

# Hawaii Legislature Amends Tax Code To Facilitate Property Seizures By Department of Taxation.

## Critical Tax Section Amended To Facilitate Property Seizures

Hawaii Governor Neil Abercrombie signed Senate Bill 1192 into law on April 24, 2013, as [Act 44 of 2013](#). Act 44 amends Hawaii Revised Statutes Section 231-25 to allow the Department of Taxation one hundred and eighty days to sell seized property. Prior law allowed only 30 days. Furthermore, Act 44 states that if “any person” commences an action relating to the seized property, the “time period set herein shall be tolled during the pendency of any action...until a final order is rendered in that action.” Act 44 is effective upon its approval, and does not make any other changes to HRS Chapter 231-25. See, Section 3.

## Legislative History

The Department of Taxation was a strong supporter of SB 1192 and [stated in written testimony](#) that “seizing and selling property is currently not a viable option for the Department.”

There was little to no legislative input into the text of SB 1192, and Committee Reports reflect that the Legislature largely adopted the reasoning (and much of the written testimony) of the Department of Taxation. See, [Senate Report 501](#) and [House Report 1462](#).

## Comment

The changes to Section 231-25(b)(7)(C) are significant because they demonstrate that the Department of Taxation is considering potential property seizures and sales as part of its delinquent tax collection arsenal. The Department of Taxation has made consistent efforts to update its powers over the past five years, including substantial changes to summons enforcement, informational reporting, penalty assessment, and collections.

The new text of Section 231-25(b)(7)(C) is likely to fall well short of its intended impact as a tool for collection. The authors could have undertaken to modernize the entirety of Section 231-25, or at least of 231-25(b)(7), in a way that would have increased the effectiveness of the Department and enhanced the rights of a delinquent taxpayer. Instead, narrow changes were made. An example of this is in Section 231(b)(7)(B), which has provisions requiring the delinquent taxpayer’s consent to anyone other than a sheriff or police officer assisting in the sale of the seized property and limits the fee for the sheriff (or other person) to 10% of the gross proceeds of sale. Such a provision is likely to be counterproductive in many instances (for example, relatively small value seizures.)

Currently, the Department of Taxation has [no administrative rules relating to HRS 231-25](#). It will be interesting to see whether rules are proposed and adopted, and any move in that direction would be a further sign of an increased interest in property seizures as a delinquent tax enforcement tool.