TAX RELIEF FOR NATURAL DISASTERS

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FOREWORD

This study was prepared in response to Act 171, Session Laws of Hawaii 1993, enacted by the Legislature during the Regular Session of 1993. The law directed the Legislative Reference Bureau to study Chapter 234, Hawaii Revised Statutes (Tax Relief for Natural Disasters), to make recommendations concerning whether Chapter 234 should be repealed or amended.

The Bureau extends its appreciation to all who cooperated and assisted with its investigation and research. The Bureau wishes to extend specific thanks to the staff of the Technical Review Office of the Department of Taxation, Roy C. Price, Sr., Vice Director of Civil Defense, Department of Defense, and William Medigovich, Regional Director, Federal Emergency Management Agency.

Samuel B. K. Chang
Director

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INTRODUCTION

Origin

This report responds to Act 171, Session Laws of Hawaii 1993, entitled "A Bill for an Act Relating to Tax Relief for Natural Disaster Losses". The Act is set out in Appendix A. The primary law in question, chapter 234, Hawaii Revised Statutes, entitled "Tax Relief for Natural Disasters" has been in existence for thirty years, originally providing relief to victims of a natural disaster from income, general excise and real property tax liabilities. Today, the relief is offered only through the general excise and real property tax. In addition, the administration of the relief has become complicated as a result of the counties taking sole authority over the real property tax. During the thirty years of relief many new programs have been put in place to provide assistance for victims of a natural disaster. These and other factors caused the Legislature to question the present flexibility of the relief and in light of all the developments, called for this review.

Purpose

The purpose of this study is to determine whether or not Chapter 234, Hawaii Revised Statutes (Tax Relief for Natural Disasters) should be repealed or amended. To achieve this, the study reviews the policy for the enactment and its legislative history, and compares and sets forth the federal, state, county, and other states' natural disaster assistance programs and benefits available in 1961, and now, in 1993.

Scope of the Study

Disaster assistance is universally recognized as taking place in several stages. The first stage is pre-disaster mitigation, which involves the planning, preparing, and avoidance or mitigation of damages, due to a natural disaster. The second stage is disaster response. Disaster response refers to the immediate mobilization of equipment, personnel, and facilities to provide or restore a safe environment including the feeding, housing and protection of the public. The third phase of a disaster is the recovery period. The recovery period is the rebuilding period, after the immediate emergencies are handled. The recovery period can last different lengths of time depending on the extent and type of damage. It is the recovery period that this study focuses upon.

This study examines economic benefits conferred on victims of a natural disaster in the recovery period. Necessarily, some programs that incorporated pre-disaster mitigation

are discussed, but only to the extent there was some benefit conferred during the recovery period, especially if that benefit did not exist at the enactment of the "Tax Relief for Natural Disasters" law.

Chapter 2 sets the political and social environment of the period of time Chapter 234 was enacted. The legislative history is set out in Chapter 3 and Chapter 4 quantifies the economic benefits offered to victims of natural disasters today. Chapter 5 discusses and analyzes the issues that are brought out in earlier chapters. Finally, Chapter 6 sets forth findings and makes recommendations based on those findings.

Chapter 2

1961 - THE WAY IT WAS

Signs of the Times

The opening of the Legislature in January of 1961 was an interesting political time in Hawaii. A few months earlier, registered voters in the new State of Hawaii had participated in their first presidential election. In an unprecedented showing, ninety-three percent of the registered voters cast ballots.[1] After a recount of ballots and by a margin of only 115 votes, the Republican candidate, Richard Nixon, was defeated and Hawaii's electoral votes contributed to electing John Fitzgerald Kennedy as President of the United States of America. Evidence of this balanced distribution of Democrats and Republicans in the voting population was also reflected in the Senators Hawaii sent to Washington, D.C., Hiram L. Fong, a Republican, and Oren E. Long, a Democrat. The small State of Hawaii qualified for only one representative in the House of Representatives, and the people chose Daniel K. Inouye.

The top state executive officer was Governor William F. Quinn, and the first state Legislature elected was balanced with a Republican majority in the Senate and a Democratic majority in the House of Representatives. Appendix B lists the members and the committee assignments of the first state Legislature for the Regular Session of 1961.

Early in January of 1961, newspaper headlines across the nation were heralding the United States monitoring of communist activity in both Laos and Cuba as well as heated civil rights demonstrations across the U.S. mainland. Local papers reported New Year's promises from legislators that included the ground breaking of the East-West Center and stimulation of the neighbor island economy through tourism promotion.[2] The January 1961 edition of *Paradise of the Pacific* published a feature article on Henry Kaiser's contribution to the development of the hotel industry in Waikiki and speculated on his newest marine/residential project called Hawaii Kai.[3]

The local economy was levelling off from the sharp economic rise that came with statehood but the future outlook was still favorable. The State's economic base was spread over four major areas, agriculture (mainly sugar and pineapple), diversified manufacturing, federal expenditures (principally defense spending), and the growing industry of tourism.[4] A slow, steady decline in both revenues and employment in the sugar and pineapple industries was evident between 1951 and 1961, but the dramatic increase in tourism during that same period shed sunshine on what could have been a grim economic forecast.[5]

Unemployment was only 4.1 percent of the the total labor force.[6] Nurses were earning $315 a month and civil engineers were earning $800 a month while plumbers earned $1.96 per hour.[7] The State levied state personal income taxes between three and nine percent and

the general excise tax for retail business was three and one-half percent.[8] A three bedroom, two bath home was selling for $39,800 in Manoa, $27,500 in Kaneohe, or $18,600 in Waipahu.[9] Property tax assessments on that home were based on seventy percent of the fair market value and amounted to rates ranging between $13.61 to $16.10 per $1,000 of net assessed valuation.[10]

The fashion world showed the majority of women's hemlines about nineteen inches off the ground. Entertainment-wise, "Blue Moon" by The Marcels was at the top of the hit parade and the Thursday night television line-up included Donna Reed, The Real McCoys, Bachelor Father, The Untouchables and Sea Hunt. The world saw Hawaii through Hollywood's eyes with Elvis Presley starring in "Blue Hawaii". One of the few problems the new state legislature struggled with in this paradise was the disruption that nature was serving up in the form of tidal waves, hurricanes and other natural disasters.

