

COUNTY OF KAUA`I DEPARTMENT OF FINANCE

Pursuant to the authority granted to the Director of Finance under the Kaua`i Code Section 5A-11.2, the Director proposes to amend the Department of Finance Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on August 2, 2021 via the Microsoft Teams online platform at 9:00 a.m., or soon thereafter.

**DEPARTMENT OF FINANCE
COUNTY OF KAUA`I
REAL PROPERTY ASSESSMENT DIVISION
REAL PROPERTY TAX CLASSIFICATION RULES**

Administrative Rules of the Director of Finance Relating to Real Property Tax Rate Classifications under Section 5A-6.4 of the Kaua`i County Code 1987, as amended.

§RP-12-1 **Purpose.** These rules implement the provisions of Section 5A-6.4 of the Kaua`i County Code (“K.C.C.”) relating to tax rate classification. These rules are further intended to ensure that the referenced provisions are applied in a uniform and equitable manner. These rules and any definitions in these rules apply only to K.C.C. § 5A-6.4.

§RP-12-2 **Authority.** These rules are promulgated pursuant to K.C.C. § 5A-1.2(j) under the Director of Finance’s authority to effectuate the purpose of K.C.C. § 5A-6.4.

§RP-12-3 **Retroactive effective date.** These rules shall be effective and applied retroactively to the furthest extent allowable by law.

§RP-12-4 **Definitions.** As used in these rules, except as otherwise required by context:

“Actual use” means how the owner uses the property as of the date of assessment.

“Definite established uses” includes categories of actual uses included in a general class, but the general class is not limited to the included definite established uses.

“Home office” means a portion of the taxpayers’ property dedicated to work-related activities but is not advertised or operated as a place of business.

“Household” means a single person or a number of related or unrelated people who reside in a living unit.

“Living unit” means an apartment, condominium, house, portion of a house, or structure ~~[occupied by a household.]~~ designed or intended for occupancy by a person(s).

“Long term rental” means a residential rental agreement for a period of at least one hundred and eighty days. ~~[This also includes month to month tenancy, if it is the same tenant for at least one hundred and eighty days.]~~ Rental agreements must be signed by the owner, signature by the owner’s agent is not sufficient.

“Owner” is defined in K.C.C. § 5A-7.1 and K.C.C. § 5A-1.1.

“Place of business” means a structure where a person engages in a trade or business evidenced by customer parking, client traffic, advertising, or signage.

“Principal residence” means the primary location that a person inhabits. Criteria for determination of a principal residence are outlined in the Department of Finance Home and Related Exemption Rules Section RP-10.4.

“Productive” means producing a benefit or income, which depend on the physical attributes, locational attributes, legal entitlements, or improvements.

“Short term rental” means a residential rental agreement for a period of less than one hundred and eighty days.

§RP-12-5 **Procedure.** Real property shall be classified into a general class provided in K.C.C. § 5A-6.4 for tax rate purposes. Assignment to a general class is based on the actual use of the property on October 1st preceding each tax year.

§RP-12-6 **Clarification of general classes.** The general classes are defined and definite established uses for tax classification are provided. The definite established uses provided are not exhaustive. If a property’s actual use is included in the definite established uses, the property shall be assigned to that class. If a property’s actual use is not found in the definite established uses, or a definite established use is not provided, the definitions as well as definite established uses are to be read together to properly classify a property.

(a) “Residential” includes use as a residence

(1) Definite established uses: long-term rental, second home exclusively used by the owner(s), vacant residential structures, ~~[and]~~ or a part time residence not occupied as a ~~[principle]~~ principal residence.

(b) “Vacation rental” includes the renting out or exchange of an apartment, condominium, living unit or house on a temporary basis to a person(s) as an alternative to a hotel for a period of less than one hundred-eighty consecutive days.

(1) A property subject to the Hawai’i Transient Accommodation Tax, other than those classified as Hotel & Resort, will be considered a vacation rental.

(2) Advertising of any sort which offers a property or portion of a property as a vacation rental or short term rental shall constitute prima facie evidence of the operation of a vacation rental.

