

ACT 14

S.B. NO. 1900

A Bill for an Act Relating to the Administration of Taxes.

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

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended as follows:

1. By adding a new grouping to be appropriately designated and to read as follows:

“LIENS, FORECLOSURE

§231- Tax liens; co-owners’ rights. (a) If a cotenancy exists and within the period of a tax lien, all of the taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, are paid by a cotenant, the cotenant shall have a lien in an amount equal to the amount paid by the cotenant on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the cotenant’s payment, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify the land, the taxes paid and the name of the cotenant upon whose interest the lien is asserted. When a notice of the tax lien is recorded by a cotenant, the registrar shall cause the tax lien to be indexed in the general indexes of the bureau of conveyances. If 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 the land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar’s 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 State for the taxes paid by the cotenant, 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.

(b) The director or the director’s subordinate, in case of a state tax lien, and the creditor cotenant, in case of a cotenant’s lien, at the expense of the debtor,

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upon payment of the amount of the lien, shall 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 the land if registered in the land court. When recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page of the original lien, the sworn satisfaction shall 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 the satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.

§231- Tax liens; foreclosure; property. (a) Upon enforcement or foreclosure by the State, in any manner whatsoever, of any state tax lien on real property, all state taxes of whatsoever nature and howsoever accruing and due at the time of the foreclosure sale from the taxpayer against whose property the 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 state tax liens on real property, and (3) the amount of any recorded liens against the property, in the order of their priority.

(b) The liens may be enforced by action of the state tax collector in the circuit court of the judicial circuit in which the property is situated. Jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such state tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings.

(c) If the owners or claimants of the property against which a state tax 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 634-23 to 634-27. 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 provided.

§231- Tax liens; foreclosure without suit, notice. All real property on which a lien for state taxes exists may be sold by way of foreclosure without suit by the state tax collector, and in case any lien, or any part thereof, has existed thereon for three years, shall be sold by the state tax collector at public auction to the highest bidder, for cash, to satisfy the lien, together with all interest, penalties, costs, and expenses due or incurred on account of the tax, lien, and sale, the surplus, if any, to be rendered to the person thereto entitled. The sale shall be held at any public place proper for sales on execution, after notice published at least once a week for at least four successive weeks immediately prior thereto in any newspaper with a general circulation of at least sixty thousand published in the State and any newspaper of general circulation published and distributed in the taxation district wherein the property to be sold is situated, if there is a newspaper published in the taxation district.

If the address of the owner is known or can be ascertained by due diligence, including an abstract of title or title search, the state tax collector shall send to each

owner notice of the proposed sale by registered mail, with request for return receipt. If the address of the owner is unknown, the state tax collector shall send a notice to the owner at the owner's last known address as shown on the records of the department of taxation. The notice shall be deposited in the mail at least forty-five days prior to the date set for the sale. The notice shall also be posted for a like period in at least three conspicuous public places within such taxation district, and if the land is improved one of the three postings shall be on the land.

§231- Tax liens; registered land. If the land has been registered in the land court, the state tax collector shall also send by registered mail a notice of the proposed sale to any person holding a mortgage or other lien registered in the office of the assistant registrar of the land court. The notice shall be sent to any such person at the person's last address as shown by the records in the office of the registrar, and shall be deposited in the mail at least forty-five days prior to the date set for the sale.

§231- Tax liens; notice, form of. The notice of sale shall contain the names of the persons assessed, the names of the present owners (so far as shown by the records of the tax office and the records, if any, in the office of the assistant registrar of the land court), the character and amount of the tax, and the tax year or years, with interest, penalties, costs, expenses, and charges accrued or to accrue to the date appointed for the sale, a brief description of the property to be sold, and the time and place of sale, and shall warn the persons assessed, and all persons having or claiming to have any mortgage or other lien thereon or any legal or equitable right, title, or other interest in the property, that unless the tax, with all interest, penalties, costs, expenses, and charges accrued to the date of payment, is paid before the time of sale appointed, the property advertised for sale will be sold as advertised. The state tax collector may include in one advertisement of notice of sale notice of foreclosure upon more than one parcel of real property, whether or not owned by the same person and whether or not the liens are for the same tax year or years.