State Aid to Natural Disaster Victims

The only general legislation that existed in 1961 that offered relief to the victims of a natural disaster had been passed in 1953. The income tax law[11] allowed victims to deduct from their income tax due, over a five-year period, the amount of losses incurred due to certain natural disasters not covered by insurance.[12] Another provision, in the real property tax law, allowed a deduction or refund on real property tax due for the remainder of the year based on the percentage of property loss.[13] This general legislation was enacted based on the passage of a series of specific acts during previous legislative sessions.[14]

Hawaii, the Territory and the State, had been struck with numerous natural disasters between the years 1955 and 1960, including hurricane "Dot", two volcanic eruptions, and a tidal wave. These natural disasters not only caused physical property damage but also resulted in lost lives in the case of the tidal wave. A patchwork of isolated acts of territorial and state legislation attempted to provide assistance to the victims of these disasters in terms of loans, tax refunds or forgiveness, land exchanges, and extension of unemployment compensation benefits. Appendix C charts the type and amount of disaster relief aid that was available through federal and state legislation for the above mentioned disasters. Unsure of whether or not the ad hoc method of legislation towards natural disaster relief was the most efficient, the Legislative Reference Bureau was requested by the House of Representatives Policy Committee to conduct a study.

1961 Legislative Reference Bureau *Disaster Relief* Study Revisited

The request to the Legislative Reference Bureau by the House of Representatives Policy Committee was concerned about ensuring equitable relief to the victims of natural disasters but also wanted to prevent any double recoveries and excessive payments. This request was answered with the Legislative Reference Report No. 1, 1961, *Disaster Relief: Considerations for State Action* (hereafter cited as "*Disaster Relief*").[15]

The recommendation of *Disaster Relief*, concerning tax relief as a type of relief for natural disasters was not favorable.[16] The report discredited the theoretical philosophy of the tax relief as a form of reimbursement of loss by pointing out that for "practical purposes, the limit of recovery was tax liability."[17] The report stated that tax liability was not a logical measure of disaster needs or disaster losses due to the variable nature of certain assets any claimant may or may not own.[18] Analyzing available data from tax relief provisions authorized by Act 207, Session Laws of Hawaii 1955,[19] the 1961 Legislative Reference Bureau report concluded that victims' recoveries through tax relief had not been equal when viewed as a percentage of losses recovered, with "smaller losses generally recover[ing] a smaller percentage than did those with larger losses."[20] Allowing an extended period of time, five or ten years, in which to recover losses through tax liability might assist in more equal total recovery reimbursement, but the report concluded that it was an inefficient method of relief after a disaster.[21]

Other States' Aid to Natural Disaster Victims

Disaster Relief reported that a survey of the other forty-nine states revealed that only three states offered the kind of assistance through legislation the State of Hawaii had offered to victims of natural disasters. Massachusetts offered a pro-rata tax rebate on real property tax, Connecticut offered refunds or credits from the sales and use tax, cigarette tax, gasoline tax, and the alcoholic beverage tax, and the state of Kentucky allocated funds for loans at prevailing rates of interest.[22]

Federal Assistance

Direct financial assistance from the federal government to individuals affected by a natural disaster was not available in 1961. Although there were no specific programs for victims of natural disasters, federal agencies did have authority to expand existing programs to incorporate victims of a natural disaster by broadening or liberalizing eligibility requirements.[23]

The Internal Revenue Code did offer some relief in the form of a tax deduction for casualty losses.[24] The total property loss in excess of $100 could be deducted from gross income in the year of the loss or carried back one year to provide a cash refund.

Insurance

Insurance in 1961 was generally unavailable for protection of buildings against seismic sea waves and floods, but was available for earthquake and windstorm damage.[25] Although the majority of personal property floater policies did protect most household items many people considered it too expensive.[26] The situation was similar for commercial enterprises. While a business could be insured to protect certain types of merchandise against certain types of natural disasters, the cost was often not worth the risk.

Available Aid from Private Associations

The Red Cross was the primary source of the majority of both immediate and long-term assistance. The policy of the Red Cross was, in 1961, the same as it is today. American Red Cross assistance is given on the basis of need and not directly related to the amount of loss. In 1961, eighty percent of Red Cross funds were expended on rehabilitative assistance after an emergency as opposed to funds expended to assist in direct emergency aid.[27] It is unclear whether or not there were any other regular private sources of assistance during the late 1950s and early 1960s.

"Tax Relief for Natural Disasters" is Enacted

It was in the above described climate that on the tenth day of the Regular Session of 1961, Senators Abe, Ushijima, Kinney, Doi, and Yates jointly introduced Senate Bill No. 461 entitled, "A Bill for an Act Providing for the Relief of Persons Suffering Property Damage Due to Disasters."[28] The legislative history is cloudy but it is apparent that the recommendations of the 1961 *Disaster Relief* report were not entirely embraced by the Legislature. The tax relief for natural disasters law as passed in Act 173, Session Laws of Hawaii 1961, was based largely on previous legislation from 1955, specifically Act 207, Session Laws of Hawaii 1955. That legislation, which offered both real property and general excise tax relief over a five-year period and created a claims commission to certify amounts of relief, was criticized as unfair and inequitable in two different analyses presented to the Legislature.[29]

Committee reports in the legislative history of Senate Bill No. 461, focus on justifying rehabilitative assistance and providing relief to persons suffering property damages due to natural disasters.[30] No report directly addresses the points brought up in the written analysis

of tax relief concerning the inequality of past tax relief efforts for victims of a natural disaster or the issue of whether or not the Legislature should base relief on a policy of need or simply recovery of loss.

