

RECEIVED

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

24 DEC 20 74118 Notice is hereby given that the Kaua'i County Council will hold a public hearing on Wednesday, January 16, 2025, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2940

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Settlement and Compromise Powers*)

This Bill proposes to amend Chapter 5A, Kaua'i County Code 1987, as amended, relating to Real Property Tax, by providing for the Director of Finance's settlement and compromise powers under Chapter 5A in a single section, and by clarifying that the authority of the Director to compromise disputes pertaining to waiving, whether partially or fully, disputes concerning the amount of taxes owed where no appeal has been filed, and clarifying that the Director may settle, without Council approval, real property tax appeals. Additionally, if a Home Exemption is disallowed pursuant to Section 5A-11.1(e), the tax classification (whether Owner-Occupied or Owner-Occupied Mixed-Use) shall be reclassified and reassessed, and taxes for those years shall be recalculated without the exemption, and the assessment cap reset, at the same time the exemption is disallowed. Where the disallowance of the Home Exemption is made for up to three (3) years (current plus two (2) prior) as allowed under Section 5A-11.1(e), a taxpayer who unduly benefited from the three percent (3%) assessment cap, shall have the assessment reset to the actual market value in those affected tax years.

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/Government/Council/Webcast-Meetings. 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 Kaua'i County Council passed on first reading and ordered to print Bill No. 2940 during the December 18, 2024 Council Meeting, by the following vote:

AYES:	Bulosan, Carvalho, Holland, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
NOES:	Cowden	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihue, Hawai'i
December 20, 2024

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'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 – December 27, 2024)

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

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. **Purpose.** The Purpose of this Ordinance is to provide for the Finance Director's settlement and compromise powers under Chapter 5A in a single section, and to clarify that the authority of the Director to compromise disputes pertains to waiving, whether partially or fully, disputes concerning the amount of taxes owed where no formal appeal has been filed, and to clarify that the Director may settle, without Council approval, real property tax appeals. The requirements that the County Attorney approve a compromise, and that the Department of Finance place on file a statement concerning a compromise are repealed. Section 5A-12.15, Appeals Settled by Director, is repealed. Additionally, if a Home Exemption is disallowed pursuant to Section 5A-11.1(e), the tax classification (whether Owner-Occupied or Owner-Occupied Mixed-Use) shall be reclassified and reassessed and taxes for those years shall be recalculated without the exemption, and the assessment cap reset, at the same time the exemption is disallowed. Additionally, where the disallowance of the Home Exemption is made for up to three (3) tax years (current plus two (2) prior) as allowed under Section 5A-11.1(e), a taxpayer who benefited from the three percent (3%) assessment cap shall have the assessment reset to the actual market value in those affected tax years. Additionally, a lien process detailed at Section 5A-11.1(e) is deleted such that the specific method is no longer mandatory. This Ordinance also includes technical edits, such as modification of abbreviations and deletions of references to previously repealed sections.

SECTION 2. Chapter 5A, Section 5A-1.2, Kaua'i County Code 1987, as amended, is hereby amended as follows:

“The Director shall have the following duties and powers, in addition to any others prescribed or granted by this Chapter.

(a) **Assessment.** To assess, pursuant to law, all real property situated within the geographic boundary of this County for taxation and to make any other assessment by law required to be made by the Director.

(b) **Collections.** To be responsible for the collection of all taxes imposed by this Chapter and for such other duties as are provided by law.

(c) 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.

(d) 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 County Attorneys or Prosecutor, 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 property.

(e) 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.

(f) Maps. The Director shall provide maps drawn to appropriate scale, showing all parcels, blocks, lots, or other divisions of land based upon ownership which shall be current as practicable under the circumstances surrounding the particular parcel, and their areas or dimensions, numbered or otherwise designated in a systematic manner for convenience of identification, valuation, and assessment. The maps, as far as possible, shall show the names of owners of each division of land, and shall be revised from time to time as further divisions of parcels occur. The Director shall also maintain, as and when such information is available, maps showing present use, zoning, and physical use capabilities of land for the guidance of assessors and the information of various tax review tribunals and the general public.

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 ordinance.

(g) Inspection, Examination of Records. To inspect and examine the records kept in any public office 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 in discharging the duties granted under this Chapter.

(h) Recommendations for Legislation. To recommend to the Mayor such amendments, changes or modifications of the provisions of this Chapter 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.

