

## ACT 83

H. B. NO. 1922-72

A Bill for an Act Relating to Levy and Dstraint Proceedings to Aid in Collection of Unpaid Taxes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to improve the procedural requirements of levy and dstraint; to determine what property can be levied on; the duty to surrender property under a levy; the extent of personal liability and penalty for failure to surrender property subject to dstraint or levy, and to produce books and records in aid of levy.

SECTION 2. Section 231-25 of the Hawaii Revised Statutes is amended to read as follows:

**“Sec. 231-25. Payment, enforcement of by assumpsit action or by levy and dstraint upon all property and rights to property.** (a) If any tax be unpaid when due, the director of taxation may proceed to enforce the payment of the same, with all penalties, as follows:

- (1) By action in assumpsit, in his own name, on behalf of the State, for the amount of taxes and costs, or, if the tax is delinquent, for the amount of taxes, costs, penalties, and interest, in any district court, irrespective of the amount claimed. Execution may issue upon any judgment rendered in any such action which may be satisfied out of any real or personal property of the defendant.
- (2) By levy upon all property and rights to property (except such property as is exempt under paragraph (b) (5) of this section) belonging to such taxpayer or on which there is a lien, as he may deem sufficient to satisfy the payment of taxes due, penalties and interest if any, and the costs and expenses of the levy.
- (b) The following rules are applicable to the levy as provided for in paragraph (a) (2) of this section:
  - (1) Seizure and sale of property.—The term ‘levy’ as used in this section includes the power of dstraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the director or his representative may levy upon property or rights to property, he may seize and sell

such property or rights to property (whether real or personal, tangible or intangible).

- (2) Successive seizures.—Whenever any property or right to property upon which levy has been made is not sufficient to satisfy the claim of the State for which levy is made, the director or his representative may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.
- (3) Surrender of property subject to levy.
  - (A) Requirement.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the director or his representative, surrender such property or rights (or discharge such obligation) to the director or his representative, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.
  - (B) Extent of personal liability.—Any person who fails or refuses to surrender property or rights to property, subject to levy, upon demand by the director or his representative, shall be liable in his own person and estate to the State in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of eight per cent a year from the date of such levy. Any amount (other than costs) recovered under this subparagraph shall be credited against the tax liability for the collection of which such levy was made.
  - (C) Penalty for violation.—In addition to the personal liability imposed by subparagraph (B), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to fifty per cent of the amount recoverable under subparagraph (B). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.
  - (D) Effect of honoring levy.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the director or his representative, surrenders such property or rights to property (or discharges such obligation) to the director or his representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.
  - (E) Person defined.—The term ‘person,’ as used in subparagraph (A), includes an officer or employee of a corporation or a mem-

- ber or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.
- (4) Production of books.—If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the director or his representative, exhibit such books or records to the director or his representative.
- (5) Property exempt from levy.—Notwithstanding any other law of the State, no property or rights to property shall be exempt from levy other than the following:
- (A) Wearing apparel and school books.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family.
  - (B) Fuel, provisions, furniture, and personal effects.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value.
  - (C) Books and tools of a trade, business or profession.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value.
  - (D) Unemployment benefits.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States or the State.
  - (E) Undelivered mail.—Mail, addressed to any person, which has not been delivered to the addressee.
- (6) Sale of the seized property.
- (A) Notice of sale.—The director shall take possession and keep the levied property until the sale. After taking possession, he shall sell the taxpayer's interest in the property at public auction after first giving fifteen days' public notice of the time and place of the sale by publication at least once in a newspaper, published in the district, or by posting the notice in at least three public places in the district where the sale is to be held.
  - (B) Assistance in seizure and sale.—The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the levied property. The director may further retain the services of any person competent and qualified to aid in the sale of the levied property, provided that the consent of the delinquent taxpayer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other

than a sheriff so retained by the director to assist him may be required to furnish bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the levy.

- (C) Time and place of sale.—The sale shall take place within thirty days after seizure; provided, that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for one week. Any further extension of the sale shall be with the consent of the delinquent taxpayer. The sale shall, in any event, be completed within forty-five days after seizure of the property.
- (D) Manner and conditions of sale.—Sufficient property shall be sold to pay all taxes, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the taxes, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited with the department subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner.
- (E) Redemption of property.—If the owner of the property seized desires to retain or regain possession thereof, he may give a sufficient bond with surety to produce the property at the time and place of sale, or pay all taxes, penalties, interest, costs and expenses.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1972.)

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\*Edited accordingly.