The original "Tax Relief for Natural Disasters" law was codified as chapter 131E, Revised Laws of Hawaii 1955, and later recodifed in its present day designation as chapter 234, Hawaii Revised Statutes (1985, as amended). The original Act authorized the convening of a claims commission by the Governor when the Governor determined a natural disaster had occurred and warranted assistance from the state government. The claims commission was required to certify all claims made under oath by taxpayers who incurred losses as a result of the natural disaster. The total loss was determined by:

> ...taking the difference between the market value immediately prior to the date of the natural disaster and the market value immediately after the date of the natural disaster. The losses to be certified to the director of taxation from the the total losses recognized by the commission shall be computed by the commission as follows:
>
> (1) [D]educt all insurance benefits received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster;
> (2) [D]educt the portion of the losses resulting from insurable property in excess of $100,000;
> (3) [D]educt tax benefits from the federal internal revenue service, and
> (4) [D]educt any other recoveries."[31]

The law required the Director of Taxation to remit, refund, or forgive over a period of five years the amount of the certified loss from the real property tax or the general excise tax but not in excess of $500,000 for all taxes due under the general excise tax law, the income tax law, and the real property tax law.[32] Specific limits were set on the amounts claimants could recover from the excise tax of not more than $250,000 and not more than $350,000 for all taxes due under the excise and real property tax law combined.

The original Act also authorized the first commission to certify claims for victims of the Puna volcanic eruption of 1960 and the tsunami of 1960.[33]

Summary

Enacting the new tax relief for natural disasters law in 1961 was not really "new" legislation at all, but a generalized version of legislation passed in 1955 to assist people suffering from property damage from volcanic activity in Puna. The policy of providing recovery of loss through tax liability was criticized in two different analyses presented to the Legislature but the legislation was passed regardless. The law authorized recovery of losses through the remittance, refund or forgiveness of general excise taxes, income taxes, and real property taxes not to exceed a total amount of $500,000 over a five-year period.

There was little federal aid to be had and private aid through the American Red Cross was based solely on need, not on amount of losses. Insurance for flooding was also unobtainable either because it was too expensive or not available. No other state in 1961 offered the kind of tax assistance the State of Hawaii had just written on the books.

ENDNOTES

1. Douglas Boswell, ed., All About Hawaii, 85th Edition (Honolulu: Star-Bulletin Printing Co., 1961), at 315. (Hereafter cited as Boswell)

2. Honolulu Advertiser, January 1, 1961, p. A10.

3. Glenn Hughes, "Hawaii Kai", Paradise of the Pacific, January 1961, p. 16.

4. Tax Foundation of Hawaii, Government in Hawaii 1962, 9th Edition (Honolulu: Tax Foundation of Hawaii, 1962), at 3. (Hereafter cited as Tax Foundation)

5. Value of sugar crops:
   1956 - $148 million
   1961 - $145 million

   Value of pineapple crops:
   1956 - $117 million
   1961 - $113 million

   Number of employees in agricultural industry:
   1951 - 34,135 (18.6% of total population)
   1956 - 26,537
   1961 - 21,848 (9.3% of total population)

   Visitors to Hawaii:
   1951 - 51,565
   1961 - 319,000

   Expenditures of visitors:
   1951 - $ 29 million
   1961 - $138 million

   Tax Foundation, pp. 4, 10.

6. Ibid.

7. Boswell, p. 333.

8. Ibid., p. 241.

9. "Classified Ads", Honolulu Advertiser, January 1, 1961, at B6.

10. Tax Foundation, p. 17.

11. Section 5508.01, Series A-109; Act 88 Session Laws of Hawaii 1953, was later recodified as section 121-11, Revised Laws of Hawaii 1955, which was then recodified as section 121-5(f), Revised Laws of Hawaii 1955, 1957 Supplement and remains as law today under section 235-7(f), Hawaii Revised Statutes (1985).

12. "General Disaster Relief" (Legislative Reference Bureau, University of Hawaii, Request No. 7941, 1960), addendum "Natural Disasters" by W. K. Watkins, Jr., and Rhoda Lewis, Office of the Attorney General, dated April 10, 1957, p. 4 (hereinafter cited as General Disaster). (Microfilm)

    Note, however, that there were general loss provisions in the income tax law from as early as 1901 that would have allowed victims of certain natural disasters to deduct their losses due to fire, storm, shipwreck or other casualty, from their income when computing taxable income in a single year. See Act 44, Session Laws of 1932, 2nd Special Session, codified as section 2034(1)(h), Revised Laws of Hawaii, 1935. See also Section 4, Act 20, Session Laws of 1901.

13. Section 128-37, Revised Laws of Hawaii 1955.

14. General Disaster, p. 5.

15. Gedan, Joseph M., Disaster Relief: Considerations for State Action, University of Hawaii, Legislative Reference Bureau, Report No. 1 (Honolulu: 1961). (Hereafter cited as Gedan).

16. Ibid., p. i.

17. Ibid., p. 23.

18. Ibid., pp. 26, 27.

19. See Appendix C for a summary of the legislation.

20. Gedan, pp. 24, 25.

21. Ibid., pp. 25, 27.

22. Ibid., p. 17.

23. Ibid., p. 13.

24. Section 165(c)(3)(h), Internal Revenue Code of 1954, as amended (now codified as section 165(c)(3)(i), Internal Revenue Code of 1986, as amended).

