

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Repeal Obsolete and Unnecessary Provisions

BILL NUMBER: HB 2217

INTRODUCED BY: LUKE

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.

EFFECTIVE DATE: Upon approval.

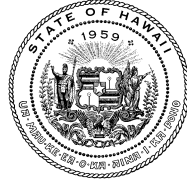
STAFF COMMENTS: Article VIII, section 3 of the Hawaii Constitution, adopted in the 1978 Constitutional Convention, provides that the taxation of real property in the State has been transferred to the several counties. As stated in *State ex rel. Anzai v. City & County of Honolulu*, 99 Haw. 508, 57 P.3d 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.

Digested 2/18/2016

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

LATE

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: February 23, 2016
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 2217, 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 and provides the following comments for your consideration.

H.B. 2217 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 bill is effective upon approval.

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.

Second, the Department notes that section 248-1, HRS, refers to section 246-1, HRS. Additionally, section 248-5, HRS, refers to section 246-50, HRS. Accordingly, the Department suggests that, if this bill is passed, sections 248-1 and 248-5 are amended accordingly.

Thank you for the opportunity to provide comments.