(i) 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 Finance Department, and such other matters of information concerning real property taxation as may be deemed of general interest; and the Mayor shall transmit copies of such reports to the Council.

(j) Rules and Regulations. To promulgate such rules and regulations deemed proper to effectuate the purposes of this Chapter and to regulate matters of procedure pursuant to the provisions of Chapter 91, H.R.S.

(k) Settlements and Compromises. [With the approval of the County Attorney, to compromise any claim arising under this Chapter not exceeding \$5,000, and if a claim exceeds \$5,000, the Director shall obtain the approval of the Council; and in any such case there shall be placed on file in the Department of Finance a statement of:

- (1) The amount of tax assessed, or proposed to be assessed;
- (2) The amount of penalties and interest imposed or proposed to be assessed;
- (3) The amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item;
- (4) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and
- (5) The reasons for the compromise.]

The Director may settle any real property tax appeal, regardless of the disputed amount, whether filed with the Board of Review or any court of law, including the Tax Appeal Court. If a property owner disputes the amount of taxes owed, but has not filed an appeal, the Director may compromise the dispute, provided that the Director shall obtain Council approval for any compromise resulting in a tax refund exceeding five thousand dollars (\$5,000) for a single tax year on an individual parcel. For purposes of this subsection, "Compromise" pertains to disputes where no formal appeal has been filed, and taxes are partially or fully waived. The Director may waive any amount of interest and penalties pursuant to Section 5A-1.2(m) without Council approval.

(l) 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.

(m) Remission of Delinquency Penalties and Interest. Except in cases of fraud or willful violation of the provisions of this Chapter the Director may remit any amount of penalties or interest added, under this Chapter, to any tax that is delinquent for not more than 90 days, in a case of excusable failure to 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 office of the Director a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved.

(n) 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, in respect to any taxable period, or in respect to 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:

(1) The matters agreed upon shall not be reopened, and the agreement shall not be modified by any officer or employee of the County; and

(2) 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.

(o) 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 and Sections 243-5 and 243-6, H.R.S., relating to fuel tax.”

SECTION 3. Chapter 5A, Section 5A-6.4, Kaua‘i County Code 1987, as amended, is hereby amended as follows:

“(a) For purposes of tax rates, real property shall be classified into one (1) of the following general classes according to the property’s actual use, and vacant property shall be classified as zoned until actual use is established, unless otherwise provided in this Chapter:

- (1) Non-Owner-Occupied Residential.
- (2) Vacation Rental.
- (3) Commercial.
- (4) Industrial.
- (5) Agricultural.

- (6) Conservation.
- (7) Hotel and Resort.
- (8) Owner-Occupied.
- (9) Owner-Occupied Mixed-Use.

(b) When property is divided into condominium units, each unit shall be: (1) classified based on its actual use into one (1) of the general classes in the same manner as other property, and (2) deemed a parcel and assessed separately.

(c) Parcels that are used for no other purpose than as the owner's principal residence shall be classified as Owner-Occupied provided that the owner has applied for and has been granted a home exemption according to Section 5A-11.4. Notwithstanding any provision in this Chapter to the contrary, if a Home Exemption is disallowed pursuant to Section 5A-11.1(e), the tax classification shall be reclassified and reassessed and taxes for those years shall be recalculated without the exemption, and the assessment cap reset, at the same time the exemption is disallowed. Additionally, where the disallowance of the Home Exemption is made for up to three (3) tax years (current plus two (2) prior) as allowed under Section 5A-11.1(e), a taxpayer who benefited from the three percent (3%) assessment cap shall have the assessment reset to the actual market value in those affected tax years. The Owner-Occupied class shall also include parcels used as the owner's principal residence that are being assessed according to their agricultural use as provided in Section 5A-9.1; provided that the owner has been granted a Home Exemption and no portion of the parcel be used for a purpose other than the owner's principal residence and agriculture. Dedicated land, as defined in Section 5A-9.1, on which refining or industrial use occurs shall not qualify for the Owner-Occupied class. The Owner-Occupied class shall also include parcels used as day care centers by licensed day care providers; provided that the owner has been granted a Home Exemption or is renting a Long-Term Affordable Rental to a tenant in accordance with Section 5A-11A.1, no portion of the parcel is used for any other commercial activity, and that owner has provided a current copy of their day care provider license or their tenant's day care provider license to the Director on or before September 30 prior to the applicable tax year. The Owner-Occupied class shall also include parcels that have applied for and have been deemed a Long-Term Affordable Rental and residential leases of state-owned property pursuant to Section 5A-11A.1.