(3) Engaging or advertising on Home Exchange websites.

(c) “Commercial” includes the use of the property to generate income, monetary gain or economic benefit.

(1) Definite established uses: golf course, retail space, commercial office space, shopping centers, strip malls, hospital facilities, medical offices, dental offices, restaurants, theatres, fitness centers, churches excluding those defined in Kaua'i County Code 5A-11.10(b)(3) and (b)(4), schools, recreational enterprises ~~[conducted for profit]~~, amusement enterprises ~~[conducted for profit]~~, ceremonial enterprises ~~[conducted for profit]~~, places where commodities or services are offered for sale, ag tourism, and spa facilities.

(2) The retail sale of value-added products ~~[grown and]~~ sold on agricultural lands does ~~[not]~~ constitute a commercial use~~[-unless a commercial use permit is granted]~~. However, the retail sale of any ~~[other product constitutes commercial use.]~~ raw fruits or vegetables grown and harvested on the subject property of it's associated farms does not constitute commercial use.

(3) Commercial use does not include a home office as defined in these rules.

(d) “Industrial” includes pertaining to manufacturing or processing, including the performance of mechanical or chemical operations.

(1) Definite established uses: manufacturing facilities, warehouse space, auto repair, paint or body shops, equipment baseyards, chemical production, chemical storage, mini-storage space, energy production facilities, communication towers, commercial kitchens, agricultural campuses, and processing and packing facilities.

(e) “Agricultural” includes the science or practice of farming, including cultivation of the soil for the growing of crops and the rearing of animals to provide food, wool, and other products.

(1) Definite established uses: farming or plant cultivation, ranching livestock, beekeeping, dairy farming, forestry, aquaculture, plant nurseries, horticulture structures, equestrian buildings, ~~[agricultural production facility, agricultural packaging facility,]~~ and permitted farm worker housing.

(f) “Conservation” is a classification reserved for vacant properties zoned within a conservation state or county land use district.

(g) “Hotel and Resort” includes an establishment providing rooms and amenities for transient tenants as a place where people go for rest, recreation, or sport.

(1) Definite established uses: hotel operations, resorts and amenities, motels, and timeshare units.

(h) "Homestead" means a property which is used exclusively as the owner's principal residence, provided that the owner has applied for and has been granted a home exemption according to K.C.C. § 5A-11.4.

(1) Criteria for qualification:

(A) The property must be the owner's principal residence occupying the home for more than two hundred seventy (270) calendar days (the calendar year shall begin on the date of assessment, October 1, and end on September 30 of the following year).

~~[(B) Submittal of a State of Hawai'i Resident Income Tax Return, or any other sufficient documentation approved by the Director of Finance, with a reported address in the State of Hawai'i.~~

~~(i) Sufficient documentation may include the documents referred to in Section RP-10.4, Home and Related Exemption Rules.~~

~~(ii) If the owner is not required to file an Income Tax Return, a notarized affidavit must be filed indicating the owner's principle address and indicating the dates of residency in the County of Kaua'i.~~

~~(iii) Non-resident and part-year resident State of Hawai'i income tax returns do not qualify for the home exemption.]~~

(B) The owner files an income tax return as a resident of the State of Hawai'i with a reported address within the County of Kaua'i the year prior to the effective date of the exemption. Non-resident and part-year resident State of Hawai'i income tax returns do not qualify.

(C) Presentation of a valid Hawai'i Driver's License, Hawai'i State Identification, or Resident aliens possessing a valid resident alien card claiming residency only in Hawai'i with an address on Kaua`i.

(D) Is stationed in the County under military orders of the United States.

(2) Properties that have multiple living units must have owner-occupants with qualified home use exemptions and long-term affordable rental occupants in the other living units to be eligible.

(3) Principal residence properties that have either agriculturally dedicated lands or licensed day cares located on the same property and no other additional uses may be eligible.

(4) A home office, defined in these rules, may be included in a homestead.

(i) “Residential Investor” is a classification for ~~residential~~ properties that do not qualify for the home exemption, are improved with a dwelling unit(s), not vacant land, and have an assessed value of ~~[two million dollars (\$2,000,000.00)]~~ one million three hundred thousand dollars (\$1,300,000.00) or more.

