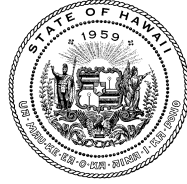


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To: The Honorable Jill N. Tokuda, Chair
and Members of the Senate Committee on Ways and Means

Date: March 23, 2016
Time: 9:15 A.M.
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 2217, H.D. 1, Relating to Amending or Repealing Hawaii Real Property Tax Laws for the Purpose of Deleting Obsolete or Unnecessary Provisions.

The Department of Taxation (Department) appreciates the intent of H.B. 2217, H.D. 1, and provides the following comments for your consideration.

H.B. 2217, H.D. 1, repeals Chapter 246, Hawaii Revised Statutes (HRS), relating to Real Property, and Chapter 246A, HRS, relating to Transfer of Real Property Taxation Functions pursuant to a finding that the Hawaii Constitution transferred the taxation of real property to the counties. The H.D. 1 version of the bill includes amendments to sections 239-5, 342G-61, 248-1, and 248-5, HRS, for the purpose of removing cross-references to Chapters 246 and 246A. The bill is effective July 1, 2030.

First, the Department notes that article VIII, section 3 of the Hawaii Constitution transferred the taxing power for real property to the counties, except for the county of Kalawao: "The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, *with the exception of the county of Kalawao.*" Haw. Const. Art. 8, § 3 (emphasis added). Accordingly, the taxing power for real property in Kalawao remains with the State. If Chapters 246 and 246A, HRS, are repealed there will not be any real property tax laws that apply to Kalawao.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

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SUBJECT: REAL PROPERTY, Repeal Obsolete and Unnecessary Provisions

BILL NUMBER: HB 2217, HD-1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Repeals HRS chapters 246 and 246A, which used to govern real property tax but are no longer needed because the counties exclusively control that tax.

BRIEF SUMMARY: Repeals HRS chapters 246 and 246A, and makes conforming amendments.

EFFECTIVE DATE: July 1, 2030.

STAFF COMMENTS: Article VIII, section 3 of the Hawaii Constitution, adopted in the 1978 Constitutional Convention, provides that the taxation of real property in the State has been transferred to the several counties. As stated in *State ex rel. Anzai v. City & County of Honolulu*, 99 Haw. 508, 57 P.3d 433 (2002), the need for the chapters in the Hawaii Revised Statutes governing the taxation of real property in the State lapsed decades ago, and those chapters are no longer of any force or effect.

In the 2015 session, a measure was introduced, HB 1293 (2015), to amend the home exemption in HRS section 246-26 to provide that a taxpayer who does not occupy the real property as a primary home due to a medical condition still shall be entitled to the exemption. This measure, if enacted, would have had no force or effect; yet, the full House still voted to pass the measure over to the Senate. The continued presence of chapters 246 and 246A in the Hawaii Revised Statutes obviously is confusing to some constituents and lawmakers.

As to the conforming amendments, we recommend that lawmakers consider repealing HRS section 205-14 as well:

~~[\$205-14 Adjustments of assessing practices. Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries shall be filed with the department of taxation. Thereafter, the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.]~~

Digested 3/17/2016