§231- Tax liens; postponement of sale, etc. If at the time appointed for the sale the state tax collector deems it expedient and for the interest of all persons concerned therein to postpone the sale of any property or properties for want of purchasers, or for other sufficient cause, the state tax collector may postpone the sale from time to time, until the sale is completed, giving notice of every adjournment by a public declaration thereof at the time and place last appointed for the sale; provided that the sale of any property may be abandoned at the time first appointed or any adjourned date, if no proper bid is received sufficient to satisfy the lien, together with all interest, penalties, costs, expenses, and charges.

§231- Tax liens; tax deed; redemption. The state tax collector or the state tax collector's assistant, on payment of the purchase price, shall make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title to the property sold; provided that the deed to the premises shall be recorded within sixty days after the sale; provided further that the taxpayer may redeem the property sold by payment to the purchaser at the sale, within one year from the date thereof, or if the deed shall not have been recorded within sixty days after the sale, then within one year from the date of recording of the deed, of the amount paid by the purchaser, together with all costs and expenses which the purchaser was required to pay, including the fee for recording the deed, and in addition thereto, interest on such amount at the rate of twelve per cent a year, but in a case of redemption more than one year after

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the date of sale by reason of extension of the redemption period on account of late recording of the tax deed, interest shall not be added for the extended redemption period.

§231- Tax liens; costs. The director of taxation by rule may prescribe a schedule of costs, expenses, and charges and the manner in which they shall be apportioned between the various properties offered for sale and the time at which each cost, expense, or charge is deemed to accrue. The costs, expenses, and charges shall be added to and become a part of the tax lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. The costs, expenses, and charges may include provision for the making of and the securing of certificates of searches of any records to furnish information to be used in or in connection with the notice of sale or tax deed, or in any case where the director deems it advisable; provided that the state tax collector shall not be required to make such searches or to cause them to be made except as provided by section 231- with respect to mortgages or other liens registered in the office of the assistant registrar of the land court.

§231- Tax deed as evidence. The tax deed referred to in section 231- is prima facie evidence that:

- (1) The property described by the deed on the date of the sale was subject to a lien or liens for state taxes, penalties, and interest in the amount stated in the deed, for the tax years therein stated, and that the state taxes, penalties, and interest were due and unpaid on the date of sale;
- (2) Costs, expenses, and charges due or incurred on account of the state taxes, liens, and sale had accrued at the date of the sale in the amount stated in the deed;
- (3) The person who executed the deed was the proper officer;
- (4) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer;
- (5) The sale was made upon full compliance with sections 231- to 231- and all laws relating thereto, and after giving notice as required by law; and
- (6) The grantee named in the deed was the person entitled to receive the conveyance.

§231- Disposition of surplus moneys. (a) The officer charged with the duty of distributing the surplus arising from a tax sale under sections 231- to 231- shall pay from the surplus all state taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in section 231- , and the officer may pay from the surplus the cost of a search of any records where such search is deemed advisable by the officer to ascertain the person or persons entitled to the surplus; provided that nothing in this section shall be construed to require the state 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 the officer may refuse to distribute the surplus and any claimant may sue the officer or the officer's 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 the officer shall state the names of all claimants known to the officer, and shall cause them to be made parties to the action. If in the officer's 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.

(b) 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 634-23 to 634-27, 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.

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

2. By adding a new section to be appropriately designated and to read as follows:

"§231- Assessment of additional taxes of corporations or partnerships. Additional taxes of a corporation or partnership shall be assessed to it under its corporate or firm name."

3. By adding a new section to be appropriately designated and to read as follows:

"§231- Fiduciaries, liability. Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all acts, matters, or things as are required to be done in respect to the assessment of the taxes for which the fiduciary is responsible in a fiduciary capacity. The fiduciary shall be liable for the payment of those taxes up to the amount of the available property held by the fiduciary, but shall not be personally liable. The fiduciary may retain so much property as may be necessary to pay the taxes due. The fiduciary may recover the amount of taxes paid from the beneficiary to whom the property shall have been distributed."

4. By adding a new section to be appropriately designated and to read as follows:

"§231- Returns of corporations or partnerships. The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, or 247, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership, by any one of the partners."

5. By adding a new section to be appropriately designated and to read as follows:

"§231- Returns by fiduciaries. The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, or 247 shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required."