(d) If a property has multiple actual uses, it shall be classified as the use with the highest tax rate, unless it satisfies the criteria for classification as Owner-Occupied Mixed-Use set forth in Subsection (e). To determine the "highest tax rate" if a class has tiered tax rates, the lowest tier tax rate shall be used. Tax rates of the prior tax year shall be used to determine the "highest tax rate."

(e) Parcels that are used for multiple purposes, one of which is use as the taxpayer's principal residence as of the date of assessment, shall be classified as Owner-Occupied Mixed-Use, provided that the taxpayer has received a Home

Exemption on the property pursuant to [Sec.] Section 5A-11.4[,] and that the taxpayer's use of the property as their principal residence does not constitute a minor or ancillary use of the entire parcel. Notwithstanding any provision in this Chapter to the contrary, if a Home Exemption is disallowed pursuant to Section 5A-11.1(e), the tax classification shall be reclassified and reassessed and taxes for those years shall be recalculated without the exemption, and the assessment cap reset, at the same time the exemption is disallowed. Additionally, where the disallowance of the Home Exemption is made for up to three (3) tax years (current plus two (2) prior) as allowed under Section 5A-11.1(e), a taxpayer who benefited from the three percent (3%) assessment cap shall have the assessment reset to the actual market value in those affected tax years.

(f) Notwithstanding any provision in this Chapter to the contrary, if during an assessment year, the actual use of a parcel is found to be not in conformance with its tax classification and that a higher tax rate would result if the parcel were classified according to its actual use, the parcel shall be reclassified and reassessed and taxes for those years during which such actual use failed to conform with the classification for up to three (3) tax years (current plus two (2) prior) shall be recalculated, and if applicable, without the exemption, and the assessment cap reset, at the same time the exemption is disallowed.

[(f)] (g) The owner may appeal the property's tax rate classification to the Board of Review as provided in Article 12."

SECTION 4. Chapter 5A, Section 5A-11.1 (Claims for Certain Exemptions), Kaua'i County Code 1987, as amended, is hereby amended as follows:

"(a) None of the exemptions from taxation granted in [Secs.] Sections 5A-11.4, [5A-11.6 to 5A-11.11,] 5A-11.6, 5A-11.8, 5A-11.9, 5A-11.10, 5A-11.20, 5A-11.24, 5A-11.27, [5A-11.31,] and 5A-11.32 shall be allowed in any case, unless the claimant shall have filed with the Director of Finance, on or before September 30 preceding the tax year for which such exemption is claimed, a claim for exemption in 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 Director voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided by either [Sec.] Section 5A-2.1 or 5A-1.14, as the case may be) that the claim or claims on file will be voided on a certain date, not less than [30] thirty (30) days after such notice;

[(3)] The five year period for exemption, as allowed in Sec. 5A-11.11, expires;]

[(4)] (3) The period for exemption, as allowed in [Secs.] Sections 5A-11.20 and 5A-11.21, expires; or

[(5)] (4) The claimant makes the report required by Subsection (d) of this Section.

(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) of this Section may be accompanied by or combined with a new claim.

(d) Any person who has been allowed an exemption under [Sec.] Section 5A-11.4, 5A-11.5 to 5A-11.11, 5A-11.20, 5A-11.24, or 5A-11.32 has a duty to report to the Assessor within [30] thirty (30) days after he or she ceases to qualify for such an exemption for one of, but not limited to, the following reasons:

(1) He or she 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 his or her exemption.

Such report shall have the effect of voiding the claim for exemption previously filed, as provided in Subsection (b)(5) of this Section. 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 [30] thirty (30) days after his or her assumption of his or her 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 the lesser of: (A) [\$200] two hundred dollars (\$200) for each year that the change in facts remain unreported; or (B) the amount of the taxes due for the property computed without the claim for exemption as of October [1st] 1 of

the year in which the report was due. 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 this Chapter.

(e) If the Director is of the view that, for any year the exemption should not be allowed, in whole or in part, the Director may, for the current year and up to two (2) prior years, disallow the exemption, in whole or in part, and reset the assessment cap, and may add to the assessment list the amount of value involved, in the manner provided by [Sec.] Section 5A-3.4 for the assessment of omitted [property; provided, that if an assessment or addition under this Subsection is made after December 31st 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 ordinance by recording a certificate setting forth the amount of tax involved, penalties, and interest.] property.

