

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Kaua'i County Council will hold a public hearing on Wednesday, February 8, 2023, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Līhu'e, on the following:

Bill No. 2891, Draft 1

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Tax Credit Residential Investor*)

This Bill proposes to amend Chapter 5A, Kaua'i County Code 1987, as amended (KCC), relating to Real Property Tax, by allowing certain property owners of property classified as Residential Investor to apply for a tax credit (also called a tax differential). For the 2022 tax year, 2023 tax year, or both (if applicable), any property owner whose property was classified as Residential Investor may apply for a tax differential by meeting the requirements provided by KCC Section 5A-11.4, other than filing a timely application (provided that the income tax return as a resident of the State of Hawai'i requirement pursuant to KCC Section 5A-11.4(a)(2) shall be waived for the 2022 tax year, 2023 tax year, or both (if applicable), if the property owner: has used the property address for Hawai'i residential tax returns, driver's license, car and voter registration, bills and correspondence; submits a copy of a valid Hawai'i Driver's License or Hawai'i State ID; and affirms that the property owner has used the property as the property owner's "principal" home or residence for more than 270 calendar days per year, with the calendar year beginning on the date of assessment, October 1, and ending on September 30 of the following year), or by providing evidence of a long-term rental agreement, such as an executed copy of a rental agreement running through October 1 of the prior year, and an "Annual Long-Term Lease Application Verification for the Reclassification of Residential Investor Properties." Bill No. 2891, Draft 1 provides that a long-term rental agreement may include agreements that begin with an initial long-term rental period of six (6) months or longer followed by an automatic month-to-month extension, provided that the property owner submits the rental agreement and an affidavit wherein both the property owner and the tenant affirm that the tenant continues to reside at the property pursuant to the month-to-month portion of the initial rental agreement. Bill No. 2891, Draft 1 would take effect upon its approval, at which time property owners shall have a specified time as will be stated in the finalized Ordinance to apply for a tax differential for the 2022 tax year, 2023 tax year, or both (if applicable). Bill No. 2891, Draft 1 also provides details on how eligible property owners would receive the tax differential, and specifies that the tax differential may be used in resolving appeals for property owners who timely filed a valid appeal that remains pending for the applicable tax year or years. Corresponding changes involve amendments to KCC Sections 5A-1.1 (including the definition of "Residential Investor"), 5A-3.2, and 5A-6.4(d). These temporary measures would terminate on September 30, 2023 and not supersede Ordinance Nos. 1130 or 1132.

Any person may testify at the public hearing, and at any Council and Committee Meeting (at which time any Bill may be amended). Meeting notices and full-text Bills are available at least six (6) days in advance at the Office of the County Clerk, Council Services Division and kauai.gov/webcastmeetings. Written testimony may be submitted via counciltestimony@kauai.gov, mail, or fax. For further information, please call (808) 241-4188.

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the Kāua'i County Council schedule for public hearing and ordered to print Bill No. 2891, Draft 1 during the January 19, 2023 Finance & Economic Development Committee Meeting, by the following vote:

AYES:	Bulosan, Carvalho, Cowden, DeCosta, Evslin, Kualii, Rapozo	TOTAL – 7,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
January 19, 2023

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kāua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – January 24, 2023)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO REAL PROPERTY TAX**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council finds that many Residential Investor property owners could have qualified for a lower property tax rate, but did not file the proper forms. The Residential Investor tax class is intended to help incentivize property owners to long-term rent their property. Taxing occupied homes at the higher Residential Investor tax class is counter to the purpose of the tax class and could result in the sale of occupied housing or an increase in rents to pay for the additional tax burden.

The Council finds that some relief should be granted for those homes that were either long-term rented or owner-occupied as of September 30 of the prior year, but failed to file the proper forms.

The purpose of this Ordinance is as follows:

- Provides for any newly classified Residential Investor property owner to apply for a tax credit limited to the 2022 tax year and 2023 tax year, by meeting the requirements provided by Sec. 5A-11.4 (with various exceptions as stated in this Ordinance) or by providing an executed copy of a rental agreement running through October 1 of the prior year, and an “Annual Long-Term Lease Application Verification for the Reclassification of Residential Investor Properties” (with various exceptions as stated in this Ordinance). Should the Director of Finance determine that a property was eligible for another tax rate classification for the 2022 tax year, 2023 tax year, or both (if applicable), a tax credit of the difference between the amount paid under the Residential Investor tax classification for the prior year and the amount the owner would have paid under the Residential tax class for the prior year shall be applied to the owner’s tax year bill for the following tax year (with restrictions as stated in this Ordinance), and all penalties and interest for delinquent payment of the tax differential portion shall be waived.
- Support current long-term rentals by providing a tax credit, while reminding owners of the process to submit the proper documentation to change tax classifications.

Applicants shall have sixty (60) days from the effective date of this Ordinance to apply for this tax credit.