6. By adding a new section to be appropriately designated and to read as follows:

"§231- Informalities not to invalidate assessments, mistakes in names or notices, etc. No assessment or act relating to the assessment or collection of taxes shall be illegal nor shall such assessment, levy, or collection be invalid on account of mere informality or mistakes in names, notices, etc."

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7. By adding a new section to be appropriately designated and to read as follows:

"§231- Tax bills. Each state tax collector shall mail, postage prepaid, or deliver to all known persons assessed taxes in the state tax collector's district, tax bills demanding payment of taxes due from each of them, but no person shall be excused from the payment of any tax or delinquent penalties thereon by reason of failure on the person's part to receive such bill. The bill, if mailed, shall be addressed to the person concerned at the person's last known address or place of residence."

SECTION 2. Section 111-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If the owner of real property from which persons are forced to move because of code enforcement is the person responsible for the code violation, and the owner fails to pay the state agency within sixty days after written demand, the state agency may claim a lien against the real property from which persons are displaced. This lien shall be in addition to any other remedy the state agency may have. Such lien may be foreclosed in the same manner as liens for [real property] state taxes and in accordance with sections [246-55 to 246-61.] 231- to 231-."

SECTION 3. Section 174-19, Hawaii Revised Statutes, is amended to read as follows:

"§174-19 Administration of project; acreage assessments; liens. All projects established pursuant to this chapter shall be administered by the board of land and natural resources. In making the final determination to establish a project, the board shall determine the proportion of acreage assessments to be borne by the land within the project. The board shall determine and certify to the director of taxation on or before March 31 of each year (1) the amount of acreage assessments necessary in that calendar year for acquisition, construction, and maintenance of facilities for each project, and (2) the acreage of each land occupier within the project.

Upon the certification the director of taxation or the director's properly authorized deputies or other assistants, shall determine the acreage assessment to be levied against the property of each land occupier by determining the amount of acreage assessments to be borne by the land within the project according to the proportion previously certified to the director by the board. The acreage assessments shall be [in addition to any real property taxes, and shall be] collected by the director of taxation in the same manner as [the taxes.] state taxes. Except in the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed land, or both, of the land occupier included within the projects forms a part. The lien may be foreclosed in the same manner as liens for [real property] state taxes and in accordance with sections [246-55 to 246-61.] 231- to 231-. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to chapter 171. In the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon the board of land and natural resources or the Hawaiian homes commission, as the case may be, for payment.

Acreage assessments shall be deemed revenues within the meaning of part III of chapter 39 and shall be used for the payment of the principal and interest of any revenue bonds issued hereunder.

Water tolls fixed by the board for each project under this chapter shall be collected by the board under such reasonable rules and procedures as it may establish and may modify from time to time.

All water tolls, acreage assessments, and receipts from properties sold by way of foreclosure for failure to pay acreage assessments shall be realizations of the board."

SECTION 4. Chapter 231, Hawaii Revised Statutes, is amended as follows:

1. Section 231-1 is amended by amending the definition of "property" or "real property" to read as follows:

"Property" or "real property" has the meaning defined [by section 246-1,] herein, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to [246,] 245, 236D, 237D, and 244D, also means and includes other subjects or measures of tax. "Real property" includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to such land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops."

2. Section 231-3 is amended to read as follows:

"§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To [assess, pursuant to law, all real property for taxation and to] make any [other] assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed by chapters 231 to 249, 236D, 244D, and 237D, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under such laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws [in respect to the assessment and taxation of property;] administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;

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- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of [property for taxation or any other assessment of or for] taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules and regulations: To make such rules and regulations as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified,

- by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in [chapter 246] chapters 235, 237 to 239, 243 to 245, 236D, 244D, and 237D, for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, [and] receiving, and enforcing payment of the taxes imposed under the authority of those chapters [235, 237 to 239, 243 to 245, 236D, 244D, and 237D,] as far as the provisions [of chapter 246 are not superseded by and] are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions [and regulations prescribed under chapter 246, except as aforesaid,] shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner.”
3. Section 231-4 is amended to read as follows:

“§231-4 Assessing officers eligible to appointment as collecting officers and vice versa. Appointees to offices or positions in the department of taxation for the assessing of [property] taxes shall be eligible [to] for appointment to offices or positions in the department for the collection of taxes, and vice versa.”