(f) In any case of recordation of a certificate for the amount of the civil penalty under Subsection (d) of this Section, [or for the amount of tax, penalties, and interest assessed or added under Subsection (e) of this Section,] a person shall be deemed to have an interest arising before the recordation of the certificate only if and to the extent that he or she acquired his or her interest in good faith and for a valuable consideration without notice of a violation of the requirements of Subsection (d) having occurred.”

SECTION 5. Chapter 5A, Section 5A-11A.3 (Assessment Cap for Home Exemption Property and Property Used For Long-Term Affordable Rental[,] and Residential Leases of State-Owned Property), Kaua‘i County Code 1987, as amended, is hereby amended as follows:

“(a) Any owner who has a home exemption pursuant to Section 5A-11.4, Kaua‘i County Code 1987, as amended, or receives the beneficial tax rate due to a long-term affordable rental, and residential leases of state-owned property pursuant to Section 5A-11A.1 shall receive a three percent (3%) assessment cap.

(b) The Director shall note on the notice of assessment or tax bill, or both, that the property receives the three percent (3%) assessment cap.

(c) Property receiving the assessment cap shall be taxed in the following manner:

(1) The property shall be assessed based on its market value, provided that, any increase in assessed value from the prior tax year’s assessment shall not exceed three percent (3%).

(A) Any improvements to the property, including, but not limited to: new construction, renovations, and partial demolition, that increase the fair market value of the property, the assessment shall be increased

based on the value of the improvements undertaken, notwithstanding the assessment cap limits.

(B) If property receiving the assessment cap subsequently increases in assessed value due solely to actions of the owner, such as but not limited to, the creation of a subdivision or condominium property regime, consolidation of lots or land area, or change in zoning, the assessment cap shall be reset to market value in the year of the change.

(C) If there is an error in the assessment for any year, the correction of which is not permitted under the terms of Section 5A-1.19, the assessment for the next year shall be based on what the assessment would have been for the previous year without the error.

(D) The gain or loss of an agricultural dedication, breach or expiration of a dedication, or change in status to another real property program that affects the value shall be excluded from the three percent (3%) assessment cap limit.

(2) In the case of properties that are multiuse parcels or structures, [the entire property shall receive the assessment cap, but shall be classified and taxed at the highest applicable tax rate in accordance with Section 5A-6.4 based on the property's actual use.] no assessment cap shall be granted.

(d) The Director shall calculate the assessment cap as prescribed in subsection (c).

(e) Upon transfer or sale of property, real property assessments shall be reset to reflect the market value of the property as of October 1 following the transfer or sale.

(f) The transfer of property for the purpose of conveying real property shall be excluded from subsection (e) if the same owner continues to maintain a home exemption pursuant to Section 5A-11.4(a) of Kaua'i County Code 1987, as amended."

SECTION 6 Chapter 5A, Section 5A-12.15, Kaua'i County Code 1987, as amended, is hereby repealed as follows:

"[§ 5A-12.15 Appeals Settled by Director.

(a) The Director may review any appeal filed at Board of Review or Tax Appeal Court.

(b) For each appeal reviewed by the Director, the Director may make an offer of settlement of the appeal, subject to further review and approval by the Board of Review or Tax Appeal Court.

(c) No later than 90 days following the close of each tax year, the Director shall submit to the County Clerk a report of all settlements entered into by the Director and approved by the Board of Review or Tax Appeal Court during the tax year. The report shall detail the name of the taxpayer, the tax parcel involved, any allowed exemption, credit, dedication, or tax classification change and the amount of the assessment as initially determined and as settled.]"

SECTION 7. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 8. 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 9. Notwithstanding any law, rule, or provision to the contrary, exemptions and tax limitations approved prior to the effective date of this Ordinance shall remain valid until the end of their originally-approved periods unless terminated or canceled as allowed by law.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by:



MEL RAPOZO
(By Request)

DATE OF INTRODUCTION:

December 18, 2024

Lihu'e, Kaua'i, Hawai'i

V:\BILLS\2024-2026 TERM\PDB Chapter 5A (RPT-Settlements and Compromise) (FIN) (MR)
CNT_slr.docx

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2940, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on December 18, 2024, by the following vote:

FOR PASSAGE:	Bulosan, Carvalho, Holland, Kaneshiro, Kuali'i, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Cowden	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
December 18, 2024



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i