25. General Disaster, p. 2.

26. Ibid., p. 2.

27. Ibid., p. 3.

28. Senate Journal 1961, p. 78.

29. General Disaster, p. 5; and see also Gedan, p. 24.

30. House Standing Committee Report No. 980, House Journal, 1961, p. 1050; Senate Standing Committee Report No. 569, Senate Journal, 1961, p. 878.

31. Section 4(b), Act 173, Session Laws of Hawaii 1961.

32. Section 4(c) and Section 7, Act 173, Session Laws of Hawaii 1961.

33. Section 10, Act 173, Session Laws of Hawaii 1961.

Chapter 3

THIRTY YEARS OF RELIEF

"Tax Relief for Natural Disasters" has been law in Hawaii for more than thirty years. During those thirty years the law has been amended by eight acts, including the two acts that amended the law in 1993. There have been twenty-three proclamations of natural disasters and nine claims commissions established. Quantifying all the relief granted over the years is difficult because records are incomplete. This chapter examines the disasters that led to the establishment of claims commissions and, the amounts of the claims, and follows the progression of the law as it was amended over the years.

As discussed in chapter 2, the original enabling legislation, Act 173, Session Laws of Hawaii 1961, was enacted to offer tax relief to victims of a natural disaster, through the excise tax, real property tax, and net income tax up to a limit of $500,000 over five years. The first claims commission was authorized legislatively in Act 173 to certify claims from damage done in 1960 by the tsunami that struck the Big Island and volcanic eruptions in Puna. During the administrative processing of the first certified claims, it became apparent that the original law was defective. The mechanism in Act 173 that was structured to refund or forgive the tax due for these victims incorporated the excise tax and real property tax but was silent as to net income tax. As a result of the omission, the Director of Taxation had no authority to forgive or refund taxes due under the net income tax law. The ambiguity in the law would prove to be the kindling that that would build a fiery debate about the original intent of the law.

Act 22, Session Laws of Hawaii 1962, enacted during the regular session of that year, modified Act 173 and made the necessary changes to authorize the net income tax refund or forgiveness by the director retroactive to the date of the original Act 173. The modification in Act 22 also acted to exclude the relief from net income taxes due for public utilities.[1]

The original, generously high limit of the allowable relief from total taxes was, however, short-lived. An additional amendment to the law in Act 22 operated to lower the allowable limits of total relief from taxes due from $500,000 to $350,000. Act 22 also imposed a specific limit of $10,000 for relief from net income tax but maintained the original $250,000 relief limit for excise taxes.[2] These limits set by Act 22 would be in force until 1974.

The second commission was convened in 1963, acting on the authority of a retroactive amendment that included droughts as natural disasters.[3] Act 145, Session Laws of Hawaii 1963, amended the definition of "natural disaster" by replacing the word "sudden" with the word "severe" and adding "prolonged drought" as another example.[4] Act 145 also clarified that the relief allowed would be effective for all victims of the prolonged drought which started in 1962.[5]

For three years the law went unchanged. Then, in 1966, Act 48, Session Laws of Hawaii 1966, amended the chapter on tax relief for natural disasters to allow for judicial review of the commission's findings on the amount of loss to be certified. The amended law allowed appealing parties to request a jury trial but denied any interest or penalty to accrue during the appeal period.[6] The appeal rights were offered retroactively to the first recipients of the tax relief and victims of the Puna volcanic eruption of 1960 and tsunami of 1960 were given until June 30, 1966 to file their appeals in Circuit Court.[7] Apparently, the claims commissions had been certifying the amounts of claims irregularly.[8] The appeal to the Circuit Court allowed claimants some recourse for reconsideration on the valuation of their losses.

Income Tax Relief Repealed

Thirteen years after tax relief for natural disasters was enacted, the provisions providing relief from income taxes were repealed by Act 134, Session Laws of Hawaii 1974. Technically, this left tax relief for natural disasters applicable only to the real property and general excise tax laws.[9] Except, as pointed out in a House Standing Committee Report, relief under the income tax law was still available through section 235-7(f), *Hawaii Revised Statutes*,[10] as it always had been.[11] An additional amendment to section 234-8, *Hawaii Revised Statutes*, served to clarify the relation between the relief offered under section 235-7(f) in the form of a deduction from gross income and the calculation of the certified claims and the total amount of relief taken under chapter 234 as a result of that deduction.[12]

Act 134 also operated to rein in the limits of total allowable relief from $350,000 to $35,000 including specific limits of relief from $250,000 to $25,000 for general excise tax.[13] Although the allowable limits were substantially decreased, it is possible that the Legislature believed they were not taking anything away, but only bringing the limits closer to the amount of real losses claimed. Available figures show that the average certified claims to date had been only $13,614 for the first commission and $25,458 for the second (see Table 3-1). Relief was doled out in this form for some time as there were no other substantive changes in the law until 1992.[14]

The 1974 amendment limiting the total amount of claims was a timely one, for in 1978 a drought led Governor Ariyoshi to proclaim a natural disaster eligible for tax relief under chapter 234, *Hawaii Revised Statutes*. While no figures are available on the amounts claimed or refunded to residents of the County of Hawaii, there were seven claims in the County of Maui totalling $8,277,500 (see Table 3-1). Due to the limits set in 1974, the State was only obligated to refund a total of $184,000, to all claimants even though the average certified claim for each claimaint was $1,182,500 (see Table 3-1).