4. Section 231-23 is amended to read as follows:

“§231-23 Adjustments and refunds. [(a) This subsection shall apply to taxes assessed and collected under chapter 246.

- (1) In the event of adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors, and errors in calculations, the adjustments may be entered upon the records although the full amount appearing on the records prior to such adjustment has been paid.
 - (2) There may be refunded in the manner provided in subsection (d) of this section any amount collected in excess of the amount appearing on the records as adjusted, or any amount constituting a duplication of payment in whole or in part.
 - (3) Whenever any real property is deemed by the director of taxation to be exempt from taxation under section 246-39, if there shall have been paid prior to the effective date of the exemption any real property taxes applicable to the period following the effective date of the exemption, there shall be refunded to the nonprofit or limited distribution mortgagor owning the property in the manner provided in section 231-23(d) all amounts representing the real property taxes which have been paid on account of the property and attributable to the period following the effective date of the exemption.
 - (4) No such adjustment shall be entered on the records nor refund made except within two years after the end of the tax year in which the amount to be refunded was due and payable, unless a written application for the adjustment or refund has been filed within such period.
- (b)] (a) This subsection shall apply to all taxes except those collected under [chapters 246 and] chapter 247 and those collected under a chapter containing a

provision for credit and refund of the amount of tax paid in excess of the tax imposed by such chapter. As to all tax payments for which a refund or credit is not authorized by this subsection (including without prejudice to the generality of the cases of unconstitutionality hereinafter mentioned in (1)(C)) the remedies provided by appeal or under section 40-35 are exclusive.

- (1) If the amount already paid exceeds that which should have been paid under the chapter imposing a particular tax, or if the amount already paid results in duplication of payment in whole or in part, the excess so paid shall be refunded in the manner provided in subsection [(d) of this section,] (c) subject however to the following limitations:
 - (A) No refund shall be made unless an application for the refund shall have been made within five years after the amount to be refunded was paid;
 - (B) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the director of taxation, provided that if the assessment by the director shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refund procedures shall apply[.];
or
 - (C) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally.
- (2) In any case where a taxpayer is entitled to a refund, the taxpayer [may], at the taxpayer's election, may apply the amount of the refund as an overpayment credit to taxes subsequently accruing under the same chapter as that under which the refundable amount was collected.
- [(c)] (b) This subsection shall apply to the taxes collected under chapter

247.

There may be refunded in the manner provided in subsection [(d) of this section] (c) such conveyance tax as has been erroneously or unjustly paid.

[(d)] (c) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a "refund voucher" prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to [246,] 245, 236D, 244D, and 237D, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund¹ shall be made out of the tax reserve fund. The director of taxation [may], from time to time, may deposit taxes collected under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the

tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made[, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated].

tax. [(e)] (d) This subsection shall apply to a refund for an overpayment of a

- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection [(d).] (c). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with the first month after the due date of the return and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director's approval, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the due date of the return until the date that the comptroller sends the refund warrant to the taxpayer.
- (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first month after the due date of the original return to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed not to have been made prior to the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
- (4) In the case of credit, interest shall be allowed and paid from the due date of the return or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 5. Section 232-4, Hawaii Revised Statutes, is amended to read as follows:

"§232-4 Second appeal. In every case in which a taxpayer appeals a real property tax assessment to [a board of review or to] a tax appeal court and there is pending an appeal of the assessment, the taxpayer shall not be required to file a

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notice of the second appeal; provided the first appeal has not been decided prior to April 9 preceding the tax year of the second appeal; and provided further the assessor gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal.”

SECTION 6. Section 232-7, Hawaii Revised Statutes, is amended to read as follows:

“§232-7 Boards of review; duties, powers, procedure before. (a) The board of review for each district shall hear informally all disputes between the assessor and any taxpayer [or county] in all cases in which appeals have been duly taken and the fact that a notice of appeal has been duly filed by a taxpayer [or county] shall be conclusive evidence of the existence of a dispute; provided that this provision shall not be construed to permit a taxpayer to dispute an assessment to the extent that it is in accordance with the taxpayer’s return.

(b) Each board shall hold public meetings at some central location in its taxation district, commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. Each board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer [or the county] in the notice of appeal; provided that no board shall have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the assessor and to increase or lower any assessment.

