

## Chapter 19

### REAL PROPERTY TAXES

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**Chapter 19****REAL PROPERTY TAXES****Article 1. Administration.****Section 19-1. Purpose.**

The purpose of this chapter is to implement the authority granted to the County to assess, impose and collect real property tax based on an amendment to the State constitution which was adopted on November 7, 1978, by the electorate. This chapter will provide for the administration, assessment, and collection of real property tax, including exemptions therefrom, dedication of land, and appeals. (1981, Ord. No. 613, sec. 1; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-2. Definitions.**

Wherever used in this chapter:

“Affordable rental housing” means a residential unit where the rental cost does not exceed the affordable rental rate.

“Affordable rental rate” is a monthly rent not to exceed seventy-five percent of the Payment Standards as established by the office of housing and community development as of the first of January each year.

“Agriculture use value” means the productivity value for assessment purposes determined for lands being put to any agricultural use.

“Certification of rental rate” means the sworn statement of the parcel owner attesting under penalty of law the rental rate that the land owner will charge and maintain for all renters on that parcel for that calendar year.

“Commercial agricultural activities” shall mean the use of property to generate income, monetary gain or economic benefit in the form of money or money’s worth of a minimum \$2,000 annual gross income per farm operation, which may include multiple parcels that need not be contiguous, and/or the use of property that adheres to generally accepted standards or recognized practices within that agricultural industry.

“Commercial agricultural use dedication” means the use of land on a continuous and regular basis that demonstrates the owner is engaged in commercial agricultural activities from:

- (1) Intensive agriculture;
- (2) Orchards;
- (3) Feed crops and fast rotation forestry; or
- (4) Pasture and slow rotation forestry.

“Continuous and regular basis” shall be evidenced by the recurring planting, cultivation and harvesting of crops or ongoing animal husbandry or aquaculture activities that adhere to generally accepted standards or recognized practices within that agricultural industry.

“County” means the County of Hawai‘i.

“Date of classification” means July 1 of the tax year for which such classification is claimed.

“Dedicated lands” are lands which are restricted in their use for specified periods of time by covenants executed between the landowners and the director of finance as provided by this chapter.

“Director” means the director of finance of the County of Hawai‘i or the director’s authorized representative.

“Duplex” and “double-family dwelling” means a building containing only two dwelling units.

“Dwelling unit” means one or more rooms designed for or containing or used as the complete facilities for the cooking, sleeping, and living area of a single-family only and occupied by no more than one family and containing a single kitchen.

“Farm dwelling” means a single-family dwelling located on and used in direct connection with a farm, or where the agricultural activity provides income to the occupant(s) of the dwelling. A farm dwelling includes employee housing for that farm.

“Feed crops and fast rotation forestry” includes, but is not limited to, such crops as forage, seed, cane, rice, and biomass grasses.

“Intensive agriculture” includes, but is not limited to, such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey and honey bees.

“Market value” is the most probable sale price of a property in terms of money in a competitive and open market assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale, and assuming that the transaction is not affected by undue stress.

“Nondedicated agricultural use assessment” means the present use of agricultural or residential and agricultural zoned land on a continuous and regular basis that demonstrates the owner is engaged in agricultural activities from:

- (1) Intensive agriculture;
- (2) Orchards;
- (3) Feed crops and fast rotation forestry; and/or
- (4) Pasture and slow rotation forestry.

“Ohana dwelling” means a second dwelling unit permitted to be built as a separate or an attached unit on a building site, but does not include a guest house or a farm dwelling.

“Orchards” includes, but is not limited to, such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple, noni and tropical specialty fruits.

“Pasture and slow rotation forestry” includes, but is not limited to, pasture and longer rotation forestry.

“Property” or “real property” means and includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the same, 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.

“Single-family dwelling” means a building containing only one dwelling unit.

“Solar water heater” means a solar thermal energy system that qualifies for the State income tax credit authorized in the Hawai‘i Revised Statutes, section 235-12.5.

(1981, Ord. No. 613, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-143, sec. 1; Am. 2007, Ord. No. 07-107, sec. 2; Am. 2008, Ord. No. 08-93, sec. 1; Am. 2008, Ord. No. 08-130, sec. 1.)

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## REAL PROPERTY TAXES

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**Section 19-3. Duties and responsibilities of the director.**

The director 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 situated within the geographic boundary of the County for taxation of real property and to make any other assessment by law required to be made by the director.
- (2) **Collections:** To be responsible for the collection of all taxes imposed by this chapter and for such other duties as are provided by law.
- (3) **Construction of Revenue Laws:** To construe the provisions of this chapter, the administration of which is within the scope of the director’s duties, whenever requested by any officer or employee of the County, or by any taxpayer.
- (4) **Enforcement of Penalties:** To see that penalties are enforced when prescribed by this chapter (the administration of which is within the scope of the director’s duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any provisions of this chapter; in the execution of these powers and duties, the director may call upon the corporation counsel or prosecuting attorney, 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 provisions of this chapter in respect to the assessment and taxation of real property.
- (5) **Forms:** To prescribe forms to be used in or in connection with the provisions of this chapter including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the provisions of this chapter and to change the same from time to time as deemed necessary.

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- (6) Maps: The director shall provide for the County maps drawn to appropriate scale, showing all parcels, blocks, lots, or other divisions of land based upon ownership, and their areas or dimensions, numbered or otherwise designated in a systematic manner for convenience of identification, valuation, and assessment.

The director shall charge fees for the use and other disposition of tracings of these maps, including copies or prints made therefrom, by private persons or firms as provided for by this chapter.

- (7) Inspection, Examination of Records and Property: The director shall have the authority to inspect and examine the records and property of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the director to obtain all information that could in any manner aid the director in discharging the director's duties under this chapter.
- (8) Inspection, Examination of Real Property: To inspect and examine the real property of any person for the purpose of enabling the director to attain all information that could in any manner aid the director in discharging the director's duties under this chapter.
- (9) Recommendations for Legislation: To recommend to the mayor such amendments, changes or modifications of the provisions of this ordinance or any applicable State statutes as may seem proper or necessary to remedy injustice or irregularity or to facilitate the assessment of property under this chapter.
- (10) Report to Mayor: To report to the mayor annually, and at such other times and in such manner as the mayor may require, concerning the acts and doings and the administration of the department of finance, and such other matters of information concerning real property taxation as may be deemed of general interest; the mayor shall transmit copies of such reports to the council within thirty days of receipt.
- (11) Rules and Regulations: To promulgate such rules and regulations as the director may deem proper and to effectuate the purposes for which the department of finance is constituted and to regulate matters of procedure by or before the director pursuant to the provisions of chapter 91, Hawai'i Revised Statutes.
- (12) Compromises: With the approval of the corporation counsel to compromise any claim arising under this chapter not exceeding \$500, and if a claim exceeds \$500, the director shall obtain the approval of the council, the administration of which is within the scope of the director's duties; and in any such case there shall be placed on file and in the department of finance'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 proposed to be assessed, (C) the amount of penalties and interest imposed or which could have been imposed by law with respect to item (A), as computed by the director, (D) the total amount of liability as determined by the terms of the compromise, and the actual payments thereon with the dates thereof, and (E) the reasons for the compromise.
- (13) Retroactivity of Rulings: To prescribe the extent, if any, to which any ruling, regulation, or construction of the provisions of this chapter shall be applied without retroactive effect.
- (14) Remission of Delinquency, Penalties and Interest: Except in cases of fraud or wilful violation of the provisions of this chapter or wilful refusal to make a return setting forth the information required by this chapter (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the director may remit any amount of penalties or interest added, under this chapter, to any tax that is delinquent for not more than one hundred eighty days, in a case of excusable failure to file a return or pay a tax within the time required by this chapter, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the director's office a statement showing the names of the person receiving such remission, the principal amount of the tax, and the year or period involved.

- (15) 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 this chapter, the administration of which is within the scope of the director'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 County, 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 County, 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.
- (16) Other Powers and Duties: In addition to the powers and duties contained in this section, the powers and duties contained in this chapter for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed hereunder, 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 this chapter.

(1981, Ord. No. 613, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1.)

#### **Section 19-4. Oaths.**

Unless otherwise provided for, the director may administer all oaths or affirmations required to be taken or be administered under this chapter.

(1981, Ord. No. 613, sec. 4; Am. 1997, Ord. No. 97-84, sec. 1.)

#### **Section 19-5. Hearings and subpoenas.**

The director may conduct any inquiry, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any inquiry or investigation into the financial resources of any delinquent taxpayer or the collectibility of any delinquent tax. The director may administer oaths and take testimony under oath relating to the matter of inquiry or investigation, and subpoena witnesses and require the production of books, papers, documents, and records pertinent to such inquiry. If any person disobeys such process, or, having appeared in obedience thereto, refuses to answer pertinent questions put to such person by the director or to produce any books, papers, documents or records, pursuant thereto, the director may apply to the third circuit court setting forth such disobedience to process or refusal to answer, and such court or judge shall cite such person to appear before such court or judge to answer such questions or to produce such books, papers, documents, or records, and upon the person's refusal to do so commit such person to jail until such person testifies but not for a longer period than sixty days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's officers, directors, agents and employees) shall be allowed their fees and mileage as in cases in the circuit courts to be paid on vouchers of the County, from any moneys available for expenses of the director.

(1981, Ord. No. 613, sec. 5; Am. 1997, Ord. No. 97-84, sec. 1.)

#### **Section 19-6. Timely mailing treated as timely filing and paying.**

(a) General Rule. Any report, claim, tax return, statement, or other document required or authorized to be filed with or any payment made to the County which is:

- (1) Transmitted through the United States mail, shall be deemed filed and received by the County on the postmarked date stamped upon the envelope or other appropriate wrapper containing it.

- (2) Mailed but not received by the County or where received and the postmarked date is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing; and in cases of the nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the County a duplicate within thirty days after written notification is given to the sender by the County of its nonreceipt of the report, tax return, statement, remittance, or other document.
- (b) Registered Mail, Certified Mail, Certificate of Mailing. If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States Postal Service of the registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was delivered to the director of finance, and the date of registration, certification, or certificate shall be deemed the postmarked date.
- (1981, Ord. No. 613, sec. 6; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-7. Tax collection; general duties, powers of director.**

The director shall collect all taxes under this chapter according to the assessments and shall be liable and responsible for the full amount of the taxes assessed, unless the director shall under oath account for the noncollection of the same, or if the director shall be released from accountability as provided in section 19-9. The corporation counsel shall assist the director in the collection of all taxes under this chapter.

(1981, Ord. No. 613, sec. 7; Am. 1984, Ord. No. 84-10, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-8. District court judges; misdemeanors and actions for tax collections.**

Except as otherwise provided in this chapter, the district court judges for the Third Circuit Court for the State, as authorized in section 231-12,\* Hawai'i Revised Statutes, shall have jurisdiction to try misdemeanors arising under this chapter and all complaints for the violation of this chapter and to impose any of the penalties therein prescribed and shall also have the jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.

(1981, Ord. No. 613, sec. 8; Am. 1997, Ord. No. 97-84, sec. 1.)

\* **Editor's Note:** Section 231-12, Hawai'i Revised Statutes, has been repealed.

**Section 19-9. Director; collection, records of delinquent taxes, uncollectible delinquent taxes.**

The director shall be responsible for the collection and general administration of all delinquent taxes. The director shall duly and accurately account for all delinquent taxes collected.

The department of finance shall prepare and maintain a complete record, open to public inspection, of the amounts of taxes assessed which have become delinquent and the name of the delinquent taxpayer in each case, but it shall not be necessary to periodically compute on the records the amount of penalties and interest upon delinquent taxes.

The department may from time to time prepare lists of all taxes delinquent which in its judgment are uncollectible. Such taxes as the department finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the department, and the department shall thereupon be released from any further accountability for their collection; provided, that no account shall be so deleted until it shall have been delinquent for at least two years. Any items so deleted may be transferred back to the delinquent tax roll if the department finds that the alleged facts as previously presented to it were not true, or that such items are in fact collectible.

(1981, Ord. No. 613, sec. 9; Am. 1984, Ord. No. 84-10, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-10. Legal representative.**

The corporation counsel or the prosecuting attorney shall assign a deputy as attorney and legal advisor and representative of the director. The corporation counsel or the prosecuting attorney may proceed to enforce payment of delinquent taxes by any means provided by law. Any legal proceeding may be instituted in the name of the director or the director's deputy.

(1981, Ord. No. 613, sec. 10; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-11. Abstracts of registered conveyances, copies of corporation exhibits, etc., furnished to director.**

The director may request abstract of titles. For the purpose of assisting the director in arriving at a correct valuation of the property within each district, the registrar of conveyances, or any other agency so requested by the department, shall furnish to the department, monthly, quarterly, or as otherwise required by the department, an abstract of the conveyances of, or other documents affecting title to, or assessment of, real property in each district, which have been entered for record at the bureau of conveyances, executed, or filed, as the case may be, during the period covered by such abstract. The director of regulatory agencies shall each year furnish the department as requested, copies of the annual corporation exhibits of any or all corporations owning real property in any district or any information contained in such exhibits.

(1981, Ord. No. 613, sec. 11; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-12. Returns, made when; form; open to public; failure to file.**

Whenever the director finds that the filing of returns under this section is advisable for the making of assessments and so orders, the director shall give, to the taxpayers during the month of December, of the year such order is made, public notice (by publication thereof, in English, at least three times on different days during the month, in a newspaper of general circulation in the County of Hawai‘i, published in the English language) requiring such taxpayers to file with the director, on or before January 15 of the succeeding year, returns in the manner and form required by this section. After such publication of notice, every person owning, or having possession, custody or control of, real property whether entitled to exemption or not, shall during the month of January, file upon forms prescribed by the director and in the manner required by such forms, a return signed as provided in section 19-13 setting forth the description and location of all real property belonging to such person or of which such person had possession, custody or control on January 1, and setting forth the taxpayer's opinion of the market value thereof as of January 1. It shall be sufficient to describe the taxpayer's real property by setting forth the location and a brief description in sufficient detail to identify the real property.

Whenever the director shall determine that there are not sufficient evidences of value to form the basis of a sound appraisal, for assessment purposes, of the value of the real property or real properties or portions thereof, of any taxpayer it may, upon notice of not less than thirty days, require the taxpayer to file a return as described in the foregoing paragraph.

All returns made under this section shall be open to inspection by the public, unless protected from disclosure by the provisions of the Uniform Information Practices Act, and shall be admissible in evidence against the person making the return, in any State court in any action wherein the value of the real property, or portion thereof, covered by the return may be in dispute.

Returns made under this section shall be taken into consideration by the director in making appraisals for assessment purposes; the opinion of any taxpayer as to market value shall not be binding upon the director but no taxpayer shall be deemed to be aggrieved by any assessment made to the taxpayer's property which is based upon the opinion of value set forth in the taxpayer's return unless the taxpayer shows lack of uniformity or inequality as set forth in section 19-93. The opinion of value shall constitute a rebuttable presumption that the market value of the real property on the date of the return was not greater than the value stated in such return in any subsequent proceeding brought to condemn the property or any part thereof for public purposes.

Failure to file a return required under this section, shall render the taxpayer liable for payment of an added tax as follows: In case of failure to file any tax return required to be filed on a day described therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return, five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate. For the purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of a tax which was paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(1981, Ord. No. 613, sec. 12; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-13. Returns to be signed.**

Every return required to be made for real property taxation purposes shall be signed by the person required to make the return or by some duly authorized person in the taxpayer's behalf.

The director may require that, if any person or persons actually prepare or sign a return for another person, such form of statement of such facts and of authority to sign such return as may be prescribed by the director shall be signed by the person so preparing or signing the return, and the director may by regulation define the classes of persons to whom this provision shall apply.

No oath shall be required upon any real property tax return.

(1981, Ord. No. 613, sec. 13; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-14. Returns by fiduciaries.**

Every executor, administrator, trustee, guardian, or other fiduciary shall make a return of the real property represented by said fiduciary in such capacity in the County in which returns shall be required to be made pursuant to the provisions of this chapter.

(1981, Ord. No. 613, sec. 14; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-15. Returns of corporations and co-partnerships.**

The returns, statements or answers required by this chapter shall, in the case of a corporation, be made by any officer thereof, or, in a case of a co-partnership, by any member thereof.

(1981, Ord. No. 613, sec. 15; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-16. Notices, how given.**

Unless otherwise provided, every notice, the giving of which by the director is required or authorized, shall be deemed to have been given on the date when the notice was mailed properly addressed to the addressee at the addressee's last known address or place of business.

(1981, Ord. No. 613, sec. 16; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-17. Federal or other tax officials permitted to inspect returns; reciprocal provisions.**

Notwithstanding the provisions of any law making it unlawful for any person, officer, or employee of the County to make known information imparted by any tax return or permit any tax return to be seen or examined by any person, it shall be lawful to permit a duly accredited tax official of the United States or of any state or territory or the Multistate Tax Commission to inspect any tax return of any taxpayer, or to furnish to such official, commission, or the authorized representative thereof an abstract of the return or supply them with information concerning any item contained in the return or disclosed by the report of any investigation of the return or of the subject matter of the return for tax purposes only. The Multistate Tax Commission may make such information available to a duly accredited tax official of the United States or to a duly accredited tax official of any state or territory, or the authorized representative thereof, for tax purposes only.

(1981, Ord. No. 613, sec. 17; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-18. Records open to public.**

All maps and records compiled, made, obtained, or received by the director or any of the director's subordinates shall be public records, and in case of the death, removal, or resignation of any such officers, shall immediately pass to the care and custody of their respective successors. The information and all maps and records connected with the assessment and collection of taxes under this chapter shall, during business hours, be open to the inspection of the public unless protected from disclosure by the provisions of the Uniform Information Practices Act.