SECTION 2. Chapter 5A, Section 5A-1.1, Kaua'i County Code 1987, as amended, is hereby amended in part by amending the definition of "Residential Investor" to read as follows:

"Residential Investor" shall mean a tax rate classification applied to properties that are not eligible for the Home Exemption (provided that the income tax return as a resident of the State of Hawai'i requirement pursuant to Section 5A-11.4(a)(2) shall be waived for the 2022 tax year, 2023 tax year, or both (if applicable), if the property owner: has used the property address for Hawai'i residential tax returns, driver's license, car and voter registration, bills and correspondence; submits a copy of a valid Hawai'i Driver's License or Hawai'i State ID; and affirms that the property owner has used the property as the property owner's "principal" home or residence for more than 270 calendar days per year, with the calendar year beginning on the date of assessment, October 1, and ending on September 30 of the following year), are improved with a dwelling unit(s), are not vacant land, are not being rented on a long-term basis, and have an assessed value of one million three hundred thousand dollars (\$1,300,000) or more."

SECTION 3. Chapter 5A, Section 5A-3.2, Kaua'i County Code 1987, as amended, is hereby amended in part to add a new 5A-3.2(e) to read as follows:

"(e) For the 2022 tax year, 2023 tax year, or both (if applicable), any property owner whose property was classified as Residential Investor may apply for a tax differential by meeting the requirements provided by Section 5A-11.4, other than filing a timely application (provided that the income tax return as a resident of the State of Hawai'i requirement pursuant to Section 5A-11.4(a)(2) shall be waived for the 2022 tax year, 2023 tax year, or both (if applicable), if the property owner: has used the property address for Hawai'i residential tax returns, driver's license, car and voter registration, bills and correspondence; submits a copy of a valid Hawai'i Driver's License or Hawai'i State ID; and affirms that the property owner has used the property as the property owner's "principal" home or residence for more than 270 calendar days per year, with the calendar year beginning on the date of assessment, October 1, and ending on September 30 of the following year), or by providing evidence of a long-term rental agreement, such as an executed copy of a rental agreement running through October 1 of the prior year, and an "Annual Long-Term Lease Application Verification for the Reclassification of Residential Investor Properties."

(1) A long-term rental agreement may include agreements that begin with an initial long-term rental period of six (6) months or longer followed by an automatic month-to-month extension, provided that the property owner submits the rental agreement and an affidavit wherein both the property owner and the tenant affirm that the tenant continues to reside at the property pursuant to the month-to-month portion of the initial rental agreement.

(2) Should the Director of Finance determine that a property was eligible for another tax rate classification for the 2022 tax year, 2023 tax year, or both (if applicable), a tax differential of the variance between the amount paid under the

Residential Investor tax classification for the applicable year or years and the amount the property owner would have paid under the Residential tax class for the applicable year or years shall be applied to the property owner's tax bill for the following tax year. The property owner may only receive the tax differential if the property owner remains the owner of record of the property at the time the tax differential would be applied to the property owner's tax bill, provided that the tax differential shall still be applied if the property was only transferred for the purposes set forth in Section 5A-11.4(c)(2)(F).

(3) For eligible property owners, all penalties and interest for delinquent payment of the tax differential portion shall be waived for the 2022 tax year, 2023 tax year, or both (if applicable).

(4) Property owners shall have sixty (60) days from the effective date of Ordinance No. *** to apply for a tax differential for the 2022 tax year, 2023 tax year, or both (if applicable).

(5) Property owners may apply for a tax differential for the 2022 tax year, 2023 tax year, or both (if applicable), even if they did not timely file a valid appeal for the applicable tax year or years pursuant to Chapter 5A, Article 12 (Appeals). Alternatively, for property owners who timely filed a valid appeal that remains pending for the applicable tax year or years, the tax differentials created by this Article may be used in resolving the appeal or appeals. Property owners who have received a tax differential for the 2022 tax year, 2023 tax year, or both (if applicable), via the appeal process need not separately apply for a tax year differential pursuant to Sections 5A-3.2(e)(4) and (5)."

SECTION 4. Chapter 5A, Section 5A-6.4(d), Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"(d) For the purposes of this Article, the Residential Investor tax rate classification shall be applied to properties that are not eligible for the Home Exemption (provided that the income tax return as a resident of the State of Hawai'i requirement pursuant to Section 5A-11.4(a)(2) shall be waived for the 2022 tax year, 2023 tax year, or both (if applicable), if the property owner: has used the property address for Hawai'i residential tax returns, driver's license, car and voter registration, bills and correspondence; submits a copy of a valid Hawai'i Driver's License or Hawai'i State ID; and affirms that the property owner has used the property as the property owner's "principal" home or residence for more than 270 calendar days per year, with the calendar year beginning on the date of assessment, October 1, and ending on September 30 of the following year), are improved with a dwelling unit(s), are not vacant land, are not being rented on a long-term basis, and have an assessed value of one million three hundred thousand dollars (\$1,300,000) or more."

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 6. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 7. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the designated Ordinance number of this Ordinance shall be substituted for the *** placeholders.

SECTION 8. This Ordinance shall take effect upon approval, terminate on September 30, 2023, and shall not supersede Ordinance No. 1130 and Ordinance No. 1132.

Introduced by: /s/ LUKE A. EVSLIN
/s/ MASON K. CHOCK

DATE OF INTRODUCTION:

November 16, 2022

Lihue, Kaua'i, Hawai'i

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