(c) The board shall base its decision on the evidence before it, and, as provided in section 231-20, the assessment made by the assessor shall be deemed prima facie correct. [Assessments for the same year upon other similar property situated in the State shall be received in evidence upon the hearing. In increasing or lowering any real property assessment the board shall be governed by chapter 246 and section 232-3.] The board shall file with the assessor concerned its decision in writing on each appeal decided by it, and a certified copy [thereof] of the decision shall be furnished by the assessor [forthwith] to the taxpayer concerned by delivery [thereof to the taxpayer,] or by mailing the copy addressed to the taxpayer’s last known place of residence. [In the case of a real property tax appeal taken by a county, a certified copy of the decision of the board shall be furnished by the assessor forthwith to the county by delivery to the county clerk.

(d) Upon completion of its review of the property tax appeals for the current year, the board shall compile and submit to the governor, and shall file with the assessor for the use of the public, a copy of a report covering such features of its work as, in the opinion of the board, will be useful in attaining the objectives set forth in chapter 246. In this report the board shall additionally note instances in which, in the opinion of the board, the assessor, in the application of the methods selected by the assessor, erred as to a particular property or particular properties not brought before the board by any appeal, whether the error is deemed to have been by way of underassessment or overassessment. Before commencing this phase of its work the board shall publish, during the first week of September a notice specifying a period of at least ten days within which complaints may be filed by any taxpayer or county. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the taxpayer or county and the grounds of objection to the assessment, and shall be filed with the assessor who shall transmit the same to the board. Not earlier than one week after the close of the period allowed for filing complaints the board shall hear the same,

after first giving reasonable notice of the hearing to all interested taxpayers, the county, and the assessor. Like notice and hearing shall be given in order for the board to include in its report any other property not brought before it by an appeal. The board may proceed by districts designated by their tax map designation, and may from time to time publish the notice above provided for as the work proceeds by districts.

(e) The assessor, in the making of assessments for the succeeding year, shall give due consideration to the report of the board made pursuant to subsection (d).

(f)] (d) Each board and each member thereof in addition to all other powers shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the board. The tax appeal court shall have the power, upon request of the boards, to enforce by proper proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, records, and papers at the hearings of the boards.”

SECTION 7. Section 232-13, Hawaii Revised Statutes, is amended to read as follows:

“§232-13 Hearing de novo; bill of particulars. The hearing before the tax appeal court shall be a hearing de novo. Irrespective of which party prevails in [the] proceedings before a state board of review, or any equivalent administrative body established by county ordinance, the assessment as made by the assessor, or if increased by the board, or equivalent county administrative body, the assessment as so increased, shall be deemed prima facie correct. Each party shall have the right to introduce, or the tax appeal court, of its own motion, may require the taking of such evidence in relation to the subject pending as in the court’s discretion may be deemed proper. The court, in the manner provided in section 232-16, shall determine all questions of fact and all questions of law, including constitutional questions, involved in the appeal.

The jurisdiction of the tax appeal court is limited to the amount of valuation or taxes, as the case may be, in dispute as shown on the one hand by the amount claimed by the taxpayer or county and on the other hand by the amount of the assessment, or if increased by the board, or equivalent county administrative body, the assessment as so increased.

Assessments for the same year upon other similar property situated in the State shall be receivable in evidence upon the hearing.

Upon the application of either the taxpayer, the county, or the assessor, the judge of the tax appeal court, upon notice, may allow and direct a bill of particulars of the claim of either the taxpayer, the county, or the assessor to be delivered to the other, and in case of default the judge shall preclude the person so defaulting from giving evidence of the part or parts of the person’s affirmative claim of which particulars have not been delivered.”

SECTION 8. Section 232-15, Hawaii Revised Statutes, is amended to read as follows:

“§232-15 Appeal to board of review. [In case the assessment is one upon real property then the appeal to a board of review shall be to the board of review for the district in which the property is located. In all other cases the] The appeal to a board of review may be either to the board of review for the district in which the taxpayer has the taxpayer’s principal place of business or to the board of review for the district in which the taxpayer resides or has the taxpayer’s principal office or to the board of review of the first district. The notice of appeal must be lodged

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with the assessor on or before the date fixed by law for the taking of the appeal. An appeal to the board of review shall be deemed to have been taken in time if the notice thereof shall have been deposited in the mail, postage prepaid, properly addressed to the assessor, on or before such date.