(1981, Ord. No. 613, sec. 18; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-19. Evidence, tax records as.**

In respect of any tax imposed or assessed under this chapter, the administration of which is within the scope of the director's duties and except as otherwise specifically provided in the law imposing the tax, the notices of assessments, records of assessments, and lists or other records of payments and amounts unpaid prepared by or under the authority of the director, or copies thereof, shall be prima facie proof of the assessment of the property or person assessed, the amount due and unpaid, and the delinquency in payment and that all requirements of law in relation thereto have been complied with.

(1981, Ord. No. 613, sec. 19; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-20. Due date on Saturday, Sunday or holiday.**

When the due date for any remittance or document required by this chapter falls on a Saturday, Sunday or legal holiday, the remittance or document shall not be due until the next succeeding day which is not a Saturday, Sunday or legal holiday.

(1981, Ord. No. 613, sec. 20; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-21. Changes, etc., in assessment lists.**

Except as specifically provided in this chapter, no changes in, additions to or deductions from, the real property tax assessments on the assessment lists prepared as provided in section 19-28 shall be made except to add thereto property or assessments which may have been omitted therefrom, or to deduct therefrom adjustments on account of duplicate assessments and departmental errors, such as but not limited to, transposition in figures, typographical errors and errors in calculation.

(1981, Ord. No. 613, sec. 21; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-22. Adjustments and refunds.**

(a) This subsection shall apply to taxes assessed and collected under this chapter.

- (1) In the event of adjustments on account of duplicate assessments and departmental errors, such as but not limited to, 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 (b) 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 to be exempt, except for the minimum tax, from taxation under section 19-87, 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 subsection (b) all amounts representing the real property taxes, except for the minimum tax, 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 for refund or taxes owed shall be entered on the records 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 has been filed within such period.
- (b) This subsection shall apply to all real property taxes.
- (1) All refunds and adjustments shall be paid by voucher approved by the director, setting forth all the details of each transaction. If the person entitled to a refund or adjustment is delinquent in the payment of the tax, the director, 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 or adjustment and apply the same to the amount owed.
- (c) This subsection shall apply to a refund for an overpayment of a tax.
- (1) If the amount already paid 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 (b) above. The interest shall be allowed at a rate based upon the average interest rate earned on County investments during the previous fiscal year as determined by the director. The interest rate shall be established as a monthly rate and paid 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, no interest on the overpayment will be allowed or paid. However, if the director exceeds the time allowed herein, interest will be computed from the due date of the return until the date that the director 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 director 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 director sends the refund warrant to the taxpayer.

(1981, Ord. No. 613, sec. 22; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-23. Partial payment of taxes.**

Whenever a taxpayer makes a partial payment of a particular assessment of taxes, the amount received by the director shall first be credited to interest, then to penalties, and then to principal.

(1981, Ord. No. 613, sec. 23; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-24. Abetting, etc., misdemeanor.**

All persons wilfully aiding, abetting or assisting in any manner whatsoever any person to commit any act constituted a misdemeanor by this chapter, shall be deemed guilty of a misdemeanor.

(1981, Ord. No. 613, sec. 25; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-25. Neglect of duty, etc., misdemeanor.**

Any officer or employee of the department of finance, any person duly authorized by the director, or any police officer, on whom duties are imposed under this chapter, who wilfully fails or refuses or neglects to perform faithfully any duty or duties required of such person in this chapter, shall be deemed guilty of a misdemeanor.

(1981, Ord. No. 613, sec. 26; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-26. Penalty for misdemeanor.**

Any person convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor, and shall be sentenced according to chapter 706, Hawai‘i Revised Statutes. (1981, Ord. No. 613, sec. 27; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 2. Notice of Assessments and Lists.****Section 19-27. Notice of assessments; addresses of persons entitled to notice.**

On or before March 15 preceding the tax year, the director shall give notice of the assessment for the tax year against each known owner, by personal delivery to the owner of or by mailing to the owner on or before such date postage prepaid and addressed to the owner at the owner’s last known place of residence or address a written notice identifying the property involved by the tax key and the general class established in accordance with section 19-53(e) and setting forth separately the valuation placed upon buildings, and the valuation placed upon all other real property, exclusive of buildings, determined pursuant to section 19-53, the exemption, if any, allowed or denied, as the case may be, and the amount of the exemption applied to the buildings and the amount applied to all other real property, exclusive of buildings, and the net taxable value of the buildings and the net taxable value of all other real property, exclusive of the buildings.

In addition to the foregoing, the director shall in each year give notice of the assessments for the year by public notice (by publication thereof at least three times on different days during the month of March of such year in a newspaper of general circulation, published in the English language) of a time when (which shall not be less than a period of ten days prior to March 31 preceding the tax year) and of a place where the records of taxable properties maintained for the district may be inspected by any person for the purpose of enabling that person to ascertain what assessments have been made against that person or that person’s property and to confer with the director so that any errors may be corrected before the filing of the assessment list. (1981, Ord. No. 613, sec. 28; Am. 1997, Ord. No. 97-84, sec. 1; Am. 1997, Ord. No. 97-153, sec. 1.)

**Section 19-28. Assessment lists.**

On or before April 19 preceding the tax year the director shall have prepared from the records of taxable properties a list in duplicate of all assessments made, which list shall be signed and sworn to by the person preparing it. The assessment list shall identify the property assessed by its tax key and shall set forth the general class of the property established in accordance with section 19-53(e), the valuation of buildings and the valuation of all other real property, exclusive of buildings, the amount of exemption allowed on buildings and the amount of exemption allowed on all other real property, exclusive of the buildings, and the net taxable value of the buildings and the net taxable value of all other real property, exclusive of the buildings. The assessment lists shall be the lists in accordance with which taxes shall be collected, subject only to change made by any court or other tribunal having jurisdiction, where appeals from assessments have been duly taken and prosecuted to final determination, and subject to section 19-21. There shall be noted upon such lists all appeals taken for the year and the amount involved in each case. The original of the assessment lists shall be retained by the person preparing it, and one copy shall be held by the county clerk. (1981, Ord. No. 613, sec. 29; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2000, Ord. No. 00-28, sec. 1.)

**Section 19-29. Informalities not to invalidate assessments, mistakes in names or notices, etc.**

No assessment or act relating to the assessment or collection of taxes under this chapter shall be illegal or invalidate such assessment, levy, or collection on account of mere informality, nor because the same was not completed within the time required by law, nor, if the notice by publication provided for by section 19-27 has been given, on account of a mistake in the name of the owner or supposed owner of the property assessed, or failure to name the owner, or failure to give the notice of assessment by personal delivery or mail provided for by section 19-27. (1981, Ord. No. 613, sec. 30; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 3. Tax Bills, Payments and Penalties.**

**Section 19-30. Tax rolls; tax bills.**

The director shall prepare tax rolls from the assessment lists provided for by section 19-28, showing thereon, in each case, names and addresses of the assessed and amount of taxes which shall not be less than as provided for in section 19-90.

The director shall mail, postage prepaid, or deliver, each year on or before the billing dates as provided for by section 19-31, to all known persons assessed for real property taxes for such year, respectively, or to their agents, tax bills demanding payment of taxes due from each such person respectively, 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, or failure on the part of the director so to mail or deliver such bill. The bill, if mailed, shall be addressed to the person concerned at that person's last known address or place of residence. Whenever any bill covers taxes for any real property owned, as joint tenants or as tenants in common or otherwise, by more than one person, the bill may be sent to any one co-owner and upon written request shall be sent to each known co-owner but shall, in any event, demand the full amount of the taxes due upon such real property. (1981, Ord. No. 613, sec. 31; Am. 1990, Ord. No. 90-138, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-31. Taxes; due when; installment payments; billing and delinquent dates.**

All real property taxes shall be due and payable on and after July 1 of each tax year and the payment thereof shall be determined in the following manner:

All known persons assessed for real property taxes shall be billed not later than the billing date designated in the schedule listed herein; subject however, to the limitations heretofore provided in section 19-30. Each taxpayer shall pay the real property taxes due from the taxpayer for the year in which the taxes are assessed, in two equal installments on or before the dates designated in the following schedule:

**Fiscal Year Schedule**

<u>Billing Date</u>	<u>1st Payment</u>	<u>2nd Payment</u>
July 20	August 20	February 20

All such taxes due on the first payment date of such year from each taxpayer, which remain unpaid after the date, shall thereupon become delinquent, and the balance of such taxes due on the second payment date of such year from each taxpayer, which remain unpaid after the date, shall thereupon become delinquent. Any payment made to the County which is transmitted through the United States mail shall be deemed filed and received by the County on the postmarked date stamped upon the envelope or other appropriate wrapper containing it.

(1981, Ord. No. 613, sec. 32; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-32. Penalty for delinquency.**

There shall be added to the amount of all delinquent taxes, a penalty of ten percent of such delinquent taxes as determined by the director, which penalty shall be and become a part of the tax and be collected as a part thereof.

All delinquent taxes and penalties shall bear interest at the rate of one percent for each month or fraction thereof until paid, beginning with the first calendar month following the calendar month designated for payment in section 19-31. The interest shall be and become a part of the tax and be collected as a part thereof.

No taxpayer shall be exempt from delinquent penalties by reason of having made an appeal on the assessment, but the tax paid, covered by an appeal duly taken, shall be held in a trust account as provided in section 19-102.

(1981, Ord. No. 613, sec. 33; Am. 1984, Ord. No. 84-20, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-33. Assessment of unreturned or omitted property; review; penalty.**

If, when returns are required under this chapter, any person refuses or neglects to make such returns, or declines to authenticate the accuracy thereof as provided in section 19-12, or omits any property from a return, the director shall make the assessment according to the best information available and shall add to the assessment or tax lists for the year or years during which it was not taxed, the property unreturned or omitted. Likewise, if for any other reason any real property has been omitted from the assessment lists for any year or years, the director shall add to the lists the omitted property. Notice of the action shall be given the owner, if known, within ten days after the assessment or addition, by mailing the same addressed to the owner at last known place of residence. Any owner desiring a review of the assessment or the addition may appeal to the board of review by filing with the director a written notice thereof in the manner prescribed in section 19-99 at any time within thirty days after the date of mailing such notice, or may appeal to the tax appeal court by filing written notice of appeal with, and paying the necessary costs to, such court within the period and in the manner prescribed in section 19-98.

A penalty of ten percent shall be added by the director to the amount of any assessment made by the director pursuant to this section, which penalty shall be and become a part of the assessment so made; but no such penalty shall be imposed where the failure to assess or tax the property was not due to the refusal or neglect of the owner to return the property or authenticate the accuracy of the return.

For the purpose of determining the date of delinquency of taxes pursuant to assessments under this section, such taxes shall be deemed delinquent if not paid within thirty days after the date of mailing of notice of assessment, or if assessed for the current assessment year, within thirty days after the date of mailing the notice or on or before the next installment payment date, if any, for such taxes, whichever is later.

(1981, Ord. No. 613, sec. 34; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-34. Reassessments.**

Any property assessed to a person or persons who did not have the record title upon January 1 preceding the tax year in which the assessment was made, may be, and in any case where the attempted assessment of property is void or so defective as to create no real property tax lien on the property and the taxes have not been fully collected, the property shall be assessed as omitted property in the manner provided in section 19-33.

(1981, Ord. No. 613, sec. 35; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 4. Remissions.****Section 19-35. Remission of taxes on acquisition by government.**

Whenever any real property is acquired for public purposes by the United States, the State or the County, and whenever any government lease or other tenancy shall terminate, the director is authorized to remit the taxes due thereon for the balance of the taxation period or year from and after the date of acquisition of the property, or the termination of the government lease or other tenancy, as the case may be.

In case the State or the County takes possession of real property which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land by the State or the County, taxes are authorized to be remitted as provided in sections 101-35 to 39, Hawai‘i Revised Statutes, subject to section 101-39(1), Hawai‘i Revised Statutes.

In case the owner of real property grants to the State or the County a right-of-entry with respect to such real property and the State or the County enters into possession under the authority of the right-of-entry with intention to acquire the fee simple estate therein and to devote the real property to public use, the State or the County shall certify to the director the date upon which it took possession, and upon receipt of the certificate the director is authorized to remit the real property tax on the parcel of land or portion of a parcel of land so coming into the possession of the State or the County for the balance of the taxation period which is subsequent to the date of possession.

In case the United States takes possession of real property which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land, taxes are authorized to be remitted for the balance of the taxation period or year after such taking, as provided in this paragraph. The remission shall be allowed conditionally upon the presentation to the director, of a written notice and agreement, signed by the person, or one or more of the persons, owning the land, stating the date of such taking of possession by the United States, and agreeing that out of the first funds received by such owner or owners from such condemnation there shall be paid sufficient moneys to discharge the lien for any real property taxes existing upon the land prorated up to and including the date of such taking possession of the property; provided that the notice may be accompanied by payment of the prorated amount of taxes in lieu of such agreement. Section 101-39, Hawai'i Revised Statutes, is hereby made applicable to such land and the owner or owners thereof and to the conditional remission authorized by this paragraph. It is further provided that in the event the prorated taxes up to the time of such taking possession shall not be paid by the owner or by one or more of the owners of the land within ten days after receipt by such owner or owners of the compensation for the condemnation, or within such additional time as shall be allowed by the director, then the conditional remission of taxes shall be void, and such owner or owners shall be liable for all taxes, penalties, and interest which would have accrued had no such conditional remission been allowed. (1981, Ord. No. 613, sec. 36; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-36. Remission of taxes in cases of certain disasters.**

In any case of the damage or destruction of real property as the result of a tidal wave, earthquake, fire, landslides or volcanic eruption, or as the result of flood waters overflowing the banks or walls of a river or stream, or other disasters, the director is authorized to remit taxes due on such property, to the extent and in the manner hereinafter set forth:

- (1) The director shall determine whether the property was wholly destroyed, or was partially destroyed or damaged, and in the latter event shall determine what percentage of the value of the whole property was destroyed or otherwise lost by reason of the disaster.
- (2) If the property was wholly destroyed, the amount remitted shall be such portion of the total tax on the property for the tax year in which such destruction occurred as shall constitute the portion of the tax year remaining after such destruction.
- (3) If the property was partially destroyed or was damaged, the percentage of the value destroyed or otherwise lost, determined as provided in paragraph (1), shall be applied to the total tax on the property and of the amount of tax so determined there shall be remitted such portion as shall constitute the portion of the tax year remaining after such partial destruction or damage.
- (4) Application for a remission of taxes pursuant to this section shall be filed with the director on or before June 30 of the tax year involved, or within sixty days after the occurrence of the disaster, whichever is the later. Any amount of taxes authorized to be remitted by this section, which has been paid, shall be refunded upon proper application therefor out of real property tax collections.
- (5) The director shall have the authority to extend the period for the remission of taxes for property that was wholly or partially damaged or destroyed for the percentage of the property which was affected by such disaster, for a period not to exceed one year after the tax year in which the disaster took place.

(1981, Ord. No. 613, sec. 37; Am. 1990, Ord. No. 90-90, sec. 2; Am. 1995, Ord. No. 95-135, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 5. Liens, Foreclosure.**

**Section 19-37. Tax liens; co-owners' rights; foreclosure; limitation.**

Every tax due upon real property, as defined by section 19-2, 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 said 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, said cotenant 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 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 government for the taxes paid by the cotenant, and may be enforced by an action in the nature of 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 tenancy thereof is recorded or filed and registered as provided by law, within the period.

The director or the director's subordinate, in case of a government lien, and the creditor cotenant, in a 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 ownership 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 however 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, provided a claim for the surplus has been filed with the director within one year from the date of the sale.

The liens may be enforced by action of the director in the Circuit Court of the Third Circuit, and the proceedings had before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings as provided for in chapter 634, Hawai‘i Revised Statutes. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time out of the County or cannot be served within the County, 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 director may request the court that service be made in the manner provided by sections 634-23 to 634-29, Hawai‘i Revised Statutes.

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.

(1981, Ord. No. 613, sec. 38; Am. 1988, Ord. No. 88-74, sec. 1; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-38. Tax liens; foreclosure without suit, notice.**

All real property on which a lien for taxes exists may be sold by way of foreclosure without suit by the director, and in case any lien, or any part thereof, has existed thereon for three years, shall be sold by the director 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 County. If the address of the owner is known or can be ascertained by due diligence, including an abstract of title or title search, the director 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 director shall send a notice to the owner at the owner's last known address as shown on the records of the department of finance. 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 the county and if the land is improved, one of the three postings shall be on the land.

(1981, Ord. No. 613, sec. 39; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-39. Same; registered land.**

If the land has been registered in the land court, the director shall also send by registered mail a notice for 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 that 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.

(1981, Ord. No. 613, sec. 40; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-40. Same; notice, for 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 director 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 director 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.

(1981, Ord. No. 613, sec. 41; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-41. Same; postponement of sale, etc.**

If at the time appointed for the sale, the director shall deem 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 director may postpone it from time to time, until the sale shall be completed, giving notice of every such 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.

(1981, Ord. No. 613, sec. 42; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-42. Same; tax deed; redemption.**

The director or the director's subordinate shall, on payment of the purchase price, make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title in fee thereto, and such title shall be free and clear of any lien, claim, or encumbrance against such property except the lien for real property taxes subsequent to that for which the property was sold, subject only to any mineral rights of the State and any easements in favor of any governmental entity; provided, that the taxpayer may redeem the property sold by payment to the purchaser at the sale, within one year from the date of the sale, 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 percent a year.

(1981, Ord. No. 613, sec. 43; Am. 1988, Ord. No. 88-74, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-43. Same; costs.**

The director by rules or regulation 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 shall be deemed to accrue; and such costs, expenses, and charges shall be added to and become a part of the lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. Such 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 shall deem such advisable; provided, that the director shall not be required to make such searches or to cause them to be made except as provided by section 19-39 with respect to mortgages or other liens registered in the office of the assistant registrar of the land court.