TABLE 3-1

BY DISASTERS	NATURAL DISASTERS		# PROCLAIMED	COMMISSION	CLAIMS CERTIFIED	TOTAL CERTIFIED CLAIMS	AVERAGE PER CLAIM	TOTAL AMOUNTS REFUNDED	GENERAL EXCISE TAX	REAL PROPERTY TAX
I	60 TIDAL WAVE/LAVA FLOW	HI	2: ?,?*	3+2=5 YEARS	703	9,570,354.65	13,613.59	5,723,341.30	?*	?*
II	62-63 Drought	HI	?*	1 year	102	2,596,730.91	25,458.15	1,749,244.51	?*	?*
III	78 Drought(11/1/77-78)	MAUI	4/18/78	?-11/79	7	8,277,500.00	1,182,500.00	184,000.00	?*	?*
III	78 Drought(11/1/77-78)	HI	4/18/78	1 YEAR	39	?*	?*	?*	?*	?*
III TOTAL					46	?	?	?	?	?
IV	83-85 Drought(12/16/83-85)	HI	11/9/84	1 YEAR	64	1,154,640.18	18,041.25	678,620.33	389,584.67	289,035.66
V	88 KAILUA, HI KAI Flood (12/21/87-1/2/88)	OAHU	1/4/88	6/6/88-8/31/89	348	6,669,972.00	19,166.59	5,219,796.97	1,348,236.00	3,871,560.97
VI	90 LAVA FLOW(1/24/83-)	HI	4/28/90	10 months	60	736,833.00	12,280.55	78,547.47	19,969.44	58,578.03
VI	91 LAVA FLOW	HI		7 months	43	684,444.00	15,917.30	26,995.65	16,540.33	10,455.32
VI TOTAL					103	1,421,277.00	13,798.81	105,543.12	36,509.77	69,033.35
VII	91 LAIE, PEARL CITY Flood (3/19/91-3/23/91)	OAHU	3/26/91	6/6/91-2/9/93	48	315,303.00	6,568.81	76,919.58	?	?
VIII	91 ANAHOLA Flood(12/13-14/91)	KAUAI	12/16/91	1/92-4/93	19	156,351.00	8,229.00	91,414.00	1,900.00	89,514.00
IX	92 INIKI Hurricane(9/11/92-)	OAHU	9/11/92	3/9/93-todate	36 (filed)**	?***	?***	?***	?***	?***
IX	92 INIKI Hurricane(9/11/92-)	MAUI	9/11/92	5/93-todate	3 (filed)**	?***	?***	?***	?***	?***
IX	92 INIKI Hurricane(9/11/92-)	HI	9/11/92	current	4 (filed)**	?***	?***	?***	?***	?***
IX	92 INIKI Hurricane(9/11/92-)	KAUAI	9/11/92	6/8/93-todate	931 (filed)**	?***	?***	?***	?***	?***
IX TOTAL					974 (filed)**	?***	?***	?***	?***	?***

"?" not available at this time (July 93)

* Question marks indicate incomplete data that is not available and not required to be retained after a period of time.

** Indicates number of claims filed but not certified. The number of certified claims may be less.

*** Incomplete data as these claims have not all been certified or processed.

Compiled by the Technical Review Office, Department of Taxation.

Real Property Rights Transferred to Counties

The next major event that affected tax relief for natural disasters law was the Constitutional Convention of 1978 that transferred the authority for the real property tax from the State to the counties.[15] The Constitution now required that "all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties."[16] It is not clear from the notes of the Constitutional Convention that the effects of the transfer on chapter 234, *Hawaii Revised Statutes*, were ever directly considered. The next two proclamations of disaster did not authorize tax relief through chapter 234,[17] so this provision was not tested until 1984.

On November 9, 1984, Governor Ariyoshi proclaimed the drought conditions on the Big Island a natural disaster. The proclamation authorized the relief under chapter 234 and the new responsibilities of the counties to remit, refund, or forgive real property taxes was tested. The total amount of the claims was relatively small with two-thirds of the refunds coming from state funds through general excise tax relief, rather than from the county coffers, for real property tax relief (see Table 3-1). A great deal of cooperation between the county and the state tax departments was required to ensure the amount of relief taken was within the certified claim amount for each claimant.

This first exchange between the State and the county led to a bill that was introduced during the 1987 Regular Session to "provide a housekeeping and technical corrections measure for the clear, unmistakable, and orderly remittance, refund, or forgiveness of appropriate tax relief of natural disaster claimants."[18] This bill was introduced in short form and in the House Draft 1 version the bill identified the county finance director as the authority to remit and refund taxes in the case of real property taxes and limited the amount of forgiveness of real property taxes to $10,000.[19] Testimony opposing the bill as drafted was submitted by Joseph W. Andrews, Director of Finance for the County of Hawaii, to the Committee on Finance.[20] This testimony was disregarded by the House Finance Committee and the only amendment made to House Draft 2 was to modify the definition of county finance director.[21] On the other hand, the Senate Draft 1 version of the bill agreed with testimony presented in a letter from Mayor Dante Carpenter of the County of Hawaii that was substantially identical to the testimony submitted by Mr. Andrews. The Mayor's testimony opposed the bill and asked that it be amended to remove all references to real property tax relief.[22] The Senate amended the bill accordingly and H.B. No. 537, H.D. 2, S.D. 1, was the version that ultimately passed both legislative bodies and was sent to the Governor. In submitting the bill to the Governor in the form that deleted all references to real property tax relief under chapter 234, the Legislature essentially conceded to the idea that the constitutional mandate transferring all administrative duties and powers to the counties made the State no longer responsible for real property tax matters.[23]

Governor Waihee disagreed. While recognizing that the bill intended "to limit the financial responsibility of the State in times of natural disaster,"[24] its practical result of assuring tax relief only to those in business through the general excise tax relief was unacceptable to the Governor. The bill was vetoed and returned to the Legislature without approval on June 22, 1987. In his statement of objections, Governor Waihee did not address the authority of the State to mandate real property tax relief by the counties.