The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal[, stating the valuation claimed by the taxpayer or county] and stating the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the taxpayer [or county] to the assessor, the assessor shall prepare the notice of appeal upon request of the taxpayer [or county] and any notice so prepared by the assessor shall be deemed sufficient as to its form. [If an appeal is taken by a county, the notice of appeal shall be served upon the taxpayer or taxpayers concerned.]

The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer [or county] in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the taxpayer [or county] in the notice of appeal and in such case the objections may be heard and determined by the tax appeal court on appeal from a decision of the board of review; but this provision shall not be construed to confer upon the board of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the board's decision; provided the amendment does not substantially change the dispute [or lower the valuation claimed]."

SECTION 9. Section 232-16, Hawaii Revised Statutes, is amended to read as follows:

"§232-16 Appeal to tax appeal court. A taxpayer or county [may], in all cases, may appeal directly to the tax appeal court without appealing to [the] a state board of review, or any equivalent administrative body established by county ordinance, by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court. An appealing taxpayer shall pay the costs in the amount fixed by section 232-22. The taxpayer or county shall also file a copy of the notice of appeal in the assessor's office or mail a copy to the assessor not later than the date fixed by law for the taking of the appeal.

The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court and the assessor and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal."

SECTION 10. Section 232-17, Hawaii Revised Statutes, is amended to read as follows:

“§232-17 Appeals from boards of review to tax appeal court. An appeal shall lie to the tax appeal court from the decision of a state board of review, or equivalent administrative body established by county ordinance, by the filing, by the taxpayer, the county, or the tax assessor, of a written notice of appeal in the office of the tax appeal court within thirty days after the filing of the decision of the state board of review, or equivalent administrative body, and, in the case of any appealing taxpayer, the payment of the costs of court in the amount fixed by section 232-22. The taxpayer shall also file a copy of the notice of appeal in the assessor’s office and, in case of an appeal from a decision involving a county as a party, with the county clerk. If an appeal is taken by a county, a copy of the notice of appeal shall be filed in the assessor’s office and a copy shall be served upon the taxpayer or taxpayers concerned. A notice of appeal shall be sufficient if it states that the taxpayer, county, or assessor appeals from the decision of the state board of review, or equivalent administrative body, to the tax appeal court and may be amended at any time. The appeal shall bring up for determination all questions of fact and all questions of law, including constitutional questions involved in the appeal.

In case of an appeal by the assessor, a copy of the notice of appeal shall be forthwith delivered or mailed to the taxpayer concerned or to the clerk of the county concerned in the manner provided in section 232-7 for giving notice of decisions.

An appeal shall be deemed to have been taken in time if the notice thereof and costs, if any, and the copy or copies of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, tax assessor, taxpayer or taxpayers, and county, respectively, within the period [hereinabove] provided[.] by this section.”

SECTION 11. Section 232-18, Hawaii Revised Statutes, is amended to read as follows:

“§232-18 Certificate of appeal to tax appeal court. Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

The certificate shall be accompanied by the taxpayer’s return, if any has been filed, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review[.] or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer’s, county’s, or assessor’s appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal.”

SECTION 12. Section 232-20, Hawaii Revised Statutes, is amended to read as follows:

“§232-20 Certificate of appeal. Upon the perfection of an appeal to the supreme court the judge of the tax appeal court shall send up to the supreme court a certificate in which there shall be set forth, among other things:

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- (1) A brief description of the assessment and the property involved in the appeal, if any, in sufficient detail to identify the same together with the valuation placed on the property by the assessor.
- (2) The valuation claimed by the taxpayer or county.
- (3) The taxpayer's or county's grounds of objection to the assessment.
- (4) The valuation, if any, placed thereon by [the] an administrative body established by county ordinance equivalent to a state board of review.
- (5) The valuation placed thereon by the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any, a copy of the notice of appeal from the assessment and any amendments thereof, the decision, if any, of the state board of review[,] or equivalent county administrative body, a copy of the notice of appeal from the decision of the state board of review[,] or equivalent county administrative body, if any, and any amendments thereof, and a transcript or statement of the evidence before and the decision of the tax appeal court, and all exhibits, motions, orders, or other documents specified by either the taxpayer, the county, or the assessor. Failure of the judge of the tax appeal court to send up or properly prepare the certificate or the accompanying documents shall not prejudice, limit, or in any manner affect the taxpayer's, county's, or assessor's appeal, and the certificate of appeal may be amended at any time up to the final determination of the appeal."