(1981, Ord. No. 613, sec. 44; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-44. Tax deed as evidence.**

The tax deed referred to in section 19-42 is prima facie evidence that:

- (1) The property described by the deed was duly assessed or taxed in the years stated in the deed and to the persons therein named;
- (2) The property described by the deed was subject on the date of the sale to a lien or liens for real property taxes, penalties, and interest in the amount stated in the deed, for the tax years therein stated, and that the taxes, penalties, and interest were due and unpaid on the date of sale;
- (3) Costs, expenses, and charges due or incurred on account of the taxes, liens, and sale had accrued at the date of the sale in the amount stated in the deed;
- (4) The person who executed the deed was the proper officer;
- (5) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer;
- (6) The sale was made upon full compliance with sections 19-38 to 19-43 and all laws relating thereto, and after giving notice as required by law; and
- (7) The grantee named in the deed was the person entitled to receive the conveyance.

(1981, Ord. No. 613, sec. 45; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-45. Disposition of surplus moneys.**

The director shall pay from the surplus all taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in section 19-37 and further the director may pay from the surplus the cost of a search of any records where such search is deemed advisable by the director to ascertain the person or persons entitled to the surplus; provided, nothing herein contained shall be construed to require the director to make or cause any such search to be made.

All proceeds remaining after payment of the costs and expenses of the enforcement and foreclosure of the tax lien, including a title search, and the amount of subsisting real property taxes, shall be distributed to lienholders of record in the order of their priority who have filed claims for the surplus with the director within one year from the date of sale. Any lien, claim or encumbrance against the property remaining unsatisfied after the distribution of the surplus moneys shall be extinguished and unenforceable against the property and the purchaser to whom the property is conveyed by the director. If, in order to ascertain the person or persons entitled to the surplus, the director deems it advisable to conduct a search of any records, the director may pay from the surplus the cost of such search; provided, nothing herein contained shall be construed to require the director to make or cause any search to be made. Any lienholder failing to file a claim for the surplus within one year from the date of the sale shall have no right to the surplus. The director shall pay from any surplus remaining after distribution to record lienholders who have filed claims, all taxes, including interest and penalties, 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. If after payment of all taxes surplus funds remain, the director shall pay the surplus to the taxpayer against whose property the tax lien was foreclosed, provided that the taxpayer has filed a claim for the surplus with the director within two years from the date of sale. Any surplus remaining after payment to all those entitled as herein set forth shall be deposited into the County general fund.

If the director is in doubt as to the person or persons entitled to the balance of the fund, the director may refuse to distribute the surplus and any claimant may sue the director in the Third Circuit Court. The director may require the claimants to interplead, in which event the director shall state the names of all claimants and shall cause them to be made parties to the action. If there are persons entitled to the fund who have not filed a claim, or if in the director's opinion there may be other persons entitled to the fund who are unknown, the director may apply for an order or orders joining these persons.

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 634-29, Hawai'i Revised Statutes, except that any publication of summons shall be in at least one newspaper of general circulation published in the State and having a general circulation in the County, and the form of notice to be published shall provide a brief description of the property which was sold.

All expenses incurred by the director shall be met out of the surplus moneys realized from the sale. (1981, Ord. No. 613, sec. 46; Am. 1988, Ord. No. 88-74, sec. 3; Am. 1994, Ord. No. 94-60, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

## **Article 6. Rate; Levy.**

### **Section 19-46. Tax base and rate.**

Except as exempted or otherwise taxed, all real property shall be subject to a tax upon one hundred percent of its market value determined in the manner provided by ordinance, at such rate as shall be determined in the manner provided in section 19-90. No taxpayer shall be deemed aggrieved by an assessment, nor shall an assessment be lowered, except as the result of a decision on an appeal as provided by law.

(1981, Ord. No. 613, sec. 48; Am. 1982, Ord. No. 765, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-47. Tax year; time as of which levy and assessment made.**

For real property tax purposes, "tax year" shall mean the fiscal year beginning July 1 of each calendar year and ending June 30 of the following calendar year. Real property shall be assessed, and taxes shall be levied thereon, as of January 1 preceding each tax year upon the basis of valuations determined in the manner and at the time provided in this chapter.

(1981, Ord. No. 613, sec. 49; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-48. Assessment of property; to whom in general.**

Real property shall be assessed in its entirety to the owner thereof.

For the purposes of this chapter, life tenants, personal representatives, trustees, guardians, or other fiduciaries may be, and persons holding government property under an agreement for the conveyance of the same to such persons shall be considered as owners during the time any real property is held or controlled by them as such. Lessees holding under any government lease shall be considered as owners during the time any real property is held or controlled by them as such, as more fully provided in section 19-84; and further, notwithstanding any provisions to the contrary in this chapter, any tenant occupying government land, whether such occupancy be on a permit, license, month-to-month tenancy, or otherwise, shall be considered as owner where such occupancy has continued for a period of one year or more, as more fully provided in section 19-84. Persons holding any real property under an agreement to purchase the same, shall be considered as owners during the time the real property is held or controlled by them as such; provided the agreement to purchase (1) shall have been recorded in the bureau of conveyances, and (2) shall provide that the purchasers shall pay the real property taxes levied on the property. Persons holding any real property under a lease for a term of ten years or more shall be considered as owners during the time the real property is held or controlled by them as such; provided that the lease (1) shall have been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court prior to January 1 preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease.

(1981, Ord. No. 613, sec. 50; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-49. Imposition of real property taxes on reclassification.**

A portion of real property taxes shall be imposed upon and paid by the owner or owners thereof when:

- (1) The property of the owner has been leased for a term of ten years or more;
- (2) The classification of the property has been changed to a classification of a higher use during the life of the lease; and
- (3) The classification to a higher use has occurred without the lessee petitioning for such higher classification. Taxes which are imposed upon the owners of property under this section shall be paid by the owner of such property without being transferred to the lessee and such tax shall be the difference between the assessed valuation of the property after the classification change times the applicable tax rate less the assessed valuation of the property as it existed prior to the classification change times the applicable tax rate.

(1981, Ord. No. 613, sec. 51; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-50. Assessment of property of corporations or co-partnerships.**

Property of a corporation or co-partnership shall be assessed to it under its corporate or firm name.

(1981, Ord. No. 613, sec. 52; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-51. Fiduciaries, liability.**

Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all such acts, matters, or things as are required to be done by this chapter in respect to the assessment of the real property said fiduciary represents in a fiduciary capacity, and shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available property held in such capacity, but a fiduciary shall not be personally liable. A fiduciary may retain, out of the money or other property which the fiduciary may hold or which may come to the fiduciary in a fiduciary capacity, so much as may be necessary to pay the taxes or to recoup the fiduciary for the payment thereof, or a fiduciary may recover the amount thereof paid by the fiduciary from the beneficiary to whom the property shall have been distributed.

(1981, Ord. No. 613, sec. 53; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-52. Assessment of property of unknown owners.**

The taxable property of persons unknown, or some of whom are unknown, shall be assessed to “unknown owners,” or to named persons and “unknown owners,” as the case may be. The taxable property of persons not having record title thereto on January 1, preceding the tax year for which the assessment is made, may be assessed to “unknown owners,” or to named persons and “unknown owners,” as the case may be. Such property may be levied upon for unpaid taxes.

(1981, Ord. No. 613, sec. 54; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 7. Tax Maps; Valuations.****Section 19-53. Valuation; considerations in fixing.**

- (a) Except as provided below, the director of finance shall cause the market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the County. In making such determination and assessment, the director shall separately value and assess within each class established in accordance with subsection (e) of this section:
- (1) Buildings.  
In determining the value of buildings, consideration shall be given to any additions, alterations, remodeling, modifications or other new construction, improvement or repair work undertaken upon or made to existing buildings as the same may result in higher assessable valuation of said buildings.
  - (2) All other real property, exclusive of buildings.  
Exception. The value of land classified and used for agriculture as determined pursuant to section 19-57 or 19-60 shall be the value of such land for such agricultural use without regard to any value that such land might have for other purposes or uses. The director shall update the agricultural use values at least every five years and shall consult with agriculturalists and/or experts in the field when making such determination. The establishment of the agricultural use rate values shall be made in accordance with chapter 91, Hawai‘i Revised Statutes.
  - (3) Real property leased and located within the Waikoloa Workforce Housing project shall be valued under this chapter based on comparison with like properties within the same project.
- (b) So far as practicable, records shall be compiled and kept which shall show the methods established by or under the authority of the director, for the determination of values.
- (c) Whenever land has been divided into lots or parcels as provided by law, each such lot or parcel shall be separately assessed.
- (d) When a condominium property regime is declared for a property, each unit shall be classified upon consideration of its actual use into one of the general classes in the same manner as land.

## (e) Classification of land:

- (1) Except as otherwise provided in subsection (e)(2) of this section, land shall be classified, upon consideration of its highest and best use, into the following general classes:
  - (A) Residential;
  - (B) Affordable rental housing;
  - (C) Apartment;
  - (D) Hotel and resort;
  - (E) Commercial;
  - (F) Industrial;
  - (G) Agricultural or native forests;
  - (H) Conservation; and
  - (I) Homeowner.
- (2) In assigning land to one of the general classes the director of finance shall give major consideration to the districting established by the land use commission pursuant to chapter 205, Hawai‘i Revised Statutes, the districting established by the County in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors which influence highest and best use, except that parcels which are used exclusively as the owner’s principal residence shall be classified as “homeowner” without regard to the highest and best use, provided that the director has granted to the owner a home exemption in accordance with sections 19-71 to 19-72.
  - (A) The homeowner class is exclusively reserved for properties which are used as the owner’s principal residence. Uses which shall not qualify as “homeowner” include:
    - (i) Real property which is valued according to its nondedicated agricultural use pursuant to subsection 19-57.
    - (ii) Real property which is dedicated to an agricultural use or native forest use.
    - (iii) Real property which is used for commercial or income-producing purposes, except as exempted under section 19-71(a) or (b).
    - (iv) Real property which is used for residential rental purposes, whether for short-term or long-term lease, except as exempted under section 19-71(a) and affordable rental housing.
    - (v) Real property which is used for any purpose other than the owner’s principal residence.
  - (B) The affordable rental housing class is exclusively reserved for properties which meet the eligible requirements for this class and have the annual required application timely filed. Uses which shall not qualify as “affordable rental housing” include:
    - (i) Real property which is valued according to its nondedicated agricultural use pursuant to section 19-57.
    - (ii) Real property which is dedicated to an agricultural use or native forest use.
    - (iii) Real property which is used for commercial or income-producing purposes, except uses which is legally permitted as a home occupation in accordance with the zoning code.
- (3) Whenever there is an overlap or contradiction in districting or use classification between the County and the State, zoned districts by the County shall take precedence.

- (f) In determining the value of buildings, consideration shall be given to any additions, alterations, remodeling, modifications or other new construction, improvement or repair work undertaken upon or made to existing buildings as the same may result in higher assessable valuation of said buildings; provided, however, that the increase in value resulting from any additions, alterations, modifications or other new construction, improvements or repair work to buildings undertaken or made by the owner-occupant thereof pursuant to the requirements of any urban redevelopment, rehabilitation or conservation project under the provisions of part II of chapter 53, Hawai'i Revised Statutes, shall not increase the assessable valuation of any building for a period of seven years from the date of certification as hereinafter provided.

It is further provided that the owner-occupant shall file with the director of finance, in the manner and place which the director may designate, a statement of the details of the improvements certified in the following manner:

- (1) In the case of additions, alterations, modifications or other new construction, improvements or repair work to a building that are undertaken pursuant to any urban redevelopment, rehabilitation or conservation project as hereinabove mentioned, the statement shall be certified by the mayor or any government official designated by the mayor and approved by the council, that the additions, alterations, modifications, or other new construction, improvement or repair work to the buildings were made and satisfactorily comply with the particular urban redevelopment, rehabilitation or conservation act provision, or
  - (2) In the case of maintenance or repairs to a residential building undertaken pursuant to any health, safety, sanitation or other governmental code provision, the statement shall be certified by the mayor or any governmental official designated by the mayor and approved by the council, that:
    - (A) The building was inspected by them and found to be substandard when the owner-occupant made the claim, and
    - (B) The maintenance or repairs to the buildings were made and satisfactorily comply with the particular code provision.
- (g) Limitation on homeowner assessment.
- (1) For properties in the homeowner class as of January 1, 2004 and not dedicated to nonspeculative residential use, the assessed value of the property shall not increase more than three percent per tax year until the parcel is sold or any portion thereof sold by way of conveyance which is subject to conveyance tax under terms of chapter 247, Hawai'i Revised Statutes, at which time the property will be assessed at market value. In addition to the three percent limit of this subsection any improvements undertaken on the property within the tax year shall be assessed at market value. All parcels entering this class after January 1, 2004 shall have the assessed value as of January 1 of the following year and be subject to the above provisions.
  - (2) Those properties dedicated to nonspeculative residential use as of January 1, 2004 may terminate the dedication without imposition of retroactive taxes upon filing and approval of petition for such termination with the director of finance by September 1, 2009. Upon termination of the dedication these properties shall be assessed at the market value and subject to section 19-53(g)(1).
  - (3) Those properties dedicated to nonspeculative residential use as of January 1, 2004 may continue the dedication and upon termination of the dedication period the parcel shall be assessed at the market value and the year following the termination be subject to section 19-53(g)(1) unless the dedication is renewed as provided in section 19-58.1.
  - (4) Those properties dedicated to nonspeculative residential use as of the effective date of this ordinance may terminate the dedication without the imposition of retroactive taxes upon filing and approval of petition for termination of dedication with the director of finance by September 1, 2009.

For properties with an effective date of dedication prior to July 1, 2005, or renewals after July 1, 2005, the assessed value shall be the market value at January 1, 2004 and increased compounded annually by three percent; and for properties with an effective date of dedication after July 1, 2005, the assessed value shall be the market value at the effective date of dedication and increased compounded annually by three percent as set in the table below rounded to the nearest hundred dollars of assessed value:

<u>Effective Date of Dedication</u>	<u>Market Value at</u>	<u>Assessed Value Multiplier</u>
<u>Prior to July 1, 2005</u>	<u>January 1, 2004</u>	<u>1.1941</u>
<u>July 1, 2005</u>	<u>January 1, 2005</u>	<u>1.1593</u>
<u>July 1, 2006</u>	<u>January 1, 2006</u>	<u>1.1255</u>
<u>July 1, 2007</u>	<u>January 1, 2007</u>	<u>1.0927</u>
<u>July 1, 2008</u>	<u>January 1, 2008</u>	<u>1.0609</u>

- (5) Paragraphs 19-53(g)(2), (3), (4) and (5) shall be repealed upon the final participant in the nonspeculative residential use program being converted as provided above.
- (h) Eligibility for affordable rental housing class.
  - (1) Real property occupied as affordable rental housing must be rented at a rate not to exceed the affordable rental rate for the entire calendar year claimed and must be legally permitted by all codes.
  - (2) All rental units on affordable rental housing properties must be rented at the affordable rental rates.
  - (3) Affordable rental housing properties shall not be excluded by the owner’s principal residence also being on the property.
  - (4) For properties in the affordable rental housing class as of January 1, 2008, the assessed value of the property shall not increase more than three percent per tax year until the parcel is sold or any portion thereof sold by way of conveyance which is subject to conveyance tax under terms of chapter 247, Hawai‘i Revised Statutes, at which time the property will be assessed at market value. In addition to the three percent limit of this subsection, any improvements undertaken on the property within the tax year shall be assessed at market value. All parcels entering this class after January 1, 2008, shall have the assessed value as of January 1 of the following year and be subject to the above provisions.
- (i) Application for the affordable rental housing class.
  - (1) No affordable rental housing classification shall be granted unless the claimant shall annually have filed with the department of finance, on or before December 31 preceding the tax year for which such classification is claimed, a claim for such classification in such form as shall be prescribed by the department and shall include but not be limited to rental agreements signed by the renter or excise tax returns.
  - (2) No affordable rental housing classification shall be granted unless and until a Hawai‘i County real property tax assessor evaluates the property and establishes its current market value.
  - (3) The landowner shall submit a certification of rental rates affirming that the rental rates charged to all renters on that parcel shall be at the affordable rental rate and that rate will be maintained for the calendar year.

- (j) Breach of affordable rental housing class.
- (1) Rental of any unit during the calendar year at a rate higher than the affordable rental rate shall breach the classification.
  - (2) Any conveyance of the parcel or portion of the parcel subject to conveyance tax under terms of chapter 247, Hawai‘i Revised Statutes, shall breach the classification.
  - (3) Upon breach of the classification, the tax assessment shall be cancelled retroactive to the date of the classification, but for not more than a period of two years plus the current year, and all difference in the amount of taxes that were paid and those that would have been due from the assessment in the higher classification shall be payable with a ten percent penalty.

(1981, Ord. No. 613, sec. 56; Am. 1982, Ord. No. 834, sec. 2; Am. 1984, Ord. No. 84-21, sec. 1; Am. 1990, Ord. No. 90-136, sec. 2; Am. 1990, Ord. No. 90-157, sec. 1; Am. 1991, Ord. No. 91-143, sec. 2; Am. 1996, Ord. No. 96-71, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1; Ord. No. 97-153, sec. 2; Am. 2000, Ord. No. 00-48, sec. 2; Am. 2003, Ord. No. 03-103, secs. 2 and 3; Am. 2004, Ord. No. 04-67, sec. 1, Ord. No. 04-121, sec. 2, Ord. No. 04-143, sec. 2; Am. 2006, Ord. No. 06-147, sec. 2; Am. 2007, Ord. No. 07-107, secs. 3 and 4; Am. 2007, Ord. No. 07-163, sec. 2; Am. 2008, Ord. No. 08-156, sec. 2.)

Intentionally left blank.