Six months later, as a result of rain and flooding on New Year's Eve, Governor Waihee declared a natural disaster authorizing relief under chapter 234 for those victims of the storm. The City and County of Honolulu took the position the County of Hawaii presented during the 1987 Regular Session and would not pay real property tax refunds as a result of certified claims under chapter 234.[25] The Director of Taxation requested an Attorney General's opinion on the matter. The Attorney General, in an opinion dated February 10, 1989, "believed that the counties have the legal responsibility and the fiscal burden of providing the real property tax relief for natural disaster losses."[26] Citing Section 6, Article VIII, of the State of Hawaii Constitution, which states that the transfer of real property transactions from the State to the Counties, "shall not limit the power of the legislature to enact laws of statewide concern."[27] The Attorney General went on to state that natural disasters appeared to be "matters of statewide concern which would confer upon the legislature the power to provide assistance in the form of relief from taxes."[28] It is interesting to note that in the Attorney General's opinion, there is no discussion of the amendments proposed by H.B. No. 537, H.D. 2, S.D. 1, during the 1987 Regular Session in which the Legislature conceded to the counties' position. The counties did not question or contest this issue further.

The issuance of the Attorney General's opinion gave authority to the introduction of a bill similar in nature to H.B. No. 537, H.D. 2 (1987).[29] The bill, which eventually became Act 237, Session Laws of Hawaii 1992, amended provisions of chapter 234 to require the counties' directors of finance to remit or refund any real property taxes due and payable under any county real property tax ordinance within the limits of the certified claim.[30]

Although it appeared that the issue between the counties and the State had been resolved, Hurricane Iniki, put the wind back in the sails of this debate. On September 11, 1992, Hurricane Iniki blew through Hawaii causing the Governor to proclaim a natural disaster and authorized relief under chapter 234. The catastrophic damage forced the reconsideration of the financial liabilities chapter 234 placed on the counties. Two Acts were passed during the 1993 Regular Session that directly affected the substantive provisions of the law. Two other Acts appropriated more than $8,500,000 to Kauai to cover the refunds and forgiveness that Kauai County would be obligated to return for property taxes under chapter 234,[31] in addition to more than $650,000 to the Department of Taxation to process the claims.[32]

The substantive amendments that were enacted during the most recent legislative session included defining "major natural disaster" as a natural disaster where more than five hundred claims are to be processed, authorizing additional claims commissions in the instances of major disasters, and in certain circumstances allowing the requirement that claims commissioners be distinterested parties to be waived.[33] The calculation of certified claims was clarified by specifying that all federal grants or loans received by a claimant be deducted from the total losses.[34] Finally, an amendment to section 234-4(c), *Hawaii Revised Statutes*, required that tax relief be taken first from real property taxes due for the year the disaster occurred and then only from real property taxes for the next four years if there had been a claim made to the general excise tax, if applicable.[35] Theoretically, this amendment provided that the State and counties would share the burden of remitting, refunding, or forgiving the tax relief offered under chapter 234.

Summary

Records indicate that in the past thirty years, there have been twenty-three natural disasters proclaimed that have resulted in nine claims commissions certifying claims of at least $32,710,806. The total amount that has been refunded is at least $13,934,423. The figures are incomplete from early years and do not include all the claims filed for Hurricane Iniki. It is estimated that an additional $8,500,000 in property tax refunds and an undetermined amount of general excise tax refunds will be refunded as a result of Hurricane Iniki claims.

There are some substantial differences between the type and amount of relief offered when the law was enacted in 1961 and what it offers today. The term "natural disaster" has been expanded to include prolonged drought. Since 1966 there has been an opportunity for judicial review of the claims commission's certification of amount of loss. The limits of relief have been substantially lowered from the original total allowable relief of $500,000 to the current allowable relief of $35,000. The tax relief originally offered was available through the property tax, general excise tax, and income tax but as of 1974, chapter 234 no longer applies to the income tax law, although provisions for relief under chapter 235, *Hawaii Revised Statutes* (income tax law) still exist. The counties, rather than the State, are now required to remit, refund, or forgive real property taxes within the limits of the certified claims. In an effort to balance the burden of refunding taxes between the counties and State, the law provides that general excise claims, where applicable, must be taken before additional real property tax claims can be taken when fulfilling the total allowable certified claim. Today the State is only required to remit, refund, or forgive taxes due and payable under the general excise tax.

ENDNOTES

1. Act 22, Session Laws of Hawaii 1962.

2. Ibid.

3. Act 145, Session Laws of Hawaii 1963. §4.

4. Ibid., §§1 and 2.

5. Ibid.

6. Act 48, Session Laws of Hawaii 1966. §2.

7. Ibid., §3.

8. Yamada v. Natural Disaster Claims Commission, 54 Haw. 621, 635, 513 P.2d 1001 (1973).

9. Act 134, Session Laws of Hawaii 1974, §1.

10. House Standing Committe Report No. 259-74, on H.B. No. 2331-74, House Journal. 1974 Regular Session, p. 654.

11. Similar provisions allowing for a deduction from losses due to storm, shipwreck, theft or other casualty can be traced back as far as Act 65, Session Laws of Hawaii 1896; Act 20, Sesssion Laws of Hawaii 1901; Act 44, Session Laws of Hawaii 1932. §5. codified at §2034(1)(h), Revised Laws of Hawaii 1935; Act 88, Session Laws of Hawaii 1953, codified as §5508.01, Revised Laws of Hawaii 1945; §121-11, Revised Laws of Hawaii 1955: §121-5(f), Revised Laws of Hawaii 1955, Supplement (1957).

12. Act 134, Session Laws of Hawaii 1974, §3.

13. Ibid., §3.

14. In 1984, Act 90, Session Laws of Hawaii 1984, authorized the revisor of statutes to change male and female gender terms to gender-neutral terms which did not change the substance of the law.

