

A Bill for an Act Relating to Taxation, Amending Sections 231-29, 231-30, 232-12, 232-14, 232-22, 236-7, 236-20, 236-25, 236-28, 236-38, 236-39, 236-40, 236-41, 237-44, 246-55, and 246-63, Hawaii Revised Statutes.

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

SECTION 1. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 231-29 Joinder of party defendant when State claims tax liens. The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters 233, 235, 237 to 239, 241, 243 to 245, and 383; provided, that the jurisdiction herein conferred shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action herein contemplated, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action.”

SECTION 2. Section 231-30, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 231-30 Unknown or nonresident delinquents; procedure to collect taxes from. Notwithstanding section 604-7(c):

- (1) Unknown persons. In all cases where taxes assessed to persons unknown are delinquent and unpaid when due, action may be brought by the department of taxation in the district court of the circuit in which the assessment was made and the defendant may be named as unknown. In any such case, it shall be a good and sufficient service of summons, binding on all parties in interest, if under the order of the district court the title and the substance of the action and summons, including a return day not less than three weeks from the date of the issuance of such summons, and calling on all parties in interest to appear and defend, shall be published once a week for three consecutive weeks in some newspaper of general circulation in the State, and the district courts are given jurisdiction to order the service. In the summons and in the notice published, a brief description of the property assessed shall be given. Any judgment entered against the defendant shall be enforced only against the property for which the tax was assessed, unless the defendant has appeared in the action and defended on the merits, in which case he shall be liable to a personal judgment with respect to the claim so defended.
- (2) Nonresident delinquents. Where taxes assessed to nonresidents of the taxation district are delinquent and unpaid when due, service of summons may be made in any part of the State, or by exercise by the district court of the powers conferred on circuit courts with respect to defendants who cannot be served with process within the State, with the same effect as if the action had been brought in the circuit court.”

SECTION 3. Section 232-14, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 232-14 Rules and forms. (a) The supreme court shall have power to make rules relating to procedure, and to prescribe forms to be used, in tax appeals, including procedure and forms for the issuance of subpoenas and other process by the tax appeal court. The rules shall have the force and effect of law and shall be subject to change from time to time by the supreme court.

(b) The boards of review shall have power, consistent with this chapter and chapter 91, to make rules relating to procedure, and to prescribe forms to be used, including procedure and forms for the issuance of subpoenas and other process by the boards of review or members thereof. The rules shall have the force and effect of law.”

SECTION 4. Section 236-28, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 236-28 Jurisdiction of circuit court. The circuit court having jurisdiction of the decedent’s estate in the State, shall have jurisdiction to hear and determine all questions in relation to the tax arising under this chapter, without the intervention of a jury.

On the application of the executor or administrator, the director of taxation or any interested party, or upon its own motion, and after due notice of the hearing thereon to the director, to the executor or administrator, and to such other persons as the circuit court shall order, in such manner as the court shall direct, the court shall by order assess and fix the value of any inheritance, devise, bequest, or other interest, and the tax to which the same is liable, whenever such value or tax is in dispute; provided that the entry of such order shall be without prejudice to further determinations of tax by the director or the circuit court, with respect to any property not included in the computations of values and amounts of taxes made by such order. Upon like application and notice, either as a part of the proceeding for determination of net values and taxes, or in a separate proceeding, the court shall hear and determine any objection to the appraisers' report. In any proceeding provided for by this section or section 236-38, the appraisers' report as to the gross values of the properties involved shall, if any party to the proceeding relies on the report, be presumed correct, and the director's determination as to the net values of the interests taxed, and the tax thereon, shall, except to the extent in conflict with the appraisers' report, be presumed correct; in any such instance the burden of proof shall be upon the person objecting to such report or determination. This paragraph shall be deemed to be without prejudice to the generality of the first paragraph of this section."

SECTION 5. Section 236-38, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 236-38 Powers of circuit court. If it appears to the circuit court that any tax accruing under this chapter has not been paid according to law, it shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax, or any person or corporation liable under the law for the payment of the tax, to appear on a day certain, not more than ten weeks after the date of the citation, and show cause why the tax should not be paid.