**Section 19-53.1. Valuation of public utilities.**

- (a) Notwithstanding any section to the contrary, the director of finance, in determining the market value assessment of the property of the public utilities, may use the values for real property as set forth in the annual financial reports of the public utilities as filed with the Public Utilities Commission, pursuant to chapter 269, Hawai‘i Revised Statutes, as the basis for the director’s assessment, which shall be deemed prima facie correct. Due to the unique nature of the public utility and its equipment, assignment of values to individual tax map keys is not required.
- (b) For the purposes of this section, the following definitions are also adopted:
- (1) “Public utilities” are as defined in section 269-1, Hawai‘i Revised Statutes.
  - (2) “Outside plant” means public utility real property, predominantly production, transmission, collection, switching, and distribution facilities, that may consist of one or more of the following:
    - (A) Units that have physical and functional characteristics that are so similar that they are accounted for as a group or class and are generally installed on easements.
    - (B) Transmission cable, wire or pipes, including support or conduit structures.
    - (C) Substation equipment.
    - (D) Measuring and regulating equipment.
    - (E) Generation equipment.
    - (F) Storage equipment.
    - (G) Switching equipment.
  - (3) “Plant or structure” means public utility real property improvements that are not outside plant, such as buildings, generating stations, production plants, gas compressor stations, boilers, switching plants, dams and reservoirs, circuit equipment, radio systems, terminals, satellite facilities, storage, wells, pumping facilities, and including those items which are included in the outside plant definition above.
  - (4) “Property” is the same as defined in section 19-2.
- (c) Valuations are determined as follows:
- (1) Land. Land values are determined by the market value approach in accordance with section 19-53.
  - (2) Public utility real property generally classed as outside plant, as set forth in section 19-53.1(b)(2), including but not limited to, production, transmission, collection, switching or distribution substation equipment or measuring, regulating, generation, storage or switching equipment or improved property is appraised on the basis of its reproduction cost new less allowances for physical depreciation, functional obsolescence and economic obsolescence, if any. The reproduction cost new is determined by multiplying reported inventory original cost by appropriate price indices and/or by multiplying physical inventories by appropriate unit prices. The rate of depreciation is a function of the appraised property’s age, estimated service life and salvage factor. Such determinations and assessments of fair market value shall be made, to the extent possible, in accordance with the annual financial reports as filed with the Public Utilities Commission pursuant to chapter 269, Hawai‘i Revised Statutes, which shall be deemed prima facie correct. For all lands of public utilities not categorized by section 19-53(a), said improvements shall be taxed at a rate assigned to the industrial classification.
  - (3) Plant; Structure. The value of improvements that are plant or structure as set forth in section 19-53.1(b)(3), including but not limited to, buildings, generating stations, gas compressor stations, switching plants, dams and reservoirs, circuit equipment, radio systems, terminals, satellite facilities, storage, wells, and pumping stations, is determined using the same methodology as is used in appraising outside plant properties.
  - (4) For the purpose of liens and foreclosure, any outside plant property shall be considered a part of any system or plant to which it is a part of and to which a tax map key has been assigned.

- (d) (1) In lieu of the assessment method as set forth in subsections (a) (b) and (c) above, a public utility, except airlines, motor carriers, common carriers by water or contract carriers taxed by section 239-6, Hawai'i Revised Statutes, may pay the County a real property tax of such rate percent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is a means of taxing the real property owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property. For the purposes of this section, gross income and net income shall have the respective meanings given those terms in chapter 239, Hawai'i Revised Statutes, provided that such gross income and net income is from public utility business within the County of Hawai'i. The rate of the tax upon the gross income of the public utility shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen percent or less, the rate of the tax on gross income shall be 1.885 percent; for all companies having net income in excess of fifteen percent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one percent in the ratio of net income to gross, there shall be an increase of .2675 percent in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term "R" is the ratio of net income to gross income, and "X" is the required rate of the tax on gross income for the utility in question:

$$X=(26.75R - 2.1275)\%;$$

provided that in no case governed by the formula shall "X" be less than 1.885 percent or more than 4.2 percent. Provided further that in no case shall the application of the above rate or formula by the County, when added to the amount of real property tax levied and assessed by the other counties using the same formula in their county ordinances, result in a combined statewide real property tax liability which is greater than that portion of the tax liability that would have been payable by the public utility under chapter 239, Hawai'i Revised Statutes, (as codified on August 1, 2000) in excess of four percent.

- (2) The public utilities may elect to utilize the method of assessment under subsection (d)(1) rather than the method of assessment under subsections (a), (b) and (c) by filing a notice of such election on or before December 31 of the year immediately preceding when the tax would be due with the director of finance; provided, however, that for the first tax year after the effective date of the ordinance codified in this section, the public utilities may file such notice on or before May 31, 2001. If the State of Hawai'i amends chapter 239, Hawai'i Revised Statutes, to decrease the tax levied thereunder to a maximum rate of four percent, the director of finance shall utilize the method of assessment under subsection (d)(1) rather than the method of assessment under subsections (a), (b) and (c) without a request from the public utilities to do so.
- (3) As the basis for calculating the public utility's gross income and net income, the County shall accept the public utility's filing for gross income and net income from public utility business within the County of Hawai'i as made to the State of Hawai'i pursuant to chapter 239, Hawai'i Revised Statutes. If a public utility has not allocated its gross income and net income on a county-by-county basis, the counties, together with that public utility, shall agree upon a method by which such income can be allocated amongst the counties.

(2000, Ord. No. 00-110, sec. 2.)

**Section 19-54. Reserved.**

(1981, Ord. No. 613, sec. 57; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2005, Ord. No. 05-165, sec. 2.)

**Section 19-55. Reserved.**

(1981, Ord. No. 613, sec. 58; Am. 1984, Ord. No. 84-21, sec. 2; Am. 1991, Ord. No. 91-143, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-143, sec. 3.)

**Section 19-56. Golf course assessment.**

Property operated and used as a golf course shall be assessed for property tax purposes on the following basis:

The value to be assessed by the director shall be on the basis of its actual use as a golf course rather than on the valuation based on the highest and best use of the land.

In determining the value of actual use, the factors to be considered shall include, among others, rental income, cost of development, sales price and the effect of the value of the golf course on the value of the surrounding lands.

(1981, Ord. No. 613, sec. 59; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-57. Nondedicated agricultural use assessment.**

(a) Lands classified and used for agriculture and which are not dedicated pursuant to section 19-60, may be assessed for real property tax purposes as established in subsection (a)(2) of this section and shall be subject to the following:

- (1) The land in nondedicated agricultural use must be used on a continuous and regular basis for intensive agriculture, orchards, feed crops and fast rotation forestry or pasture and slow rotation forestry on lands zoned by the County to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district;
- (2) The portion of land that is committed in specific nondedicated agricultural use shall be assessed at two times the dedicated agricultural use value as established by the director of finance under this chapter; and
- (3) A farm dwelling site shall be assessed at the highest commercial agriculture use value, provided that the maximum farm dwelling site area to be assessed at the highest commercial agriculture use value shall not exceed one-fourth acre.

(b) All portions of land that are not committed or used for a specific agricultural use shall be assessed based on the proportional market value of the total property.

(c) Application; filings; assessment effective; renewal.

- (1) The director shall prescribe the form of the nondedicated agricultural use application.
- (2) The application shall be filed with the director by December 31 of any calendar year.
- (3) The application for a nondedicated agricultural use assessment must be signed by all owners of the land being committed.
- (4) If the application is approved, the assessment based upon the use requested in the application shall be effective as of January 1 for the following tax year.
- (5) Renewal of the application shall be in such form and at such time as required by the director.

- (d) Deferred or rollback tax.
- (1) A deferred or rollback tax shall be imposed on the owner of the agricultural land upon any of the following events:
    - (A) Conversion to any County zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district as a result of a petition by the owner or lessee;
    - (B) The property is subdivided into parcels of less than five acres in size; or
    - (C) A condominium property regime is declared for the property having condominium units with an area equivalent to less than five acres in size.
  - (2) The deferred tax shall commence from the date the conversion was made retroactive to the date the agricultural use assessment was approved, but for not more than a period of two years plus the current year.
  - (3) The amount of deferred taxes shall be based on the difference between the assessed market value at highest and best use and the assessed agricultural use value of the land at the tax rate applicable for the respective years, with a ten percent penalty.
- (1981, Ord. No. 613, sec. 60; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-143, sec. 4.)

**Section 19-58. Certain lands dedicated for residential use.**

- (a) The term “owner” as used in this section means a person who is the fee simple owner of real property, or who is the lessee of real property whose lease term extends at least ten years from the effective date of the dedication.
- (b) A special land reserve is established to enable the owner of any parcel of land within a hotel, apartment, resort, commercial, or industrial district to dedicate the owner’s land for residential use and to have the land assessed at its value in residential use; provided that:
  - (1) The land dedicated shall be limited to a parcel used only for single-family dwelling residential use;
  - (2) The owner of the land dedicated shall use it as the owner’s principal residence and qualify to be in the homeowner’s class per section 19-53(e)(2)(A); and
  - (3) Not more than one parcel of land shall be dedicated for residential use by any owner.
- (c) If any owner desires to use the owner’s land for residential use and to have the land assessed at its value in this use, the owner shall so petition the director of finance and declare in the petition that if the petition is approved, the owner will use the land for single-family dwelling residential use only and that the land so dedicated will be used exclusively as the owner’s principal residence.
 

Upon receipt of any such petition, the director of finance shall make a finding of fact as to whether the land described in the petition is being used by the owner for single-family dwelling residential use only and exclusively as the owner’s principal residence. If the finding is favorable to the owner, the director shall approve the petition and declare the land to be dedicated.
- (d) The approval of the petition by the director of finance to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the land for a minimum period of ten years. At least one hundred eighty days prior to the cancellation date, the department of finance shall notify the owner by mail of such cancellation. The owner of a dedicated property must renew the dedication on or before September 1 of the tenth year of the original dedication or any subsequent renewal period in order to continue the dedication for the next ten years.
- (e) Failure of the owner to observe the restrictions on the use of the land or the sale of the property shall cancel the special tax assessment privilege retroactive to the date of the dedication, or the latest renewal ten-year period, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve consecutive months to use the land in the manner requested in the petition or the overt act of changing the use for any period, or the sale of the real property. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

The additional taxes and penalties, due and owing as a result of failure to use or any other breach of the dedication shall be a paramount lien upon the property as provided for by this chapter.

- (f) The director of finance shall prescribe the form of the petition. The petition shall be filed with the director of finance by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the dedication shall be effective on July 1 of the following tax year.
  - (g) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.
- (1981, Ord. No. 613, sec. 61; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-58.1. Certain lands dedicated to nonspeculative residential use. Only renewal petitions will be accepted.**

- (a) The term “owner” as used in this section shall mean the fee owner or the lessee of real property with an unexpired lease term of not less than five years from the effective date of the dedication.
- (b) Any owner of property who qualifies under sections 19-71 and 19-72 for home exemption and uses the property exclusively for residential use may dedicate said property in its entirety to nonspeculative residential use and have that parcel assessed in the manner provided by section 19-58.2, except that a husband and wife, although living separate and apart, shall be entitled to dedicate only one parcel to the nonspeculative residential use.

Exclusive residential use as used in this section shall not permit the owner to conduct any commercial activities on the property, except as otherwise permitted in sections 19-71(a) and (b). Those owners who have dedicated their property to agricultural use or receive the benefit of the agricultural use or native forest dedication shall not be eligible for this nonspeculative residential use dedication.

- (c) In the case of a renewal which immediately follows an expiring term, the assessment base for the new five- or ten-year dedication term shall be the dedicated value on the expiration date plus fifty percent of the amount of increase between the dedicated value and the market valuation as of January 1, preceding the termination of the dedication term.
- (d) If, during any period of dedication, any breach of the dedication requirements should occur, the special nonspeculative residential use assessment privilege shall be canceled and retroactive taxes shall be imposed. Breach of the dedication shall include termination of the dedication after September 1, 2009 or other unauthorized termination, the failure to maintain the home exemption status of the property, violating the exclusive residential use provision, dedicating the property to agricultural use or receiving the benefit of the agricultural use assessment, subdivision of the property into separate parcels, or the declaration of a condominium property regime, or the sale of the dedicated property or any portion thereof sold by way of a conveyance which is subject to conveyance tax under the terms of chapter 247, Hawai‘i Revised Statutes. Retroactive taxes due and owing as a result of the breach shall be a paramount lien on the property.

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- (1) Provided, that the nonspeculative residential use dedication shall not be breached if the dedicated property meets the criteria as listed below:

The following also includes provisions that are not subject to the conveyance tax under the terms of chapter 247, Hawai‘i Revised Statutes, and are included for further clarification.

- (A) Transferred to the owner’s heirs by testacy or intestacy,
  - (B) Jointly owned by spouses and upon the death of one spouse ownership is transferred to the surviving spouse,
  - (C) Transferred to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation,
  - (D) Transferred to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor,
  - (E) Subject to a title change between spouses and said change does not result in a loss of the home exemption status,
  - (F) And the heirs, surviving spouse, divorced spouse, or trustee, within sixty days after receiving title to the property, petitions the director, in writing, to continue the dedication and the property continues to qualify for the home exemption as defined in sections 19-71 and 19-72, or
  - (G) The dedication shall not be cancelled if the lessee purchases the leased fee interest from the lessor.
- (2) Provided further that, except as provided herein, retroactive taxes shall not be assessed when:
- (A) A person receives title to property dedicated to nonspeculative residential use by ways of testacy or intestacy and does not petition the director to continue the dedication as provided in section 19-58.1(d)(1)(A).
  - (B) The dedicated property is jointly owned by spouses and upon the death of one spouse, ownership is transferred to the surviving spouse, and the surviving spouse does not petition the director to continue the dedication as provided in section 19-58.1(d)(1)(B).
  - (C) The property is wholly or partially destroyed or damaged as a result of fire, seismic or tidal wave, volcanic eruption, earthquake, flood waters and wind or rain storm.
- The owner may cancel the dedication for the reasons enumerated in paragraph (2)(C) by submitting written notice of the cancellation within sixty days of the damage or destruction. Cancellations shall become effective July 1 of the next tax year, and the property shall be assessed in accordance with section 19-53(a).
- (e) The director shall prescribe the form of the petition.
  - (f) Only renewal petitions will be accepted. Section 19-58.1 shall be repealed upon the final participant in the nonspeculative residential use program being converted as provided in subsection 19-53(g).
- (1990, Ord. No. 90-137, sec. 3; Am. 1991, Ord. No. 91-109, sec. 2; Am. 1991, Ord. No. 91-122, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2003, Ord. No. 03-103, sec. 4; Am. 2004, Ord. No. 04-122, sec. 2; Am. 2008, Ord. No. 08-156, sec. 3.)

**Section 19-58.2. Nonspeculative residential use assessment.**

Properties approved by the director for dedication to nonspeculative residential use shall be assessed for real property tax purposes in the following manner:

- (a) Property, approved for nonspeculative residential use dedication, shall be assessed for real property tax valuation purposes on its market value as of the assessment date January 1 of the calendar year following the petition approval. This assessment shall be frozen for the dedication period, except for adjustments as provided for in this section.

- (b) Upon approval by the director of succeeding dedications by the owner of the same property, the assessed valuation shall continue to be assessed in accordance with the provisions of section 19-58.2(a).
  - (c) If any improvements are undertaken on the dedicated property, and such improvements increase the market value of the dedicated property, the assessment shall be increased based on the market value of the improvements undertaken, however, the assessed valuation for ensuing tax years shall be determined in accordance with the provisions of section 19-58.2(a).
  - (d) If any improvements are undertaken on the dedicated property, the owner shall obtain the required building permit for the construction of new or additional improvements or renovations of the dedicated property. Violation of this reporting requirement will result in cancellation of the dedication and activate payment of retroactive taxes and penalties.
  - (e) In the case where additional dwelling units are constructed or a single-family dwelling unit is renovated or converted into a two or more family dwelling unit all in accordance with article 6, chapter 25, Hawai‘i County Code of 1983, as amended, the dedication shall not be cancelled provided the owners within sixty days of the change submit a written petition to continue the dedication and file the claim for home exemption and the owners would continue to be eligible for the home exemption. If the owner fails to submit the written petition in a timely manner or uses the additional dwelling units or renovated areas for rental or income-producing purposes the dedication shall be cancelled and the retroactive taxes imposed.
  - (f) If the dedicated property loses the home exemption under which it was dedicated, or if the dedicated property or any portion thereof is sold by way of a conveyance which is subject to conveyance tax under the terms of chapter 247, Hawai‘i Revised Statutes, the dedication shall be deemed breached. Occupancy of a separate living unit by an immediate family member is permissible under this section and is not considered a breach of dedication provided all other provisions are met. For the purpose of this section immediate family is defined as: parents, brothers, sisters, spouses, children, parents-in-law, grandparents, and grandchildren.
  - (g) Retroactive assessments shall be imposed upon the breach of the dedication. The retroactive assessment shall be calculated as the cumulative difference between the amount that should have been owed without the dedication less the amount actually paid for each of the years deemed to be in breach plus penalty at a rate of ten percent. If the dedicated property is sold, the retroactive assessment for that year shall be calculated as the difference between the dedicated value and the higher of either the actual selling price or the value of the property at its actual use. In the case of properties dedicated to nonspeculative use, notice of assessment as prepared under section 19-27 shall delineate the dedicated value and market value, beginning tax year 1993-94.
  - (h) Section 19-58.2 shall be repealed upon the final participant in the nonspeculative residential use program being converted as provided in subsection 19-53(g).
- (1990, Ord. No. 90-137, sec. 3; Am. 1991, Ord. No. 91-122, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2008, Ord. No. 08-156, sec. 3.)

**Section 19-58.3. Reserved.**

(1990, Ord. No. 90-137, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-58.4. Reserved.**

(1996, Ord. No. 96-71, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2003, Ord. 03-103, sec 5.)

**Article 8. Dedications.**

**Section 19-59. Native forest dedications.**

- (a) “Native forests” means lands which have sixty percent or greater native species forest cover.
  - (1) Native species are defined as those species indigenous to the Hawaiian islands. Indigenous in this context shall mean plants that became established or evolved in the Hawaiian islands without the aid of human beings.