SECTION 13. Section 232-22, Hawaii Revised Statutes, is amended to read as follows:

"§232-22 Costs; deposit for an appeal. [The costs to be deposited by the taxpayer on appeal to the board of review shall be \$3 for each real property tax appeal.] No costs shall be charged on appeal to the state board of review [in other cases].

The costs to be deposited by the taxpayer on any appeal to the tax appeal court shall be five per cent of the amount of taxes in dispute but not more than \$100 nor less than \$5 in any one case.

On appeal to the supreme court, the deposit for costs, and costs chargeable, shall be the same as in appeals to the supreme court from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the supreme court is in favor of the taxpayer, the taxpayer shall pay no costs for the appeal and any payment or deposit therefor shall be returned to the taxpayer. If the decision is only partly in favor of the taxpayer, the costs shall be prorated in the manner provided by section 232-23. No costs shall be payable by, and no deposit shall be required from, the assessor or the county in any case."

SECTION 14. Section 232-23, Hawaii Revised Statutes, is amended to read as follows:

"§232-23 Costs, taxation. (a) In the event of an appeal by a taxpayer to the state board of review, if the appeal is compromised, or is sustained as to fifty per cent or more of the [valuation] amount in dispute, the costs deposited shall be returned to the appellant. Otherwise the entire amount of costs deposited shall be retained.

(b) In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a

part of the costs proportionate to the amount for which the appellant shall obtain judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the merits the costs deposited in excess of the \$5 minimum shall be returned to the appellant.

In the event of a final determination of an appeal by a county to [a board of review,] the tax appeal court[,], or the supreme court, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment."

SECTION 15. Section 237-27.5, Hawaii Revised Statutes, is amended to read as follows:

"[§237-27.5] Air pollution control facility. (a) As used in this section, "air pollution control facility" shall mean a new identifiable treatment facility, equipment, device, or the like, which is used to abate or control atmospheric pollution or contamination by removing, reducing, or rendering less noxious air contaminants emitted into the atmosphere from a point immediately preceding the point of such removal, reduction, or rendering to the point of discharge of air, meeting emission standards as established by the department of health, excluding air conditioner, fan, or other similar facility for the comfort of persons at a place of business.

(b) Any provision of law to the contrary notwithstanding, and upon receipt of the certification required by subsection (c), there shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter [237], all of the gross proceeds arising from, and all of the amount of tangible personal property furnished in conjunction with, the construction, reconstruction, erection, operation, use, or maintenance of an air pollution control facility[; provided that application for exemption shall first be made with the director of health and the director of taxation in the manner prescribed by section 246-34.5].

(c) Application for the exemption provided by this section shall first be made with the director of health who, if satisfied that the facility meets the pollution emission criteria established by the department of health, shall certify to that fact. A new certificate shall be obtained from the director of health and filed with the director of taxation every five years certifying that the pollution control facility complies with the pollutant emission criteria established by the department of health."

SECTION 16. Section 421H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The membership shares and cooperative fees are interests in real property for purposes of:

- (1) Cooperative housing corporations under section 216 of the federal Internal Revenue Code of 1954, as amended; and
- (2) Exemption from state general excise tax under section 237-24(16)[; and
- (3) Exemption from real property tax under sections 246-26 and 246-27(3)]."

SECTION 17. Section 501-82, Hawaii Revised Statutes, is amended to read as follows:

"§501-82 Tenure of holder of certificate of title. Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent

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purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on the certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall be deemed to fall within this subsection only if the same are recorded in the bureau of conveyances as provided by chapter 505.
- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by [section 246-55,] county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale.
- (3) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined.
- (4) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed.
- (5) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.
- (6) The possibility of reversal or vacation of the decree of registration upon appeal."

SECTION 18. Section 92-22, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 92-23, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 231-19, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 231-22, Hawaii Revised Statutes, is repealed.

SECTION 22. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 23. This Act shall take effect upon its approval.

(Approved April 11, 1989.)

Notes

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.