Circuit courts acting under this chapter shall have power to enter and enforce all appropriate orders, decrees, and judgments, and all other appropriate powers that may be exercised by circuit courts exercising probate jurisdiction, or in civil actions in the nature of suits in equity."

SECTION 6. Section 236-40, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 236-40 Enforcement by State. In all cases where any tax has become a lien upon any property under or by virtue of this chapter the attorney general may, whenever any property of the estate has been distributed without the payment to the State of all or any part of the taxes payable on account thereof under this chapter, bring and prosecute an action in the name of the State as plaintiff for the purpose of enforcing such lien against any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of the tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was derived through the decedent by will or succession or by decree or distribution

of the estate of the decedent, and any lienor or incumbrancer subsequent to the lien of the tax may be made a party defendant. The enumeration in sections 236-40 to 236-42 of the persons who may be made defendants shall not be deemed to be exclusive.”

SECTION 7. Section 236-41, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 236-41 Quieting title.** Actions may be brought against the State for the purpose of quieting the title to any property, against the lien or claim of lien of any tax under this chapter, or for the purpose of having it determined that any property is not subject to any lien for taxes under this chapter. In any such action the plaintiff may be any administrator or executor of the estate or will of any decedent, whether the estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee, or devisee of the decedent, or trustee of the estate or of any part of the estate of the decedent, or distributee of the estate or of any part of the estate of the decedent, and any assignee, grantee, or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought by the State under sections 236-40 to 236-42, and notwithstanding that all or any of the persons enumerated in such sections shall or may have assigned, granted, conveyed, or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any claim of lien before the commencement of the action. Any of the persons in such sections enumerated may be joined or united as parties plaintiff. The enumeration in such sections of the persons who may be made parties shall not be deemed to be exclusive. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.”

SECTION 8. Section 237-44(b), Hawaii Revised Statutes, is amended to read as follows:

“(b) Every person receiving admissions for any circus, carnival, or any other place whatsoever at which a transient taxpayer is engaged in business (whether or not further admissions are charged inside the place, such further admissions, if any, being also subject to this section), shall set aside from the admissions and hold in trust for the State five per cent of the admissions, or such lesser amount as the department of taxation shall approve as sufficient, to guarantee payment of the tax levied by this chapter on the transient taxpayer. The amount so required to be set aside from the admissions shall be deposited with the department promptly upon collection thereof, from time to time, for deposit by it in a special trust fund in the treasury of the State, there to remain until refunded upon voucher of the department, or until applied to the payment of the taxes guaranteed thereby with the consent of the person making the deposit, or until deposited in court pursuant to chapter 655 or the rules of court. The department may bring an action to obtain an adjudication of its right to apply the guarantee fund in payment of taxes and may deposit the fund in court to await the results of the adjudication, or may be sued by an interested person seeking to obtain the adjudication and may be

ordered to make such deposit in court, notwithstanding that the department asserts a claim against the fund.”

SECTION 9. Section 246-55, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 246-55 Tax liens; co-owners’ rights; foreclosure; limitation.** Every tax due upon real property, as defined by section 246-1, shall be a paramount lien upon the property assessed, which lien shall attach as of July 1 in each tax year and shall continue for six years. If proceedings for the enforcement or foreclosure of the lien are brought within the applicable period hereinabove designated, the lien shall continue until the termination of the proceedings or the completion of such sale.

In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, he shall have, pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. In case the land affected is registered in the land court the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in his capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.

The cotenant’s lien shall have the same priority as the lien or liens of the government for the taxes paid by him, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun, and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

The director or his subordinate, in case of a government lien, and the creditor cotenant, in case of a cotenant’s lien, shall, at the expense of the debtor, upon payment of the amount of the lien, execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title of such land if registered in the land court, which, when recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, shall, in the case of a cotenant’s lien, which contains the reference to the book and page of the original lien, be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of such satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of owner-

ship by more than one assessable person.