- (2) The forest cover requirement may be met by native species in either the tree layer or the understory layer, or a combination of the two; provided a minimum twenty-five percent of the forest cover shall contain tree cover.
- (b) Native forest dedication process.
- (1) An owner who desires to dedicate the land for native forest preservation for a period of twenty years shall petition the director of finance and demonstrate in the petition that the land qualifies as native forest as provided herein. The term “owner” includes lessees of real property whose term extends at least twenty years from the effective date of the dedication.
- (A) Any property three acres or larger within agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project districts, or open zoned districts, which is covered with at least 2.75 intact and contiguous acres of native forest is eligible for dedication as native forest property if it meets the classification requirements of native forest.
- (B) The petition shall be filed with the director of finance by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the dedication shall be effective on July 1 of the following tax year.
- (C) The director of finance shall determine whether or not land qualifies as native forest by using current natural resource or vegetation maps or other acceptable evidence. Other acceptable evidence includes, but is not limited to:
- (i) A written affidavit by a recognized professional in the field of natural resources, or
  - (ii) A finding by a County, State or Federal agency or department with the relevant expertise in the field of natural resources.
- If the director’s findings are favorable, the petition shall be approved and the land shall be declared dedicated. Approval of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the land to a use other than preservation for a minimum period of twenty years. In order to place prospective buyers on notice of the rollback tax liability, the owner shall, within sixty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances.
- (c) Native forest dedication value.  
Dedicated native forest land shall be assessed at a preferential per-acre value in its restricted preservation use. In determining the value of lands which are classified native forest, the director shall assign the value of the lowest agricultural use category that the land could qualify for if it were to be put into agricultural use. No preferential value shall be granted to native forest land unless it is dedicated.
- (d) Breach of dedication.  
The dedication shall be deemed breached and the tax assessment privilege cancelled retroactive to the date of the dedication, or the latest renewal period, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent penalty and the native forest classification shall be rescinded, upon any of the following:
- (1) Failure of the owner to observe the restrictions on the use of the land; or
  - (2) The cover of native forest species falls below sixty percent; or
  - (3) The property is rezoned to a higher use at the owner’s request; or
  - (4) The property is subdivided into parcels of less than three acres; or
  - (5) A condominium property regime is declared for the property having condominium units with an area equivalent to less than three acres. Each unit shall be treated as a subdivision into lots of like size; or

- (6) The dedicated property or any portion thereof is sold by way of a conveyance which is subject to conveyance tax under the terms of chapter 247, Hawai‘i Revised Statutes, unless the director of finance submits a notarized affidavit signed by the owner to the bureau of conveyances stating that the land shall continue to be subject to the full requirements of the dedication, including the full penalties and rollback taxes imposed for violation; or
  - (7) The dedicated property is not maintained according to sound land management practices such that soil erosion is minimized, foreign species are controlled, and the watershed is protected.
- (e) Other provisions to the contrary notwithstanding, a portion or portions of a parcel that is being assessed and dedicated as pasture may be taken out of production as part of an approved forest restoration plan set forth in this chapter for the duration of the approved restoration period without breaching the terms of the agricultural use dedication.
- (1) Such a plan indicating the acres and area, as well as the specific forest restoration work to be done, shall be filed with and approved by the director of finance. If the plan is approved, the land shall continue to be given the same pasture assessment.
  - (2) The owner shall provide to the director of finance yearly evidence that the forest restoration plan is being implemented, as well as a signed and notarized affidavit by a recognized forestry professional that the restoration plan is likely to succeed within the designated time period. The owner shall continue to fulfill all other requirements of the agricultural assessment, including providing yearly proof that any portion of the parcel not being restored to a native forest, but still being assessed for an agricultural use, continues to be used and maintained substantially and continuously in the approved agricultural use.
  - (3) If at the end of the time period designated by the native forest restoration plan, the land meets the requirements of the native forest class described in this chapter, then it shall be classified and rededicated as a native forest. If, at the end of the time period designated in the plan, the land does not meet the requirements of the native forest class, the owner may return the land to its designated use as pasture or it shall be assessed and taxed at market value.
- (f) At least one hundred eighty days prior to the cancellation, the department of finance shall notify the owner by mail of such cancellation. The owner may reapply for renewal of the dedication by filing an application with the director on or before September 1 of the twentieth year. The renewal petition shall, in all respects, be processed in the same manner as an original petition. Upon approval of succeeding dedications by the director of finance, the property shall continue to be assessed in accordance with the provisions of this section.
- (g) If forest dedicated for native forest preservation is destroyed in whole or in part by fire, hurricane or other disasters, the director may continue the dedication upon submittal and approval of a forest restoration plan as provided in this section.
- (h) The owner may appeal a petition that has been disapproved as in the case of an appeal from an assessment.
- (1981, Ord. No. 613, sec. 62; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2003, Ord. 03-103, sec 6.)

**Section 19-60. Commercial agricultural use dedication.**

- (a) A special land reserve is established to enable the owner of any parcel of land, or lessee of a recorded agricultural lease with a minimum of five years remaining on the lease at time of petition, to dedicate the land for a specific commercial agricultural use dedication, and to have the land assessed its value in such use for a period of ten years, or in the case of a recorded agricultural lease the term of the lease up to ten years, provided:

- (1) The land dedicated for commercial activity must be used on a continuous and regular basis for intensive agriculture, orchards, feed crops and fast rotation forestry or pasture and slow rotation forestry and have a minimum lot size per farm operation for that dedicated category of commercial activity as provided for in the administrative rules and regulations of the department; and
  - (2) The land is within the County zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural, agricultural project district, or any other County zoned district meeting with the approval of the director of planning.
- (b) The owner of land under the twenty-year agricultural dedication at July 1, 2003 may continue to be assessed at fifty percent of its agricultural use value and shall be subject to the conditions and provisions of the effective commercial agricultural use dedication.
- (c) Determining agricultural use value.
- (1) In determining the value of lands which are classified and used for commercial agriculture use, consideration shall be given to rent, productivity, nature of actual commercial agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of persons who may be considered to have special knowledge of land values.
  - (2) Four general agricultural categories shall be used in determining the value of lands which are dedicated for commercial agriculture:
    - (A) "Intensive agriculture," which includes such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey and honeybees.
    - (B) "Orchards," which includes such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple and tropical specialty fruits.
    - (C) "Feed crops and fast rotation forestry," which includes forage crops, seed crops, cane, short rotation forestry, biomass, grasses, etc.
    - (D) "Pasture and slow rotation forestry," which includes pasture and longer rated forestry.
  - (3) Lands classified as tree farm property pursuant to chapter 186, Hawai'i Revised Statutes, shall be considered for classification and valuation as agricultural.
  - (4) The portion of land that is not dedicated for commercial agriculture use shall be assessed based on the proportional market value of the total property.
  - (5) A farm dwelling site shall be assessed at the highest commercial agricultural use value, provided that the maximum farm dwelling site area to be assessed at the highest commercial agriculture use value shall not exceed one-fourth acre.
- (d) Commercial agricultural use dedication petition.
- (1) If any owner desires to dedicate the owner's land for a commercial agricultural use and to have the land taxed as its assessed value in this use, the owner shall so petition the director of finance and declare in the petition that the land can best be used for the purpose for which the owner requests permission and that if the petition is approved the land will be used for this purpose. The director may require evidence of commercial agricultural use in such form and at such times as provided for in the administrative rules and regulations of the department.
  - (2) The director shall prescribe the form of the petition.
  - (3) The petition shall be filed with the director of finance by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, dedication shall be effective on July 1 of the following tax year.
  - (4) The petition for commercial agricultural use dedication must be signed by all owners of the land being dedicated.

- (5) A recorded lessee of the land with a term of five or more years remaining from the date of the petition and who is responsible for payment of the real property tax shall also be deemed an owner of the land within these provisions.
- (6) Action by director on petition.
  - (A) Upon receipt of a petition as provided above, the director shall make a finding of fact as to whether the land in the petition area is reasonably well suited for the intended use. The finding shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit, the present use of surrounding similar lands and other criteria as may be appropriate.
  - (B) The director shall also make a finding of fact as to whether the intended use is in conflict with the overall development plan of the State and County; provided that for lands in a zoned district other than County zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural or agricultural project district, the director shall make further findings respecting the economic feasibility of the intended use of the land.
  - (C) If all findings are favorable, the director shall approve the petition and declare the land to be dedicated.
  - (D) In order to place prospective buyers on notice of the rollback liability, the petitioner shall record the dedication in accordance with the procedures of the bureau of conveyances within ninety days of notice of approval.
- (e) Approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the land to a use other than commercial agriculture for a minimum period of ten years, unless otherwise provided by this chapter, subject to cancellation or renewal as follows:
  - (1) At least one hundred eighty days prior to any cancellation or termination, the department of finance shall notify the owner by mail of such cancellation or termination. The owner shall reapply for renewal of the dedication by filing an application with the director on or before September 1 of the last year of dedication. The renewal petition shall, in all respects, be processed similarly to an original petition. Upon approval by the director of succeeding dedications, the property shall continue to be assessed in accordance with the provisions of the dedication.
  - (2) In the case of a change in zoning not as a result of a petition by any property owner or lessee such that the owner's land is placed within any zoned district other than a County zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the dedication may be cancelled within sixty days of the change by the owner.
  - (3) Upon any conveyance or any change in ownership during the period of dedication, the land shall continue to be subject to the terms and conditions of the dedication unless a release has been issued by the director.
- (f) Changing between commercial agricultural categories.
  - (1) If the owner desires to change from a specific commercial agricultural category to another commercial agricultural category, the owner shall so petition the director of finance and declare in the petition that:
    - (A) The owner's land can best be used for a commercial agricultural activity other than that for which the petition was originally approved; and

- (B) The owner will use the land for that new commercial agricultural activity if the petition is approved.
  - (2) If an owner is permitted to change the use as provided in this subsection, the owner shall be allowed up to twenty-four months from the effective date of the petition to convert to the new commercial agricultural category. This conversion must be completed prior to the end of the dedication period.
  - (3) The petitioner shall submit progress reports of the petitioner's efforts in converting from one commercial agricultural category to another commercial agricultural category to the director of finance by the anniversary date of the petition approval and yearly, thereafter, as long as such conversion period remains.
  - (4) If the owner fails to make the conversion within the specified time limit, the owner will be subject to the taxes and penalties provided herein.
  - (5) Any other provision to the contrary notwithstanding, an approved change in use as provided herein shall not alter the original dedication period.
- (g) Breach of dedication; deferred or rollback taxes; penalties and interest.
- (1) A deferred or rollback tax shall be imposed on the owner of commercial agricultural use dedicated lands upon any of the following:
    - (A) Failure of the owner to observe any restriction, condition, or provision on the use of the land; or
    - (B) If the dedicated property or any portion thereof is sold by way of a conveyance which is subject to conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes, unless a notarized affidavit is signed by the owner stating that the land will continue to be subject to the full requirements of the dedication including any penalties for violation. The director shall record the notarized affidavit with the bureau of conveyances.
  - (2) The deferred or rollback tax shall commence from the date the failure to observe the restriction, condition or provision, or the property's conveyance retroactive to the date the assessment was made pursuant to subsection (3)(F) of this section but for not more than ten years.
    - (A) Failure to observe the restrictions on the use means failure for a period of six consecutive months to use the land in the manner requested in the petition or the overt act of changing the use for any period; provided that the petition by the owner for a change in use as provided in subsection (f), and the owner's subsequent change in use of such dedicated lands, shall not be deemed to constitute a failure of the owner to observe the restrictions on the use.
    - (B) Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only such portion as is withdrawn from the dedicated use and applied to a use other than the commercial agricultural category shall be taxed as provided by this subsection.
  - (3) Calculating deferred or rollback taxes.
    - (A) The deferred or rollback tax shall be based on the difference between the assessed market value at highest and best use and the commercial agricultural use of the land at the rate applicable for the respective years.
    - (B) All differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be due and payable with a ten percent penalty.
    - (C) If the owner of dedicated land breaches a condition of the dedication before its completion, deferred or rollback taxes shall be imposed on the subject parcel pursuant to subparagraph (F) below, retroactive from the end of the tax year in which the breach occurs.
    - (D) In any case in which deferred or rollback taxes are imposed after successful completion of an agricultural dedication period, the deferred or rollback taxes shall be retroactive only to the end of the completed dedication period, and shall not be imposed for any time covered by a successfully completed agricultural dedication period.

- (E) In cases involving a breach of a ten-year dedication, or a rollback period of ten or fewer years for breach of a twenty-year dedication, the rollback taxes under this section shall be for a maximum total of ten years, including both the breached dedication rollback period and any period of nondedicated agricultural use assessment subject to rollback. Rollback taxes for any breach of dedication affecting more than ten years under a twenty-year dedication shall not exceed ten years.
- (F) Deferred or rollback tax schedule.
  - (i) Breach of the restrictions on use within five years of the dedication shall result in a rollback to the date of the dedication.
  - (ii) Breach of the restrictions on use within six years of the dedication shall result in a rollback of four years from the date of the breach.
  - (iii) Breach of the restrictions on use within seven years of the dedication shall result in a rollback of three years from the date of the breach.
  - (iv) Breach of the restrictions on use within eight or nine years of the dedication shall result in a rollback of two years from the date of the breach.
- (4) The additional taxes and penalties due and owing shall be a paramount lien upon the property as provided for by this chapter.
- (h) The director may cancel a dedication without rollback taxes or penalties in the event of any of the following:
  - (1) A recognized natural disaster beyond the farmer’s control; or
  - (2) The land can no longer be used for the dedicated agricultural use; or
  - (3) The death or severe disability of the principal farmer such that the farm operation cannot continue.

Corporations and partnerships are not eligible for this death or severe disability exemption.

(1981, Ord. No. 613, sec. 63; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-143, sec. 5; Am. 2005, Ord. 05-30, sec. 2.)

**Section 19-61. Reserved.**  
 (1981, Ord. No. 613, sec. 64; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-62. Reserved.**  
 (1981, Ord. No. 613, sec. 65; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-63. Reserved.**  
 (1981, Ord. No. 613, sec. 66; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-64. Reserved.**  
 (1981, Ord. No. 613, sec. 67; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-65. Reserved.**  
 (1981, Ord. No. 613, sec. 68; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-66. Reserved.**  
 (1981, Ord. No. 613, sec. 69; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 9. Nontaxable Property; Assessment.**

**Section 19-67. Nontaxable property.**

For purposes of accountability, the director of finance shall assess at the nominal sum of \$100 each parcel of real property which is completely exempt from taxation.

(1981, Ord. No. 613, sec. 70; Am. 1990, Ord. No. 90-138, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 10. Exemptions.**

**Section 19-68. Claims for certain exemptions.**

- (a) (1) None of the exemptions from taxation granted in sections 19-76 to 19-78, 19-89.2 and 19-89.5 shall be allowed in any case, unless the claimant shall have filed with the department of finance, on or before December 31 preceding the tax year for which such exemption is claimed, a claim for exemption in such form as shall be prescribed by the department.
- (2) The exemption from taxation granted for disabilities in sections 19-73 to 19-75 shall be allowed from the next tax payment date, provided that the claimant shall have filed a claim for the disability exemption along with a copy of the physician's certificate of disability with the department on or before June 30 for the first half payment or December 31 for the second half payment on such form as shall be prescribed by the department.
- (3) The exemption from taxation granted for principal home in section 19-71 shall be allowed from the next tax payment date, provided that the claimant shall have filed a claim for the home exemption on or before December 31 for the first half payment or June 30 for the second half payment on such form as shall be prescribed by the department.
- (b) A claim for exemption once allowed shall have continuing effect until:
  - (1) The exemption is disallowed;
  - (2) The assessor voids the claim after first giving no less than thirty days' notice (either to the claimant or to all claimants in the manner provided for by ordinance), that the claim or claims on file will be voided on a certain date;
  - (3) The five-year period for exemption, as allowed in section 19-78, expires; or
  - (4) The claimant makes the report required by subsection (d).
- (c) A claimant may file a claim for exemption even though there is on file and in effect a claim covering the same premises, or a claim previously filed and disallowed or otherwise voided. However, no such claim shall be filed if it is identical with one already on file and having continuing effect. The report required by subsection (d) may be accompanied by or combined with a new claim.
- (d) Any person who has been allowed an exemption under sections 19-71, 19-73 to 19-78, 19-89.2 or 19-89.5 has a duty to report to the assessor within thirty days after that person ceases to qualify for such an exemption for one of, but not limited to, the following reasons:
  - (1) That person ceases to be the owner, lessee, or purchaser of the exempt premises;
  - (2) A change in the facts previously reported has occurred concerning the occupation, use, or renting of the premises, buildings or other improvements thereon; or
  - (3) Some other change in status has occurred which affects the exemption.

Such report shall have the effect of voiding the claim for exemption previously filed, as provided in subsection (b)(4). The report shall be sufficient if it identifies the property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.

In the event the property comes into the hands of a fiduciary who is answerable as provided for by this chapter, the fiduciary shall make the report required by this subsection within thirty days after the fiduciary's assumption of fiduciary duties or within the time otherwise required, whichever is later.

Any person who has a duty of making a report as required by this subsection, who within the time required fails to make a report, shall be liable for a civil penalty. The amount of the penalty shall be \$100. The penalty shall be recovered as provided for by ordinance. In addition to this penalty, the taxes due on the property plus any additional penalties and interest thereon shall be collected as property taxes and shall be a lien on the property as provided for by ordinance.

- (e) In addition to any penalty set forth in article 10, any individual who files a fraudulent claim for exemption or attests to any false statement, with the intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the department of finance, shall be fined \$1,000. This fine shall attach as a paramount lien against the property for which the claim for exemption is filed.
- (f) If the assessor is of the view that, for any tax year, the exemption should not be allowed, in whole or in part, the assessor may at any time within two years of January 1 of that year disallow the exemption for that year, in whole or in part, and may add to the assessment list for that year the amount of value involved, in the manner provided for by ordinance for the assessment of omitted property; provided, that if an assessment or addition under this subsection is made after April 9 preceding the tax year, the taxes on the amount of value involved in the assessment or addition so made shall be made a lien as provided for by this chapter by recording a certificate setting forth the amount of tax involved, penalties, and interest.
- (g) In any case of recordation of a certificate for the amount of the civil penalty under subsection (d), or for the amount of tax, penalties, and interest assessed or added under subsection (f), a person shall be deemed to have an interest arising before the recordation of the certificate only if and to the extent that a person acquired the interest in good faith and for a valuable consideration without notice of a violation of the requirements of subsection (d) having occurred.