15. Hawaii Const., art. VIII, sec. 3. (Real property changeover effective July 1, 1981, Act 279, Session Laws of Hawaii 1980.)

16. Ibid.

17. See Appendix E for a list of proclamations declaring a natural disaster.

18. House Standing Committee Report No. 465, on H.B. No. 537, House Journal, 1987 Regular Session, p. 1319.

19. House Bill No. 537, H.D. 1, Fourteenth Legislature. 1987, State of Hawaii.

20. Testimony of Joseph W. Andrews, Director of Finance, Department of Finance, County of Hawaii, before the Committee on Finance, on H.B. No. 537, February 26, 1987.

21. House Bill No. 537, H.D. 2, 1987.

22. Senate Standing Committee Report No. 1030, on H.B. No. 537, H.D. 2, Regular Session of 1987.

23. Ibid. and see also House Journal, 1987 Regular Session, pp. 658 and 674.

24. John Waihee, Governor of Hawaii, Statement of Objections to House Bill No. 537, June 22, 1987, Executive Chambers, Honolulu.

25. Letter from Richard Kahle, Director of Taxation, State of Hawaii, to Warren Price, Attorney General, State of Hawaii, dated January 25, 1989.

26. Letter from Kevin T. Wayakama, Deputy Attorney General, Department of the Attorney General, to Richard F. Kahle, Jr., Director of Taxation, State of Hawaii, dated February 10, 1989, p. 3. (Hereinafter "Wakayama letter")

27. Hawaii Const., art. VIII, sec. 6.

28. Wayakama letter, p. 2.

29. H.B. No. 3295, Sixteenth Legislature, 1992, State of Hawaii.

30. Act 237, Session Laws of Hawaii 1992.

31. Act 335, Session Laws of Hawaii 1993, appropriated $3,500,000 for fiscal year 1993-1994 and $5,000,000 for fiscal year 1994-1995 to reimburse the County of Kauai for real property taxes remitted, refunded, or forgiven under chapter 234, Hawaii Revised Statutes; $3,000,000 grant-in-aid for tourism promotion, and $1,500,000 towards public works projects, housing assistance, and economic revitalization.

32. Act 289, Session Laws of Hawaii 1993, §116 (General Appropriations Bill), allocated $372,828 for fiscal year 1993-94 and $297,828 for fiscal year 1994-1995 to the tax department for the processing of claims applications of victims of Hurricane Iniki.

33. Act 108, Session Laws of Hawaii 1993.

34. Act 154, Session Laws of Hawaii 1993.

35. Ibid.

Chapter 4

ECONOMIC DISASTER RELIEF

This report has examined the environment and conditions that led up the enactment of the "Tax Relief for Natural Disasters" law. This report has also traced the legislative amendments that affected the type of tax relief offered under Chapter 234, Hawaii Revised Statutes, over the thirty years of the law's existence. This chapter takes a step closer to the individual economic situation of present day natural disaster victims to quantify the economic relief provided under current laws offered by the federal government, state governments, and local governments as well as other sources.

Chapter 234, Hawaii Revised Statutes

The progression of events that is started when the Governor proclaims a natural disaster authorizing relief under Chapter 234, Hawaii Revised Statutes, is similar to the progression of events that started when the law authorizing tax relief for natural disasters was first passed. A claims commission is appointed by the Governor.[1] Today, when there is a major disaster, where more than 500 claims are expected, the Governor is authorized to establish more than one commission.[2] The Department of Taxation provides a claim application form[3] that all victims of the natural disaster must file to obtain relief under Chapter 234. All claims must be made to the claims commission within six months of the date of the occurrence of the natural disaster.[4] The claim application comprises three pages not including five additional schedules claimants may be required to complete depending on the type of losses claimed. The application requests information about the claimant's losses and recoveries. Claimants are also required to submit documentation for major losses claimed. Determining the exact amount of losses is not an exact science and even with an experienced appraiser there can be large differences of opinion, especially concerning lost crops. The application requires the claimant to supply federal and state income tax information to compute tax benefits received as a result of a claimant's natural disaster losses. The claim application must be notarized and submitted to the claims commission. It is the claims commission that reviews the application and certifies the amount of loss to the Director of Taxation.[5]

The certified loss is calculated according to the statute which requires specific deductions from the total loss. The total amount of loss due to the damage or destruction of real or personal property is computed by taking the difference between the market value immediately prior to the date of the natural disaster and the fair market value immediately after the date of the natural disaster. The amount of the certified loss is the total amount of loss less the deductions specified by law. The list of specific deductions required to be taken from the total amount of loss in order to reach the amount of certifiable loss has gone

unchanged until the most recent legislative session.[6] In 1993, in the wake of Hurricane Iniki, any federal or state grants or loans received by claimants as a result of the natural disasters were added to the list of deductions.[7] The calculation of certified losses is now computed by taking the total losses recognized by the commission and deducting:

(1) All insurance benefits received or to be received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster;

(2) The portion of the losses resulting from insurable property in excess of $100,000;

(3) Tax benefits from the federal Internal Revenue Service;

(4) Any federal grant or loan received by the claimant as a result of the natural disaster;

(5) Any state grant or loan received by the claimant as a result of the natural disaster; and

(6) Any other recoveries.[8]

Figuring the exact amount of the certifiable loss continues to retain some ambiguity[9] due to the language and the open-ended nature of the last deduction listed. The problems of calculation can be identified by examining the list of deductions. In subparagraph (2) the portion of the losses resulting from "insurable property" needs to be identified. According to the Natural Disaster Claims Commission Briefing Manual ("Briefing Manual") "all property is insurable."[10] The Department of Taxation though, has recently clarified this statement to conform to an Attorney General Memorandum[11] and now interprets "insurable property" to mean all property except land and some crops.[12] To continue the calculation, the portion of the insurable losses in excess of $100,000 must be determined. The Department of Taxation interprets this phrase to require a deduction equal to the entire amount of the losses that is above $100,000, (assuming none of the losses to be land or non-insurable agricultural losses). This interpretation effectively caps every certified loss at $100,000, even if no other deductions are applied.[13]

The deduction for the amount of benefit taken in federal income taxes requires a claimant to recompute the tax liability as if the taxpayer had not claimed a casualty loss. The amount of the federal benefit deduction is equal to the difference between the amount of taxes due without taking the casualty loss deduction from income and the amount of taxes that is due when deducting the casualty loss from income.