(1) This class does not include a property where all living units are rented on a long term rental basis. In order for property to be excluded from the Residential Investor tax class based on all living units being rented on a long term rental basis, each of the following conditions are required:

(A) The rental/lease agreement cannot expire on or before October 1st preceding each tax year. Those submitting rental/lease agreements expiring October 31 or before must provide a renewal agreement not later than November 15.

(B) Owners must not rent any of the living units to themselves personally, or via a related corporation, co-partnership, or company.

(C) Tenants must be the age 18 years or older.

(D) Renters/lessees must occupy the property as their principal residence.

(E) Owners whose property is currently classified as Residential Investor and who seek a lower tax rate based on all living units being rented on a long term rental basis must submit an application to the real property division by September 30 before the relevant tax year for a lower tax rate, and the application must include as an attachment a long-term lease for each living unit.

(j) “Commercialized Home Use” is applicable to parcels utilized for multiple purposes, one of which is use as the taxpayer’s principal residence as of the date of assessment, provided that the taxpayer has been granted a home use exemption on the property pursuant to K.C.C. § 5A-11.4.

§RP-12-7 **Vacant land.** Vacant land shall be classified as zoned until actual use is established. If the property has multiple zonings, then an assessment is made for each zoning. Once actual use is established, the tax classification will be assigned to the entire parcel.

(a) “Vacant land” means unimproved land~~[, or a portion of the property verified by a special use permit,]~~ that lacks the essential appurtenant improvements required to make it productive.

(b) The following general classes are zonings for vacant land and actual uses: residential, commercial, industrial, agricultural, and hotel and resort.

§RP-12-8 **Partially Complete.** A partially complete property shall be classified as zoned until actual use of the improvements has been established.

(a) "Partially complete" means a property, that shall be added to the assessment list pursuant to K.C.C. § 5A-8.1(e), where active construction exists, but has not yet been completed establishing the actual use. This includes structures with completion between twenty percent (20%) and sixty nine percent (69%). Completion percentage is determined by the "Appraisal and Component Rating Worksheet for Incomplete Buildings" incorporated into these rules by reference. This worksheet is available from the Real Property Assessment Division.

(b) At seventy percent (70%) completion, actual use may be established. Once actual use is established, the tax classification will be assigned to the entire parcel.

(c) Pursuant to K.C.C. § 5A-8.1(e), the Assessor may conduct a site inspection to determine whether a building is twenty percent (20%) complete or more.

§RP-12-9 **Criteria to change tax classification.** The following proof must be submitted, if applicable, to the Real Property Assessment Division by September 30th of the year prior to the desired change.

(a) Cessation of all previous use on the property.

(b) Removal of all signage indicating the previous use of the property.

(c) Removal of all advertisements, referencing the previous use of the property.

~~[(d) A copy of the County of Kaua'i Planning Department's closing letter or email acknowledging compliance with any use violations.]~~

(d) Removal of all special permits, tax licenses, use licenses or entitlements granted to the property. If applicable, acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.

(e) A newly completed Use Survey indicating current actual use(s).

(f) [Affidavit] Written statement or letter from the owner describing the current use(s) of the property and the last known date of prior use, or last booking date.

~~[(g) Additional requirements to change from a "Vacation Rental" to a different class.~~

~~(1) Acknowledgment by the County of Kaua'i Planning Department that the transient vacation non-conforming use permit is forfeited.~~

~~(2) An affidavit indicating the last pre-paid or reserved booking of the vacation or short term rental use on the property.~~

~~(3) Proof of cancellation of Transient Accommodations Tax License.~~

~~(4) A copy of a current long term lease and most recent general excise tax license filing.]~~

The Department of Finance reserves the right to audit records to ensure compliance.

§RP-12-10 **Appeal**. The owner may appeal the property's tax rate classification as in the case of an appeal from an assessment, as provided in K.C.C. § 5A-6.4(g).

§RP-12-11 **Severability**. If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.