(1981, Ord. No. 613, sec. 72; Am. 1987, Ord. No. 87-116, sec. 2; Am. 1990, Ord. No. 90-138, sec. 4; Am. 1994, Ord. No. 94-24, sec. 1; Am. 1995, Ord. No. 95-83, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-123, sec. 2; Am. 2008, Ord. No. 08-11, secs. 3 & 4.)

**Section 19-69. Reserved.**

(1981, Ord. No. 613, sec. 73; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-70. Assignment of partial exemptions.**

Unless otherwise specifically provided, allowable exemptions shall be applied first to the value of the buildings on the land and the remainder of the unused exemption, if any, to the value of the land.

(1981, Ord. No. 613, sec. 74; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-71. Homes.**

- (a) Real property owned and occupied as a principal home shall be exempt to the following extent from property taxes:

- (1) Totally exempt where the value of the property is not in excess of \$40,000;
- (2) Where the value of the property is in excess of \$40,000, the exemption shall be the amount of \$40,000.

Provided that:

- (A) No such exemption shall be allowed to any corporation, co-partnership, or company;
- (B) The exemption shall not be allowed on more than one home for any one taxpayer and that such taxpayer shall certify under penalty of perjury that such taxpayer has no other home exemption in any other jurisdiction;

- (C) The taxpayer has acquired said home by a recorded deed;
  - (D) A husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, in which case they shall be entitled to one exemption, to be apportioned equally between each of their respective homes;
  - (E) A person living on premises, a portion of which is used for commercial purposes, except as provided in (b) or which is legally permitted as a home occupation in accordance with the zoning code, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion thereof used exclusively as a home;
  - (F) A person living on the premises, a portion of which is used as residential housing rental for a term of not less than six months and legally permitted by all codes, shall be entitled to an exemption, except as provided in (b); and
  - (G) In the case of a lease of Hawaiian homestead lands, where either a husband or wife is of non-Hawaiian descent, either spouse shall be entitled to the home exemption in the same manner as if either spouse was considered the owner thereof, provided proof of marriage is submitted to the director of finance.
- (b) The use of a portion of any real property, building or structure for the purpose of any agricultural use permitted pursuant to section 205-2(d) or 205-4.5, Hawai'i Revised Statutes, shall not affect the exemptions provided for by this section.
  - (c) Where two or more individuals by life estate and remainder, jointly, by the entirety, or in common own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this section, shall receive the exemption. If a portion of land held by life estate and remainder, jointly, by the entirety, or in common by two or more individuals is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.
  - (d) A taxpayer who is sixty years of age or over and who qualifies under subsection (a) shall be entitled to one of the following home exemptions:

<b>Age of Taxpayer</b>	<b>Exemption Amount</b>
60 years of age or over but not 70 years of age or over	\$80,000
70 years of age or over	\$100,000

- For the purpose of this subsection, a husband and wife who own property by life estate and remainder, jointly, by the entirety, or in common, on which a home exemption under the provisions of subsection (a) has been granted shall be entitled to the applicable home exemption set forth above when at least one of the spouses qualifies each year for the applicable home exemption.
- (e) For purposes of this section, the term “real property owned and occupied as a principal home” is defined as the place where an individual has a true, fixed, permanent home and principal establishment, and to which place the individual has, whenever absent, the intention of returning. It is the place in which an individual has voluntarily fixed habitation, not for mere special, temporary, or vacation purpose, but with the intention of making a permanent home.
    - (1) Three elements are necessary for real property to be considered a “principal home.”
      - (A) The taxpayer has no other home exemption or principal home in any other jurisdiction;
      - (B) Intent of the owner to create or maintain a principal home within the County; and
      - (C) Owner’s actual physical occupancy of the principal home within the County.
    - (2) “Intent of the owner to create or maintain a principal home” may be evidenced by, but not be limited to, any of the following indicia:
      - (A) Occupancy of the home in the County for more than two hundred calendar days of a calendar year;
      - (B) Registering to vote in the County;

- (C) Being stationed in the County under military orders of the United States and must claim residency only in Hawai‘i; or
- (D) Possession of any of the following with a reported address within the County of Hawai‘i:
  - (i) Valid Hawai‘i drivers license.
  - (ii) Hawai‘i state identification card.
  - (iii) Filed resident income tax return of the State of Hawai‘i.
  - (iv) Resident aliens possessing a valid resident alien card (“green card”) must claim residency only in Hawai‘i.

The director of finance may require documentation of the above or additional indicia of intent to reside in the County from a property owner applying for an exemption or from an owner as evidence of continued qualification for an exemption. Failure to respond to the director’s request, or in the event the director receives satisfactory evidence that a claimant occupies a permanent home outside the County and there is documented evidence of the claimant’s intent to reside outside of the County, shall be deemed grounds for denying a claim for exemption or disallowing an existing exemption.

- (f) Real property qualifying under subsection (a) shall be entitled to an additional exemption of twenty percent of the assessed value of the property not to exceed an additional \$80,000.  
(1981, Ord. No. 613, sec. 75; Am. 1982, Ord. No. 766, sec. 3; Am. 1990, Ord. No. 90-138, sec. 5; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-123, sec. 3; Am. 2006, Ord. No. 06-147, sec. 3.)

**Section 19-72. Home, lease, lessees defined.**

For the purpose of section 19-71 the word “home” includes:

- (1) The entire homestead when it is occupied by the taxpayer as such;
- (2) A residential building on land held by the lessee or the lessee’s successor in interest under a lease for a term of ten years or more for residential purposes and owned and used as a residence by the lessee or the lessee’s successor in interest, where the lease and any extension, renewal, assignment, or agreement to assign the lease, have been duly entered into and recorded by the respective date set forth in subsection 19-68(a)(3), and whereby the lessee agrees to pay all taxes during the term of the lease;
- (3) An apartment which is a living unit (held under a proprietary lease by the tenant thereof) in a multi-unit residential building on land held by a cooperative apartment corporation (of which the proprietary lessee of such living unit is a stockholder) under a lease for a term of ten years or more for residential purposes and which apartment is used as a residence by the lessee-stockholder, where the lease and any extension or renewal have been duly entered into and recorded by the respective date set forth in subsection 19-68(a)(3), and whereby the lessee-stockholder agrees to pay all taxes during the term of the lease;
- (4) An apartment in a multi-unit apartment building which is occupied by the owner of the entire apartment building as the owner’s residence;
- (5) That portion of a residential duplex and that portion of land appurtenant to the duplex which are occupied by the owner of the duplex and land as the owner’s residence;
- (6) An apartment which is a living unit (held under a lease by the tenant thereof) in a multi-unit residential building used for retirement purposes under a lease for a term to last during the lifetime of the lessee and the lessee’s surviving spouse and which apartment is used as a residence by the lessee and the lessee’s surviving spouse, and where the apartment unit reverts back to the lessor upon the death of the lessee and the lessee’s surviving spouse, and where the lease has been duly entered into and recorded by the respective date set forth in subsection 19-68(a)(3), and whereby the lessee agrees to pay all taxes during the term of the lease.

As used in section 19-48, in section 19-68 and in section 19-71,\* the word “lease” shall be deemed to include a sublease, and the word “lessee” shall be deemed to include a sublessee. (1981, Ord. No. 613, sec. 76; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2004, Ord. No. 04-123, sec. 4.)

\* Editor’s Note: Style change made for consistency.

**Section 19-73. Homes of totally disabled veterans.**

Real property owned and occupied as a home by any person who is totally disabled due to injuries received while on duty with the armed forces of the United States, or owned by any such person together with such person’s spouse and occupied by either or both spouses as a home, or owned or occupied by a widow or widower of such totally disabled veteran who shall remain unmarried and who shall continue to own and occupy the premises as a home, is hereby exempted except for the minimum tax from all property taxes, other than special assessments, provided:

- (1) That such total disability was incurred while on duty as a member of the armed forces of the United States, and that the department of finance may require proof of total disability;
- (2) That the home exemption shall be granted only as long as the veteran claiming exemption remains totally disabled; and
- (3) That a person living on premises, a portion of which is used for commercial purposes, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion used exclusively as a home; provided, that this exemption shall not apply to any structure, including the land thereunder, which is used for commercial purposes.

For the purposes of this section, the word “home” includes the entire homestead when it is occupied by a qualified totally disabled veteran as a home; houses where the disabled veteran owner sublets not more than one room to a tenant; and premises held under an agreement to purchase the same for a home, where the agreement has been duly entered into and recorded prior to January 1 preceding the tax year for which exemption is claimed, whereby the purchaser agrees to pay all taxes while purchasing the premises.

(1981, Ord. No. 613, sec. 77; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-74. Persons affected with Hansen’s disease.**

Any person who has been declared by authority of law to be a person affected with Hansen’s disease in the communicable stage and is admitted to a hospital for isolation treatment, shall, so long as that person is so hospitalized, and thereafter for so long as such person has been so declared to be therefrom temporarily released, shall, so long as that person remains or continues under temporary release, be exempted except for the minimum tax from real property taxes on all real property owned by the person on the date when the person was declared to be a person so affected with Hansen’s disease, up to, but not exceeding, a taxable value of \$50,000.

(1981, Ord. No. 613, sec. 78; Am. 1982, Ord. No. 766, sec. 4; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-75. Exemption, persons who are blind, deaf, and/or totally disabled.**

(a) Definitions as used in this chapter:

- (1) “Blind” means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees, as certified under this section.
- (2) “Deaf” means a person whose average loss in the speech frequencies (five hundred to two thousand Hertz) in the better ear is ninety-two decibels, or such other level as may be updated by American National Standards Institute (A.N.S.I.), or worse, as certified under this section.

- (3) “Totally disabled” means a person who is totally disabled, either physically or mentally, and who, except for such total disability, would be able to engage in substantial gainful business or occupation, as certified under this section.
- (b) Any person who is certified as blind, deaf, and/or totally disabled as defined in this section shall be exempt from real property taxes on all real property owned by the person up to, but not exceeding a taxable value of \$50,000. Except that no exemption shall apply to any minimum tax payable under section 19-90(e) of this chapter.
- (c) The disability shall be certified by (1) a physician licensed under chapter 453 or 460, or both, (2) a qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides, or (3) a commissioned medical officer in the United States military or public health service, engaged in the discharge of one’s official duty. Certification for a person who is blind or deaf may also be made by a licensed optometrist or licensed audiologist as the case may be. Certification shall be on forms prescribed by the department of finance. For disabled veterans, the proof of disability submitted for section 19-73(1) from the Veterans Administration, may be substituted for the required certification. Official documentation from the Social Security Administration may also be substituted for the required certification.
- (d) Any person who is certified as being temporarily blind, deaf, and/or totally disabled shall submit an annual certification or recertification, as required by this section. No exemption shall be allowed unless the required certification or recertification is submitted.
- (e) Any person who qualifies for an exemption under this section shall be allowed to apply for only one of the exemptions established in this section.
- (f) In the case of a lease of Hawaiian homestead land, where either a husband or wife is of non-Hawaiian descent, either spouse shall be entitled to the blind, deaf, or totally disabled exemption in the same manner as if either spouse was considered the owner thereof, provided proof of marriage is submitted to the director of finance.
- (g) In the event that a person qualifies for the home exemption as provided in section 19-71 and the blind, deaf, or totally disabled exemption as provided in this section, the exemptions shall be granted to the claimant in the following order: the home exemption shall be granted first, then followed by the applicable blind, deaf, or totally disabled exemption on the property claimed as the owner’s principal residence. Thereafter, the exemption provided by this section shall be applied to any other property designated by the claimant.
- (1981, Ord. No. 613, sec. 79; Am. 1982, Ord. No. 766, sec. 5; Am. 1989, Ord. No. 89-150, sec. 2; Am. 1990, Ord. No. 90-152, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2001, Ord. No. 01-73, sec. 1; Am. 2009, Ord. No 09-27, sec. 3.)

**Section 19-76. Nonprofit medical, hospital indemnity associations; tax exemption.**

Every association or society organized and operating under chapter 433, Hawai‘i Revised Statutes,\* solely as a nonprofit medical indemnity or hospital service association or society or both shall be, from the time of such organization, exempt except for the minimum tax from real property taxes on all real property owned by it.

(1981, Ord. No. 613, sec. 80; Am. 1997, Ord. No. 97-84, sec. 1.)

\* **Editor’s Note:** Chapter 433 was repealed by Act 347, Session Laws of Hawai‘i, 1987. Its provisions were incorporated into Chapter 432.

**Section 19-77. Charitable, etc., purposes.**

- (a) There shall be exempt except for the minimum tax from real property taxes real property designated in subsection (b) or (c) and meeting the requirements stated therein, actually and (except as otherwise specifically provided) exclusively used for nonprofit purposes. If an exemption is claimed under one of these subsections (b) and (c), an exemption for the same property may not also be claimed under the other of these subsections. Claimants shall submit to the director of finance documentation from the Internal Revenue Service verifying their exemption status.

- (b) This subsection applies to property owned in fee simple, leased, or rented for a period of one year or more, by the person using the property for the exempt purposes, hereinafter referred to as the person claiming the exemption. If the property for which exemption is claimed is leased or rented, the lease or rental agreement shall be in force and recorded in the bureau of conveyances.

Exemption is allowed by this subsection to the following property:

- (1) Property used for school purposes including:
    - (A) Kindergartens, grade schools, junior high schools, and high schools, which carry on a program of instruction meeting the requirements of the compulsory school attendance law, section 302A-1132, Hawai'i Revised Statutes, or which are for preschool children who have attained or will attain the age of five years on or before December 31 of the school year, provided that any claim for exemption based on any of the foregoing uses shall be accompanied by a certificate issued by or under the authority of the department of education stating that the foregoing requirements are met;
    - (B) Junior colleges or colleges carrying on a general program of instruction of college level. The property exempt from taxation under this paragraph is limited to buildings for educational purposes (including dormitories), housing owned by the school or college and used as residence for personnel employed at the school or college, campus and athletic grounds, and realty used for vocational purposes incident to the school or college.
  - (2) Property used for hospital and nursing home purposes, including housing for personnel employed at the hospital; in order to qualify under this paragraph the person claiming the exemption shall present with the claim a certificate issued by or under the authority of the State department of health that the property for which the exemption is claimed consists in, or is a part of, hospital or nursing home facilities which are properly constituted under the law and maintained to serve, and which do serve the public.
  - (3) Property used for church purposes including incidental activities, parsonages, and church grounds, the property exempt except for the minimum tax from real property taxes being limited to realty exclusive of burying grounds (exemption for which may be claimed under paragraph (4)).
  - (4) Property used as cemeteries (excluding, however, property used for cremation purposes) maintained by a religious society, or by a corporation, association or trust organized for such purpose. Property used as individual or family burial plots shall be exempted for the portion that is actually used for such purposes.
  - (5) Property dedicated to public use by the owner, which dedication has been accepted by the State or County, reduced to writing, and recorded in the bureau of conveyances.
  - (6) Property owned by any nonprofit corporation, admission to membership of which is restricted by the corporate charter to members of a labor union; property owned by any government employees' association or organization, one of the primary purposes of which is to improve employment conditions of its members; property owned by any trust, the beneficiaries of which are restricted to members of a labor union; property owned by any association or league of credit unions chartered by the United States or the State, the sole purpose of which is to promote the development of credit unions in the State. Notwithstanding any provision in this section to the contrary, the exemption shall apply to property or any portion thereof which is leased, rented, or otherwise let to another, if such leasing, renting, or letting is to a nonprofit association, organization, or corporation.
- (c) This subsection shall apply to property owned in fee simple or leased or rented for a period of one year or more, the lease or rental agreement being in force and recorded in the bureau of conveyances at the time the exemption is claimed, by either:

- (1) A corporation, society, association, or trust having a charter or other enabling act or governing instrument which contains a provision or has been construed by a court of competent jurisdiction as providing that in the event of dissolution or termination of the corporation, society, association, or trust, or other cessation of use of the property for the exempt purpose, the real property shall be applied for another charitable purpose or shall be dedicated to the public, or
  - (2) A corporation chartered by the United States under title 36, United States Code, as a patriotic society, or
  - (3) A corporation, society or association qualifying for exemption from federal income tax under section 501(c)(3) where the property used for charitable purposes which are of a community character building, social service, or educational nature, or
  - (4) Senior citizen housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959 as amended by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965 as amended by the Housing and Urban Development Act of 1970.
- (d) If any portion of the property which might otherwise be exempted under this section is used for commercial or other purposes not within the conditions necessary for exemption (including any use the primary purpose of which is to produce income even though such income is to be used for or in furtherance of the exempt purposes) that portion of the premises shall not be exempt but the remaining portion of the premises shall not be deprived of the exemption if the remaining portion is used exclusively for purposes within the conditions necessary for exemption. In the event of an exemption of a portion of a building, the tax shall be assessed upon so much of the value of the building (including the land thereunder and the appurtenant premises) as the proportion of the floor space of the nonexempt portion bears to the total floor space of the building.
- (e) The term “for nonprofit purposes,” as used in this section requires that no monetary gain or economic benefit inure to the person claiming the exemption, or any private shareholder, member, or trust beneficiary. “Monetary gain” includes without limitation any gain in the form of money or money’s worth. “Economic benefit” includes without limitation any benefit to a person in the course of business, trade, occupation, or employment.
- (1981, Ord. No. 613, sec. 81; Am. 1987, Ord. No. 87-116, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2005, Ord. No. 05-164, sec. 2.)

