;

15 (B) Assistance in seizure and sale. The  
16 director may require the assistance of any  
17 sheriff or authorized police officer of any  
18 county to aid in the seizure and sale of the  
19 levied property. The director may further  
20 retain the services of any person competent  
21 and qualified to aid in the sale of the  
22 levied property, provided that the consent  
23 of the delinquent taxpayer is obtained. Any

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1 sheriff or the person so retained by the  
2 director shall be paid a fair and reasonable  
3 fee but in no case shall the fee exceed ten  
4 per cent of the gross proceeds of the sale.  
5 Any person other than a sheriff so retained  
6 by the director to assist the director may  
7 be required to furnish bond in an amount to  
8 be determined by the director. The fees and  
9 the cost of the bond shall constitute a part  
10 of the costs and expenses of the levy;

11 (C) Time and place of sale. The sale shall take  
12 place and be completed within [thirty]one  
13 hundred eighty days after seizure; provided  
14 that ~~[by public announcement at the sale, or~~  
15 ~~at the time and place previously set for the~~  
16 ~~sale, it may be extended for one week.]the~~  
17 time period set herein shall be tolled for  
18 the pendency of any action commenced by any  
19 person relating to the seized property until  
20 a final order is rendered in such action,  
21 whether by stipulation with the person or by  
22 court order, or upon such extended time as  
23 may be agreed upon. ~~[Any further extension~~



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1 ~~of the sale shall be with the consent of the~~  
2 ~~delinquent taxpayer. The sale, in any~~  
3 ~~event, shall be completed within forty-five~~  
4 ~~days after seizure of the property;~~

5 (D) Manner and conditions of sale. Sufficient  
6 property shall be sold to pay all taxes,  
7 penalties, interest, costs, and expenses.  
8 On payment of the price bid for any property  
9 sold, the delivery thereof with a bill of  
10 sale from the director shall vest the title  
11 of the property in the purchaser. No charge  
12 shall be made for the bill of sale. All  
13 surplus received upon any sale after the  
14 payment of the taxes, penalties, interest,  
15 costs, and expenses, shall be returned to  
16 the owner of the property sold, and until  
17 claimed shall be deposited with the  
18 department subject to the order of the  
19 owner. Any unsold portion of the property  
20 seized may be left at the place of sale at  
21 the risk of the owner; and

22 (E) Redemption of property. If the owner of the  
23 property seized desires to retain or regain

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1 possession thereof, the owner may give a  
2 sufficient bond with surety to produce the  
3 property at the time and place of sale, or  
4 pay all taxes, penalties, interest, costs,  
5 and expenses."

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


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

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INTRODUCED BY: 

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BY REQUEST

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**Report Title:**

Taxes; Delinquent, Collection of

**Description:**

Increases the amount of time that the Department of Taxation has within which to sell property that has been seized due to a failure of the taxpayer to pay the tax delinquency and provides for a tolling of the time period if any party commences an action concerning the seized property.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO COLLECTION OF TAXES.

PURPOSE: To allow the Department of Taxation additional time to dispose of property seized to enforce payment of unpaid taxes, if the delinquent taxpayer appeals the action.

MEANS: Amend section 231-25(b), Hawaii Revised Statutes.

JUSTIFICATION: The current statute requires the Department to sell any seized property within 45 days regardless of circumstances, which may lead to a situation in which the delinquent taxpayer uses the taxpayer's appeal rights to frustrate the seizure and sale process. The suggested change prevents such frustration of the process and should promote collection of delinquent taxes.

Impact on the public: Prevents delinquent taxpayers from using their appeal rights to frustrate the process of seizure and sale.

Impact on the department and other agencies: This measure will assist in collecting delinquent taxes and will ensure that the department's collection processes do not come into conflict with taxpayers' rights to appeal.

GENERAL FUND: \$

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

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EFFECTIVE DATE:       Upon approval.