Upon enforcement or foreclosure by the government, in any manner whatsoever, of any such real property tax lien, all taxes of whatsoever nature and howsoever accruing due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (1) the costs and expenses of the enforcement and foreclosure including a title search, if any, (2) the amount of subsisting real property tax liens, and (3) the amount of any recorded liens against the property, in the order of their priority.

The liens may be enforced by action of the tax collector in the circuit court of the judicial circuit in which the property is situate, and jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time without the State or cannot be served within the State, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint, or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by sections 634-59 to 634-63.

In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner herein provided.”

SECTION 10. Section 246-63, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 246-63 Disposition of surplus moneys; escheat.** The officer charged with the duty of distributing the surplus arising from a tax sale under sections 246-56 to 246-61 shall pay from the surplus all taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in section 246-55, and further he may pay from the surplus the cost of a search of any records where such search is deemed advisable by him to ascertain the person or persons entitled to the surplus; provided, nothing herein contained shall be construed to require the tax collector to make or cause any such search to be made. If the officer is in doubt as to the person or persons entitled to the balance of the fund he may refuse to distribute the surplus and any claimant may sue the officer or his successor in office in the circuit court in the circuit within which the property sold was situated. The officer may require the claimants to interplead, in which event he shall state the names of all claimants known to him, and shall cause them to be made parties to the action. If in his opinion there may be other claimants who are unknown the officer may apply for an order or orders joining all persons unknown having or claiming to have any legal or equitable right, title, or interest in the moneys or any part thereof or any lien or other claim with respect thereto.

Any orders of the court or summons in the matter may be served as provided by law or the rules of court, and all persons having any interest in the moneys who are known, including the guardians of such of them as are under legal age or under any other legal disability (and if any one or more of them is under legal age or under other legal disability and without a guardian the court shall appoint a guardian ad litem to represent them therein) shall have notice of the action by personal service upon them. All persons having any interest in the moneys whose names are unknown or who if known do not reside within the State, or for any reason cannot be served with process within the State shall have notice of the action as provided by sections 634-59 to 634-63, except that any publication of summons shall be in at least one newspaper published in the State and having a general circulation in the circuit within which the property sold was situated, and the form of notice to be published shall provide a brief description of the property which was sold.

All expenses incurred by the officer shall be met out of the surplus moneys realized from the sale.

If any surplus moneys realized from the sale remain on deposit in the treasury awaiting distribution to the persons thereto entitled for a period of ten years from the date of the sale and no action shall have been commenced by any claimant for the recovery of such moneys within such period, the director of finance shall take proceedings to obtain the escheat of the moneys to the State in the same manner as if the moneys were subject to sections 665-12 to 665-14. The information filed shall contain the names of any persons assessed and the owners of the property at the time of the sale as contained in the notice of such sale, and the summons issued shall be served by publication, shall be directed to all persons, including those named as respondents therein, claiming any interest in the moneys, and shall contain a brief description of the property which was sold. All of the provisions of sections 665-12 to 665-14 not inapplicable and not inconsistent with this section are hereby made applicable to the funds arising from the tax sale.”

SECTION 11. Sections 232-12, 232-22, 236-7, 236-20, 236-25, and 236-39, Hawaii Revised Statutes, are amended by deleting the words shown in the second column below opposite the section number, wherever the same appear in the designated section, and inserting in lieu thereof the words shown in the third column, if any are shown:

SECTION NUMBER	WORDS TO BE DELETED	WORDS TO BE INSERTED
232-12	judge at chambers	court
232-22	judges at chambers	courts
236-7	judge at chambers, before whom	court before which
236-20	a circuit judge at chambers	the circuit court having jurisdiction
236-25	at chambers	—
236-39	judge at chambers	court

SECTION 12. In sections 1 to 10, statutory 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 13. This Act shall take effect on July 1, 1973.

(Approved May 22, 1973.)

*Edited accordingly.