**Section 19-78. Property used in manufacture of pulp and paper.**

All real property in the County actually and solely used or to be used, whether by the owner or lessee thereof, in connection with the manufacture of pulp and paper shall be exempt except for the minimum tax from property taxes for a period of five years from the first day of January following commencement of construction of a plant or plants on the property for such purpose.

(1981, Ord. No. 613, sec. 82; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-79. Crop shelters.**

Any other law to the contrary notwithstanding, any permanent structure constructed or installed on any taxable real property used primarily for the protection of crops shall be exempted in determining and assessing the value of such taxable real property. Such exemption shall continue only as long as the structure is maintained in good condition.

(1981, Ord. No. 613, sec. 83; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-80. Exemption, dedicated lands in urban districts.**

- (a) Portions of real property which are dedicated and approved by the director of finance as provided for by this section shall be exempt except for the minimum tax from real property taxes.

- (b) Any owner of taxable real property in an urban district desiring to dedicate a portion or portions thereof for landscaping, open spaces, public recreation, and other similar uses shall petition the director of finance stating the exact area of the land to be dedicated and that the land is not within the setback and open space requirements of applicable zoning and building code laws and ordinances, and that the land shall be used, improved, and maintained in accordance with and for the sole purpose for which it was dedicated, except that land within a historic district may be so dedicated without regard to the setback and open space requirements of applicable zoning and building code laws and ordinances.

The director shall make a finding as to whether the use to which such land will be dedicated has a benefit to the public at least equal to the value of the real property taxes for such land. Such finding shall be measured by the cost of improvements, the continuing maintenance thereof, and such other factors as the director may deem pertinent. If the director finds that the public benefit is at least equal to the value of real property taxes for such land, the director shall approve the petition and declare such land to be dedicated land.

- (c) The approval of the petition by the director shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's land for a minimum period of ten years. At least one hundred eighty days prior to the cancellation, the department of finance shall notify the owner by mail of such cancellation. The owner of a dedicated property must renew the dedication on or before September 1 of the tenth year of the original dedication or any subsequent renewal period in order to continue the dedication for the next ten years.
- (d) Failure of the owner to observe the restrictions on the use, improvement, and maintenance of the land shall cancel the special tax exemption privilege retroactive to the date of the original dedication, or to the latest renewal date whichever is later, and all differences in the amount of taxes that were paid and those that would have been due from the assessment of the tax exempted portion of the land shall be payable together with penalty of ten percent from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve consecutive months to use, improve, and maintain the land in the manner requested in the petition or any overt act changing the use for any period. Nothing in this paragraph shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.
- (e) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15 of such year. If approved, the dedication shall be effective July 1 of the following tax year.
- (f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.
- (g) The director shall make and adopt necessary rules and regulations including such rules and regulations governing minimum areas which may be dedicated for the improvement and maintenance of such areas.
- (h) "Landscaping" means lands which are improved by landscape architecture, cultivated plantings, or gardening.

"Open spaces" means lands which are open to the public for pedestrian use and momentary repose, relaxation, and contemplation.

"Public recreation" refers to lands which may be used by the public as parks, playgrounds, historical sites, campgrounds, wildlife refuge, scenic sites, and other similar uses.

"Owner" includes lessees of real property whose lease term extends at least ten years from the effective date of the dedication.

(1981, Ord. No. 613, sec. 84; Am. 1997, Ord. No. 97-84, sec. 1.)

#### **Section 19-81. Water tanks.**

Any provision to the contrary notwithstanding, any tank or other storage receptacle required by any government agency to be constructed or installed on any taxable real property before water for home and farm use is supplied, and any other water tank, owned and used by a real property taxpayer for storing water solely for said taxpayer's own domestic use, shall be exempted in determining and assessing the value of such taxable real property.

(1981, Ord. No. 613, sec. 85; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2005, Ord. No. 05-165, sec. 3.)

**Section 19-82. Alternate energy improvements, exemption.**

- (a) The value of all improvements in the County (not including a building or its structural components, except where alternate energy improvements are incorporated into the building, and then only that part of the building necessary to such improvement) actually used for an alternate energy improvement shall be exempted from the measure of the taxes imposed by this article.
- (b) As used in this section “alternate energy improvement” means any construction or addition, alteration, modification, improvement, or repair work undertaken upon or made to any building which results in:
  - (1) The production of energy from a source, or uses a process which does not use fossil fuels, nuclear fuels, or geothermal source. Such energy source may include, but shall not be limited to, solid wastes, wind, solar, or ocean waves, tides, or currents.
  - (2) An increased level of efficiency in the utilization of energy produced by fossil fuels or in the utilization of secondary forms of energy dependent upon fossil fuels for its generation.
- (c) Alternate energy production or energy by-products transferred, marketed, or sold on a commercial basis shall not qualify for exemption under the provisions of this section. Provided further, that alternate energy improvements used primarily for personal consumption and producing excess energy incidental to personal consumption may transfer, market, or sell such excess energy produced and continue to qualify for the exemption as provided for by the provisions of this section; however, the transfer, marketing, or sale shall be limited to less than twenty-five percent of the total energy output produced by such improvements. Nuclear fission and geothermal energy sources shall be excluded from the provisions of this section.
- (d) Application for the exemption provided by this section shall be made with the director of finance on or before December 31, preceding the tax year for which the exemption is claimed, except that no claim need be filed for the exemption of solar water collections, heaters, heat pumps and similar devices. The director of finance may require the taxpayer to furnish reasonable information in order that the director may ascertain the validity of the claim for exemption made under this section and may adopt rules and regulations to implement this section.

(1981, Ord. No. 613, sec. 86; Am. 1983, Ord. No. 83-57, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-83. Reserved.**

(1981, Ord. No. 613, sec. 87; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-84. Public property, etc.**

The following real property shall be exempt from taxation:

- (1) Real property belonging to the United States, to the State, or to the County; provided, that real property belonging to the United States shall be taxed upon the use or occupancy thereof as provided in section 19-85, and there shall be a tax upon the property itself if and when the Congress of the United States so permits, to the extent so permitted and in accordance with any conditions or provisions prescribed in such act of Congress; provided, further, that real property belonging to the State or the County, or belonging to the United States and in the possession, use, and control of the State, shall be taxed on the fee simple value thereof, and private persons shall pay the taxes thereon and shall be deemed the “owners” thereof for the purposes of this chapter, in the following cases:
  - (A) Property held on January 1 preceding the tax year under an agreement for its conveyance by the government to private persons shall be deemed fully taxable, the same as if the conveyance had been made;
  - (B) Property held on January 1 preceding the tax year under a government lease shall be entered in the assessment lists and such tax rolls for that year as fully taxable for the entire tax year, but adjustments of the taxes so assessed may be made as provided for by this chapter so that such tenants are required to pay only so much of the taxes as is proportionate to the portion of the tax year during which the real property is held or controlled by them;

- (C) Property held under a government lease commencing, after January 1 preceding the tax year or under an agreement for its conveyance or a conveyance by the government, made after January 1 preceding the tax year, shall be assessed as omitted property as provided for by this chapter, but the taxes thereon shall be prorated so as to require the payment of only so much of the taxes as is proportionate to the remainder of the tax year;
- (D) Property where the occupancy by the tenant for commercial purposes has continued for a period of one year or more, whether the occupancy has been on a permit, license, month-to-month tenancy, or otherwise, shall be fully taxable to the tenant after the first year of occupancy, and the property shall be assessed in the manner provided in subparagraphs (B) and (C) of this paragraph for the assessment of properties held under a government lease; provided that the property occupied by the tenant solely for residential purposes on a month-to-month tenancy shall be excluded from this paragraph;
- (E) In any case of occupancy of a building or structure by two or more tenants, or by the government and a tenant, under a lease for a term of one year or more, the tax shall be assessed to the tenant upon so much of the value of the entire real property as the floor space occupied by the tenant proportionately bears to the total floor space of the structure or building;

For the purposes of subdivisions (B) and (C) of this subsection: "Lease" means any lease for a term of one year or more or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term "lease," be deemed a lease notwithstanding any right of revocation, cancellation, or termination reserved therein or provided for thereby. Whenever a lease is such that the highest and best use cannot be made of the property by the lessee, the measure of the tax imposed on such property pursuant to subdivisions (B) and (C) shall be its fee simple value upon consideration of the highest and best use which can be made of the property by the lessee.

Provided, further, that real property belonging to the United States, even though not in the possession, use, and control of the State, shall be taxed on the fee simple value thereof, and private persons shall pay the taxes thereon and shall be deemed the "owners" thereof for the purposes of this chapter, in the following cases:

- (i) Property held on January 1 preceding the tax year under an agreement for the conveyance of the same by the government to private persons shall be deemed fully taxable, the same as if the conveyance had been made, but the assessment thereof shall not impair and shall be so made as to not impair, any right, title, lien, or interest of the United States.
  - (ii) Property held under an agreement for the conveyance of the same or a conveyance of the same by the government, made after January 1 preceding the tax year, shall be assessed as omitted property as provided by this chapter, but the taxes thereon shall be prorated so as to require the payment of only so much of such taxes as is proportionate to the remainder of the tax year, and in the case of property held under an agreement for the conveyance of the same but not yet conveyed, the assessment thereof shall not impair, and shall be so made as to not impair, any right, title, lien, or interest of the United States.
- (2) Real property under lease to the State or the County under which lease the lessee is required to pay the taxes upon such property;
  - (3) Subject to section 101-39(B), Hawai'i Revised Statutes, any real property in the possession of the State or County which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land by the State or County; provided the fact of such possession has been certified to the director as provided by section 101-36 or 101-38, Hawai'i Revised Statutes, or is certified not later than December 31 preceding the tax year for which such exemption is claimed;

- (4) Real property with respect to which the owner has granted to the State or County a right-of-entry and upon which the State or County has entered and taken possession under the authority of the right-of-entry with intention to acquire the fee simple estate therein and to devote the real property to public use; provided the State or County shall have, prior to December 31 preceding the tax year for which the exemption is claimed, certified to the director the date upon which it took possession;
  - (5) Any portion of real property within the area upon which construction of buildings is restricted or prohibited and which is actually rendered useless and of no value to the owners thereof by virtue of any ordinance establishing setback lines thereon; provided, that in order to secure the exemption the person claiming it shall annually file between December 15 and December 31 preceding the applicable tax year a sworn written statement with the director describing the real property in detail and setting forth the facts upon which exemption is claimed, together with a written agreement that in consideration of the exemption from taxes the owner will not make use of the land in any way whatsoever during the ensuing year. Any person who has secured such exemption who violates the terms of the agreement shall be fined twice the amount of the tax which would be assessed upon the land but for such exemption;
  - (6) Real property exempted by any laws of the United States which exemption is not subject to repeal by the council; and
  - (7) Any other real property exempt by law.
- (1981, Ord. No. 613, sec. 88; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-85. Lessees of exempt real property.**

- (a) When any public real property which for any reason is exempt from taxation is leased to and used or occupied by a private person in connection with any business conducted for profit, such use or occupancy shall be assessed and taxed in the same amount and to the same extent as though the lessee were the owner of the property and as provided in subsection (b), provided, that:
  - (1) The foregoing shall not apply to the following:
    - (A) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed; or
    - (B) Any property or portion thereof taxed under any other provision of this chapter to the extent and for the period so taxed.
  - (2) The term “lease” shall mean any lease for a term of one year or more, or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term “lease,” be deemed a lease notwithstanding any right of revocation, cancellation, or termination reserved therein or provided for thereby.
  - (3) The assessment of the use or occupancy shall be made in accordance with the highest and best use permitted under the terms and conditions of the lease.
- (b) The tax shall be assessed to and collected from such lessee as nearly as possible in the same manner and time as the tax assessed to owners of real property, except that the tax shall not become a lien against the property. In case the use or occupancy is in effect on January 1 preceding the tax year, the lessee shall be assessed for the entire year but adjustments of the tax so assessed shall be made in the event of the termination of the use or occupancy during the year so that the lessee is required to pay only so much of the tax as is proportionate to the portion of the tax year during which the use or occupancy is in effect, and the director is hereby authorized to remit the tax due for the balance of the tax year. In case the use or occupancy commences after January 1 preceding the tax year, the lessee shall be assessed for only so much of the tax as is proportionate to the period that the use or occupancy bears to the tax year.

The assessment of the use or occupancy of real property made under this section shall not be included in the aggregate value of taxable realty for the purposes of section 19-90 but the council, at the time that it is furnished with information as to the value of taxable real property, shall also be furnished with information as to the assessments made under this section, similarly determined but separately stated.

If a use or occupancy is in effect on January 1 preceding the tax year, the assessment shall be made and listed for that year and the notice of assessment shall be given to the taxpayer in the manner and at the time prescribed by this chapter, and when so given, the taxpayer, if deemed aggrieved, may appeal as provided for by this chapter; if a use or occupancy commences after January 1 preceding the tax year or if for any reason an assessment is omitted for any tax year, the assessment shall be made and listed and notice thereof shall be given in the manner and at the time prescribed by this chapter, and an appeal from an assessment so made may be taken as provided by this chapter.

(1981, Ord. No. 613, sec. 89; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-86. Property of the United States leased under the National Housing Act.**

Real property belonging to the United States leased pursuant to title VIII of the National Housing Act, as amended or supplemented from time to time:

- (1) Shall not be taxed under this chapter upon the lessee's interest or any other interest therein, except as provided in paragraph (2).
- (2) Shall be taxed under this chapter to the extent of and measured by the value of the lessee's interest in any portion of the real property (including land and appurtenances thereof and the buildings and other improvements erected on or affixed on the same) used for, or in connection with, or consisting in, shops, restaurants, cleaning establishments, taxi stands, insurance offices, or other business or commercial facilities. The tax shall be assessed to and collected from the lessee. The assessment of such property shall not impair, and shall be so made as to not impair, any right, title, lien, or interest of the United States.

(1981, Ord. No. 613, sec. 90; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-87. Exemption for low and moderate-income housing.**

- (a) For the purposes of this section, "nonprofit or limited distribution mortgagor" means a mortgagor who qualifies for and obtains mortgage insurance under sections 202, 221(d)(3), or 236 of the National Housing Act as a nonprofit or limited distribution mortgagor.
- (b) Real property used for a housing project which is owned and operated by a nonprofit or limited distribution mortgagor or which is owned and operated by a person, corporation or association regulated by Federal or State laws or by a political subdivision of the State or agency thereof as to rents, charges, profits, dividends, development costs and methods of operation, shall be exempt except for the minimum tax from property taxes.
- (c) Exemptions claimed under section 53-38, Hawai'i Revised Statutes, shall disqualify the same property from receiving an exemption under this section.
- (d) The director of finance shall promulgate rules and regulations necessary to administer this section.

(1981, Ord. No. 613, sec. 91; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-88. Claim for exemption.**

- (a) Notwithstanding any provision in this chapter to the contrary, any real property exempt from property taxes under section 19-87 shall be exempt except for the minimum tax from property taxes from the date the property is qualified for the exemption; provided that a claim for exemption is filed with the director within sixty days of the qualification. As used herein, the date of the qualification shall be the date when the mortgage made by a nonprofit or limited distribution mortgagor and insured under sections 202, 221(d)(3) or 236 of the National Housing Act is filed for recording with the registrar of the bureau of conveyances or the assistant registrar of the land court of the State, whichever is applicable.
- (b) After the initial year of the qualification, the claim for exemption shall be filed in the manner provided by applicable law or rule or regulation.
- (c) In the event property taxes have been paid to the County in advance for real property subsequently becoming qualified for the exemption, the director of finance shall refund to the nonprofit or limited distribution mortgagor owning the property that portion of the taxes attributable to and paid for the period after the qualification.

(1981, Ord. No. 613, sec. 92; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-89. Exemptions for certain Hawaiian Homes property, and other agencies.**

Exemptions from real property taxes as set forth in chapter 53, chapter 183, and chapter 234,\* Hawai‘i Revised Statutes, and in section 208 of the Hawaiian Homes Commission Act, and which were enacted prior to November 7, 1978, shall remain in effect and be recognized by this County in its administration of the real property tax system, provided, that all references to the director of taxation or the department of taxation shall now be deemed to refer to the designated representative of the mayor who shall also be subject to approval by the council. If State legislation is enacted allowing a public utility under section 239-5(a), Hawai‘i Revised Statutes, to pay a tax to the County of at least 1.885% upon the gross income of the public utility’s business within the County, effective July 1, 2001, then notwithstanding any provision to the contrary, the County exemption from real property taxes for a public utility under chapter 239, Hawai‘i Revised Statutes, as codified on August 1, 2000, shall be reinstated.

If reinstated, this exemption shall be construed and applied in conjunction with section 239-3,\*\* Hawai‘i Revised Statutes, as section 239-3, Hawai‘i Revised Statutes, was codified on August 1, 2000; provided that the exemption shall be limited to real property used by the public utility in its public utility business.

As used within this section, “public utility” has the meaning ascribed to it in section 269-1, Hawai‘i Revised Statutes, except airlines, motor carriers, common carriers by water, and contract carriers subject to taxation under section 239-6, Hawai‘i Revised Statutes. The County will accept such revenues in lieu of directly collecting real property taxes from those public utilities previously exempt from real property taxation under chapter 239. The County director of finance shall deposit all funds received in connection with said claim into the general fund. Hawaiian home lands, as defined in section 201, Hawaiian Homes Commission Act, 1920, as amended, real property, exclusive of buildings, leased and used as a homestead (houseslots, farm lots, and pastoral lots), pursuant to section 207(a) and subject to the conditions of sections 208 and 216 of the Hawaiian Homes Commission Act, 1920, shall be exempt from real property taxes, except for the minimum tax, and as provided for by this section. Disposition of Hawaiian home lands for other than homestead purposes is deemed fully taxable and will not qualify for the exemption granted by this section. The respective homestead lessee of Hawaiian home lands shall continue to qualify and receive other personal exemptions, provided that claims for the exemptions are timely filed, including the seven-year limitation on the exemption afforded by section 208 of the Hawaiian Homes Commission Act, 1920.

