

TAX FOUNDATION OF HAWAII

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Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, Collection of Delinquent Taxes by Converting to Civil Judgment

BILL NUMBER: HB 2179 HD 1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Authorizes the Director of Taxation to apply to the circuit court to convert certain tax liens into enforceable civil judgments. Our view is that such a process is not necessary given the tools the Department already has. The apparent goal of the bill is to extend the applicable 15-year statute of limitations on collection by substituting a judgment for a tax assessment. We do not believe that goal is legitimate.

SYNOPSIS: Amends section 231-33, HRS, to add a new subsection providing that if the Department records a tax lien and there is 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.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: This is an Administration bill sponsored by the department of taxation and designated TAX-05 (22).

To us, this seems backwards. Usually, when a civil dispute results in a civil judgment, the judgment is then recorded and the judgment creditor can then enforce the judgment by writ of execution against any property affected.

When a tax is due and unpaid, section 231-33, HRS, says that it automatically becomes a lien against a taxpayer's property or rights to property. Department collectors who find some property in a bank account, for example, can levy upon it right away whether or not the taxpayer agrees. If real property belonging to the taxpayer exists, the Department, under section 231-63, HRS, can initiate a nonjudicial foreclosure against it, thereby forcing the property to be sold with the proceeds then applied against the tax debt. This procedure requires that the taxpayer be served with notice of the proceeding but certainly does not require the taxpayer's agreement. And if the taxpayer cannot be found, the proceeding can commence anyway through service by publication in a manner that comports with constitutional due process requirements.

In that respect, we cannot agree with the Department's assertion in its testimony that "[w]hen a delinquent taxpayer deliberately ignores the department's communications and the lien remains uncontested, the collection process cannot move forward."

Because a creditor who obtains a civil judgment needs to record the judgment against the property to establish its priority as against other creditors and then apply to the court for a writ of execution, but the Department of Taxation doesn't need to do any of that before foreclosing the

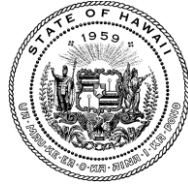
lien that it gets automatically under the tax laws, we have no idea what a civil judgment would give the Department that it doesn't already have.

Another testifier theorized, and the Department's rules officer admitted at an earlier hearing, that conversion of a tax lien to a civil judgment is an artifice to get around the 15-year statute of limitations on collection of taxes (Act 166, SLH 2009, as codified in HRS sections 235-111 and 237-40) because a judgment is subject to a new statute of limitations for judgments of between 10 and 20 years per section 657-5, HRS. If this is the goal, we believe it is not legitimate. Fifteen years is plenty of time for the Department to collect on a tax debt that it has assessed.

Digested: 4/3/2022

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To: The Honorable Karl Rhoads, Chair;
The Honorable Jarrett Keohokalole, Vice Chair;
and Members of the Senate Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Isaac W. Choy, Director
Department of Taxation

Date: Tuesday, April 5, 2022

Time: 10:00 A.M.

Place: Via Video Conference, State Capitol

Re: H.B. 2179, H.D. 1, Relating to Collection of Delinquent Taxes

The Department of Taxation (Department) strongly supports H.B. 2179, H.D. 1, an Administration measure, and offers the following comments for the committee's consideration.

H.B. 2179, H.D. 1, amends section 231-33, Hawaii Revised Statutes (HRS), to authorize the Director of Taxation to apply to the circuit court to convert certain tax liens into enforceable civil judgments. H.D. 1 has a defective effective date of July 1, 2050.

The Department notes that there are several current delinquent tax cases that are essentially uncollectible despite the existence of tax liens. When a delinquent taxpayer deliberately ignores the department's communications and the lien remains uncontested, the collection process cannot move forward. This legislation would allow the Director to seek judicial enforcement of tax liens that were properly recorded and for which at least 365 days have elapsed since official notice with no response or action from the lienee taxpayer. This change will incentivize delinquent taxpayers to proactively respond to lien notices instead of ignoring them, leading to increased tax compliance.

The Department is in strong support of this bill and respectfully requests that the measure be amended to be effective upon its approval. Thank you for the opportunity to testify.

HB-2179-HD-1

Submitted on: 4/1/2022 9:41:13 PM

Testimony for JDC on 4/5/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

Tax Collecting is Against the Law of the United States of America. It violates the Constitution!!