(1981, Ord. No. 613, sec. 93; Am. 1992, Ord. No. 92-129, sec. 1; Am. 1997, Ord. No. 97-84, sec. 1; Am. 1999, Ord. No. 99-159, sec. 2; Am. 2001, Ord. 01-36, sec. 1.)

\* **Editor’s Note:** Chapter 234, Hawai‘i Revised Statutes, has been repealed.

\*\* **Editor’s Note:** Section 239-3, Hawai‘i Revised Statutes, has been repealed.

**Section 19-89.1. Historic residential real property dedicated for preservation; exemption.**

- (a) Portions of residential real property which are dedicated and approved by the director of finance as provided for by this section, shall be exempt except for the minimum tax from real property taxation. The owners shall assure reasonable visual access to the public.
  - (b) An owner of taxable real property that is the site of a historic residential property that has been placed on the Hawai'i Register of Historic Places after January 1, 1977, desiring to dedicate a portion or portions thereof for historic preservation, shall petition the director of finance.
  - (c) The director of finance shall approve the petition and determine what portion or portions of the real property shall be exempt except for the minimum tax from real property taxes. The director shall consult with the State Historic Preservation Office in making this determination. The director may take into consideration whether the current level of taxation is a material factor which threatens the continued existence of the historic property, and may determine the total area or areas of the real property that shall be exempted.
  - (d) The approval of the petition of the director shall constitute a forfeiture on the part of the owner of any right to change the use of the owner's property for a minimum period of ten years. The owner of a dedicated property must renew the dedication on or before September 1 of the tenth year of the original dedication or any subsequent renewal period in order to continue the dedication for the next ten years.
  - (e) Failure of the owner to observe the restrictions of subsection (d) shall cancel the tax exemption and privilege retroactive to the date of the dedication, and all differences in the amount of taxes that were paid and those that would have been due but for the exemption allowed by this section shall be payable together with penalty at ten percent from the respective dates that these payments would have been due, provided the provision in this paragraph shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.
  - (f) Any person who becomes an owner of real property that is permitted an exemption under this section shall be subject to the restrictions and duties imposed under this section.
  - (g) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15 of such year. If approved, the dedication shall be effective July 1 of the following tax year.
  - (h) An owner applicant may appeal any determination as in the case of an appeal from an assessment.
  - (i) Subject to chapter 91, Hawai'i Revised Statutes, the director shall adopt rules and regulations decreed necessary to accomplish the foregoing.
- (1981, Ord. No. 837, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-89.2. Credit union exemption.**

- (a) Real property owned in fee simple or leased for a period of one year or more by a Federal or State credit union which is actually and exclusively used for credit union purposes shall be exempt except for the minimum tax from real property taxes. If the property for which exemption is claimed is leased, the lease agreement shall be in force and recorded in the bureau of conveyances at the time the exemption is claimed. As used in this section, "Federal credit union" means a credit union organized under the Federal Credit Union Act of 1934, 12 U.S.C. chapter 14, as amended, and "State credit union" means a credit union organized under the Hawai'i Credit Act, chapter 412, Hawai'i Revised Statutes, as amended.
- (b) If any portion of the property which might otherwise be exempted under this section is used for commercial or other purposes not within the conditions necessary for exemption (including any use the primary purpose of which is to produce income even though such income is to be used for or in furtherance of the exempt purposes) that portion of the premises shall not be exempt but the remaining portion of the premises shall not be deprived of the exemption if the remaining portion is used exclusively

for purposes within the conditions necessary for exemption. In the event of an exemption of a portion of a building, the tax shall be assessed upon so much of the value of the building (including the land thereunder and the appurtenant premises) as the proportion of the floor space of the nonexempt portion bears to the total floor space of the building.

(1987, Ord. No. 87-116, sec. 4; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-89.3. Exemptions for enterprise zones.**

Buildings or other like structures which are built as a result of new construction by a qualified business within an enterprise zone shall be exempt except for the minimum tax from real property taxes for a period of three years. A qualified business in an enterprise zone must satisfy the requirements of chapter 31 of this code and section 209E, Hawai‘i Revised Statutes, as amended.

(1995, Ord. No. 95-14, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-89.4. Hawai‘i Island housing trust exemption.**

There shall be exempt, except for the minimum tax from real property taxes, those properties held by the Hawai‘i Island housing trust and its nonprofit special purpose entities, until such time as the properties are leased to individual homeowners.

(2006, Ord. No. 06-111, sec. 2.)

**Section 19-89.5. Kuleana land exemption.\***

- (a) For the purposes of this section, “kuleana land” means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled “An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges,” as amended by L. 1851, p.98, entitled “An Act to Amend an Act Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges” and as further amended by subsequent legislation.
- (b) Those portions of real property zoned as residential or agricultural, and designated as kuleana land, shall pay the minimum real property tax set forth in subsection 19-90(e) as long as the real property is owned in whole or in part by a lineal descendant of the person(s) that received the original title to the kuleana land.
- (c) An application for this exemption shall be filed with the director on forms prescribed by the director. The application shall include documents verifying ownership of the portion of the parcel and that the condition set forth in subsection (b) has been satisfied. Verification of the condition set forth in subsection (b) shall be satisfied by either genealogy verification by the Office of Hawaiian Affairs or by court order stating that the applicant is a lineal descendant of the person(s) that received the original title to the kuleana land. The applicant/landowner shall be responsible for all costs.

(2008, Ord. No. 08-11, sec. 2; Am. 2009, Ord. No. 09-27, sec. 4.)

\* **Editor’s Note:** Section 19-89.5 shall apply to the tax year beginning July 1, 2009 and the tax years thereafter.

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**Article 11. Determination of Rates.****Section 19-90. Real property tax; determination of rates.**

- (a) Unless a different meaning is clearly indicated by the context, as used in this section:
- (1) “Net taxable lands” means all other real property exclusive of buildings.
  - (2) “Net taxable real property” or “net taxable buildings” or “net taxable lands” means, as indicated by the context, the percentage of the market value of property determined under section 19-46 which the director of finance certifies as the tax base as provided by this chapter, less exemptions as provided by this chapter and, in all cases where appeals from the director’s assessment are then unsettled, less fifty percent of the value in dispute.
- (b) The council may increase or decrease the tax rate for buildings and for all other real property, exclusive of buildings for net taxable land and net taxable buildings of each class of property established in accordance with section 19-53(e) of this chapter. A resolution setting the tax rates shall be adopted on or before June 20 preceding the tax year for which property tax revenues are to be raised according to the following procedures:
- (1) The council shall advertise its intention to increase or decrease tax rates and the date, time, and place of a public hearing in two newspapers of general circulation. The public hearing notice shall set forth the tax rates or range of tax rates to be considered by the council.
  - (2) The resolution to set the real property tax rates shall disclose the approximate amount of revenue to be raised for net taxable lands and net taxable buildings within each class of property, the approximate percentage of revenue from net taxable lands and net taxable buildings within each class of property, and shall set the real property tax rate to be assessed, expressed in terms of tax per \$1,000 of net taxable lands and net taxable buildings within each class of property computed to the nearest cent.
  - (3) After the adoption of the resolution setting the real property tax rates, the council shall publish the adopted tax rates in two newspapers of general circulation.
  - (4) If no action is taken by the council to increase or decrease the tax rates, then the tax rates as previously set shall be applicable to the subsequent tax year.

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- (c) If the tax rates for the tax year are increased or decreased the council shall notify the director of finance of the increased or decreased rates, and the director shall employ such rates in the levying of property taxes as provided by this chapter.
- (d) The director of finance shall on or before May 1 preceding the tax year furnish the council with a calculation certified by the director as being as nearly accurate as may be, of the net taxable real property within the County, separately stated for each class established in accordance with section 19-53(e) of this chapter for net taxable lands and for net taxable buildings plus such additional data relating to the property tax base as may be necessary.
- (e) Notwithstanding any provision to the contrary, there shall be levied upon each individual parcel of real property taxable under this chapter, a minimum real property tax of \$100 per year, except under the following conditions:
  - (1) If the property owner receives a home exemption or totally disabled veteran exemption resulting in the minimum tax, and the assessed value of improvements is less than or equal to \$75,000, then, the minimum tax for this property shall be as follows:
    - (i) Property with improvements assessed at \$50,001 to \$75,000 the minimum tax shall be \$75.
    - (ii) Property with improvements assessed at \$25,001 to \$50,000 the minimum tax shall be \$50.
    - (iii) Property with improvements assessed up to \$25,000 the minimum tax shall be \$25.
  - (2) If the property is assessed at a market value of less than or equal to \$500, it shall be taxed at a minimum tax of \$25.

(1981, Ord. No. 613, sec. 94; Am. 1990, Ord. No. 90-138, sec. 6; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2002, Ord. No. 02-01, sec. 2; Ord. No. 02-102, sec. 2; Am. 2009, Ord. No. 09-27, sec. 2.)

## **Article 12. Appeals.**

### **Section 19-91. Appeals.**

Any taxpayer, aggrieved by an assessment made by the director or by the director's refusal to allow any exemption, may appeal from the assessment or from such refusal to the board of review or the tax appeal court pursuant to section 232-16, Hawai'i Revised Statutes, on or before April 9 preceding the tax year, as provided in this chapter. Where such an appeal is based upon the ground that the assessed value of the real property for tax purposes is excessive, the valuation claimed by the taxpayer in the appeal shall be admissible in evidence, in any subsequent condemnation action involving the property, as an admission that the market value of the real property as of the date of assessment is no more than the value arrived at when the assessed value from which the taxpayer appealed is adjusted to one hundred percent market value; provided, that such evidence shall not in any way affect the right of the taxpayer to any severance damages to which the taxpayer may be entitled.

(1981, Ord. No. 613, sec. 95; Am. 1997, Ord. No. 97-84, sec. 1; Am. 2000, Ord. No. 00-28, sec. 1.)

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**Section 19-92. Appeals by persons under contractual obligations.**

Whenever any person is under a contractual obligation to pay a tax assessed against another, the person shall have the same rights of appeal to the board of review and the tax appeal court and the supreme court, in the person's own name, as if the tax were assessed against said person. The person against whom the tax is assessed shall also have a right to appeal and be heard on any such application or appeal.

(1981, Ord. No. 613, sec. 96; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-93. Grounds of appeal, real property taxes.**

In the case of a real property tax appeal, no taxpayer shall be deemed aggrieved by an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown (1) assessment of the property exceeds by more than twenty percent the assessment of market value used by the director, or (2) lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or (3) denial of an exemption to which the taxpayer is entitled and for which the taxpayer has qualified, or (4) illegality, on any ground arising under the Constitution or laws of the United States or the laws of the State or the ordinances of the County in addition to the ground of illegality of the methods used, mentioned in clause (2).

(1981, Ord. No. 613, sec. 97; Am. 1982, Ord. No. 766, sec. 6; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-94. Second appeal.**

In every case in which a taxpayer appeals a real property tax assessment to the 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 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 director gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal.

(1981, Ord. No. 613, sec. 98; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-95. Small claims.**

Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000 by reason of the protested assessment on payment in question, may elect to employ the small claims procedures of the tax appeal court as set out in section 232-5, Hawai‘i Revised Statutes.

(1981, Ord. No. 613, sec. 99; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-96. Appointment, removal, compensation.**

There is created a board of review for the County which shall consist of five members who shall be citizens of the State and residents of the County, shall have resided at the time of appointment for at least three years in the State, and shall be appointed by the mayor and confirmed by the council as provided by Charter. A chairman shall be elected annually by members of the board. The vice-chairman shall serve as the chairman of the board during the temporary absence or disqualification of the chairman. Any vacancy in the board shall be filled for the unexpired term as provided for in the Charter. Each member may be compensated in the same manner as board and commission members covered under section 13-4(g), Hawai‘i County Charter, for each day's actual attendance and actual traveling expenses. No officer or employee of the County shall be eligible for appointment to any such board.

(1981, Ord. No. 613, sec. 100; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-97. Board of review; duties, powers, procedure before.**

(a) The board of review for the County shall hear all disputes between the director and any taxpayer 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 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 unless the taxpayer shows lack of uniformity or inequality as set forth in section 19-93. The chairperson shall dismiss those appeals which have not been timely filed or whose fee pursuant to section 19-100 has not been paid.

- (c) A second or more boards of review may be created when in the opinion of the director, the volume of the work of the existing board (or boards) creates undue delay in the completion of the board's work or undue hardship upon the members of the existing board (or boards). The provisions of this chapter shall be fully applicable to each board and each board shall function independently from every other board of review created under this chapter. The boards of review may provide by rules and regulations for the segregation of the real property tax appeals to be heard by each of the boards.
- (c) The board shall hold public meetings at some central location in the County commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. The 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 the board shall not 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 director and to increase or lower any assessment.
- (d) The board shall base its decision on the evidence before it, and, as provided in section 19-19, the assessment made by the director shall be deemed prima facie correct. Assessments for the same year upon other similar property situated in the County shall be received in evidence upon the hearing. In increasing or lowering any real property assessment, the board shall be governed by this chapter. The board shall file with the director its decision in writing on each appeal decided by it, and a certified copy thereof shall be furnished by the director 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 or business.
- (e) Upon completion of its review of the property tax appeals for the current year, the board shall compile and submit to the mayor and the council, and shall file with the director 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 this chapter. In this report the board shall additionally note instances in which, in the opinion of the board, the director, in the application of the methods selected by the director, 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. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the taxpayer and the grounds of objection to the assessment, and shall be filed with the director 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 hold the hearing on the complaint submitted, after first giving reasonable notice of the hearing to all interested taxpayers and the director. 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 work proceeds by districts.
- (f) The director, in the making of assessments for the succeeding year, shall give due consideration to the report of the board made pursuant to subsection (e).

- (g) The 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. It may request the tax appeal court, to order the attendance of witnesses and the giving of testimony by them, and the production of books, records and papers at the hearings of the board.

(1981, Ord. No. 613, sec. 101; Am. 1985, Ord. No. 85-102, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-98. Tax appeal court.**

An appeal to the tax appeal court may be filed by a taxpayer or the director as provided in sections 232-8 to 232-14, Hawai‘i Revised Statutes, and sections 232-16 to 232-18, Hawai‘i Revised Statutes.

Appeals to the State supreme court shall conform to sections 232-19 to 232-21, Hawai‘i Revised Statutes. (1981, Ord. No. 613, sec. 102; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-99. Appeal to board of review.**

The notice of appeal of a real property assessment must be lodged with the director 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 postmarked and properly addressed to the director, 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 and the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the taxpayer to the director, the director shall prepare the notice of appeal upon request of the taxpayer or County and any notice so prepared by the director shall be deemed sufficient as to its form.

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 for the determination of the objections raised by the taxpayer in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the taxpayer 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.

(1981, Ord. No. 613, sec. 103; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-100. Costs; deposit for an appeal.**

The costs to be deposited by the taxpayer on appeal to the board of review shall be \$15 for each real property tax appeal.

The cost to be deposited by the taxpayer on any appeal to the tax appeal court or the State supreme court shall be as provided in sections 232-22 and 232-23, Hawai‘i Revised Statutes.

(1981, Ord. No. 613, sec. 104; Am. 1991, Ord. No. 91-61, sec. 2; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-101. Costs, taxation.**

In the event of an appeal by a taxpayer to the board of review, if the appeal is compromised, or amended as to fifty percent or more of the valuation in dispute, the costs deposited shall be returned to the appellant. Otherwise the entire amount of costs deposited shall be retained by the County.

(1981, Ord. No. 613, sec. 105; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-102. Taxes paid pending appeal.**

The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall be paid by the director into the "litigated claims account." If the final determination is in whole or in part in favor of the appealing taxpayer, the director shall repay to the taxpayer out of the account, or if investment of the account should result in a deficit therein, out of the general fund of the County, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with interest at a rate to be determined by the director based upon the average interest rate earned on County investments during the previous fiscal year. Interest shall be calculated from the date of each payment into the litigated claims account. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the director, shall, upon the final determination become a realization of the general fund.

In a case of an appeal to a board of review, the tax paid upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director in the general fund of the County. In the event of final determination of the appeal in the board of review, the director shall repay to the appealing taxpayer out of the general fund the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, together with interest at a rate to be determined by the director based upon the average interest rate earned on County investments during the previous fiscal year. Interest shall be calculated from the date of each payment into the general fund of the County. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the director, shall, upon the final determination become a realization of the general fund.

(1981, Ord. No. 613, sec. 106; Am. 1991, Ord. No. 91-61, sec. 3; Am. 1997, Ord. No. 97-84, sec. 1.)

**Section 19-103. Amendment of assessment list to conform to decision.**

The director shall alter or amend the assessment and the assessment list in conformity with the decision or judgment of the last board or court to which an appeal may have been taken.

(1981, Ord. No. 613, sec. 107; Am. 1997, Ord. No. 97-84, sec. 1.)

**Article 13. Tax Credits.****Section 19-104. Solar water heater tax credit established.**

- (a) An owner of real property that has a single-family dwelling, ohana dwelling, farm dwelling, duplex, or double-family dwelling unit(s) and who installs a solar water heater on the owner's property on or after January 1, 2008, shall be entitled to a one-time tax credit per tax map key of up to \$300 under this article against the owner's real property tax liability, except for the minimum tax from all property taxes.
- (b) The credit shall be claimed against real property tax liability for the tax year immediately following approval of the application for the credit. The tax credit shall entitle the owner to a credit only for the single tax year. There shall be no carryover tax credit.

(2008, Ord. No. 08-93, sec. 2.)

**Section 19-105. Administration.**

- (a) The director shall determine the eligibility of the owner for the tax credit upon review and verification that the owner has installed a solar water heater on the owner's property.
- (b) The owner shall file an application with the department of finance on or before September 30 preceding the tax year in which the credit would be provided.
- (c) The director shall adopt rules having the force and effect of law for the administration, implementation, and enforcement of this article.

(2008, Ord. No. 08-93, sec. 2.)