New deductions added in 1993 require the claims commission to subtract from the total losses any amounts received by claimants from the federal or state governments in the form of grants or loans. It is not clear why loans would be considered "recoveries" and therefore required to be deducted.

The "other recoveries" deduction is still the catch-all phrase to include any type of assistance received by claimants. Typically, grants from private organizations, like the Red Cross, are listed here, along with state income tax benefits received under section 235-7(f), Hawaii Revised Statutes, which are calculated the same as the federal income tax benefits.[14]

Applying the statutory formula to some real life situations is the only way to quantify what economic relief is offered by Chapter 234. Discussed below are several different types of claimants and what Chapter 234 would offer each one.

Homeowners' Relief. The Briefing Manual gives two examples of how the calculation of the certified claim is reached for homeowners.

> **Example** 1 - Mr. and Mrs. John Q. Taxpayer's home and furnishings were partially destroyed by a natural disaster. The fair market value of the house and lot before the natural disaster was $150,000, and $105,000 after the disaster. Mr. and Mrs. Taxpayer's car, household furnishings and appliances, worth $10,000 before the natural disaster, were totally destroyed.
>
> Mr. and Mrs. Taxpayer received $2,400 of temporary housing benefits from the Red Cross. Their losses were not insured. Federal tax benefits were $600.
>
> The Taxpayers suffered a net loss of $55,000 (Total value before the disaster of $160,000 reduced by the $105,000 total value after the disaster). This $55,000 loss must be further reduced by the $2,400 temporary housing benefits and the $600 federal tax benefits to obtain the losses to be certified of $52,000. If there were any insurance recoveries, that amount would be added to the total deductions to further reduce the losses to be certified. Although the certifiable loss in this example is $52,000, the maximum relief available is $35,000.
>
> **Example** 2 - Mr. and Mrs. Aloha's home and furnishings were partially destroyed as a result of a natural disaster. The fair market value of the house and lot before the natural disaster was $330,000 and after the disaster, $140,000. Mr. and Mrs. Aloha's

car, household furnishings and appliances worth $50,000 before the natural disaster were totally destroyed.

Mr. and Mrs. Aloha received $1,000 of temporary housing benefits from the Red Cross. They received $175,000 from their insurance company. Federal tax benefits were $6,500.

The Aloha's net loss is $240,000 (Total value before the disaster of $380,000 reduced by $140,000, the value after the disaster). The Aloha's total Schedule I deductions are $322,500 consisting of $140,000 (the total amount of the loss in excess of $100,000), + $175,000 (insurance proceeds), + $6,500 (Federal tax benefits) + $1,000 (temporary housing allowance).

Because the total required deductions ($322,500) exceed the total net loss ($240,000), the Aloha's have no certifiable loss.[15]

Neither of the examples have itemized losses that reflect a business so it can be assumed that only the real property tax relief will be claimed. In Example 1, Mr. and Mrs. Taxpayer, probably do not live on Oahu if their house and lot was originally worth $150,000. If Mr. and Mrs. Taxpayer live on the Big Island, their relief would amount to their real property tax debt, which in the year of the disaster could have been $445 if the property was in the homeowner class.[16] The next year the property would be reassessed at the lower value and would be taxed accordingly until Mr. and Mrs. Taxpayer were able to rebuild or repair their home. Assuming the rebuilding happened within one year and the real property tax assessment was not lowered and the Taxpayer's property was classified in the homeowner rate class, the total amount of loss that Mr. and Mrs. Taxpayer would be able to recover under Chapter 234 is $2,225 over five years, only nine percent of their certified loss, or only four and one quarter per cent of their net loss.

In Example 2 there is no relief available under Chapter 234, HRS for Mr. and Mrs. Aloha. But the Alohas did actually recover seventy-six per cent of their net loss due to their insurance coverage. In fact, if the Aloha's house had a basis lower than $175,000, (the amount of the insurance proceeds received) they may have to report a gain on their income tax as a result of payments made due to the natural disaster. It is interesting to compare the situation if the Alohas had not insured their home. Although their certified loss would then be $92,500,[17] the maximum allowable limit is $35,000. If Mr. and Mrs. Aloha live on Oahu, their real property tax bill was probably close to $1,000 a year. If they were able to rebuild quickly and the assessed value of the house remained in the $300,000 range, over five years they could recover $5,000 under the real property tax relief offered under Chapter 234. Mr. and Mrs. Aloha's recovery would have been five per cent of their certified loss, or two percent of their net loss.

Renters' Relief. Chapter 234, HRS offers no relief for renters who do not own a business and have no general excise tax liability. There can be no relief under Chapter 234 for those who have lost all or part of their personal property in a natural disaster, if they do not own real property or a business. More than fifty percent of the total housing units are rental units,[18] so one could infer that more than fifty percent of people would not be eligible for relief under Chapter 234. It was not possible to determine how many of those who rent would be eligible for relief through the general excise tax law.

Relief for Businesses. The Department of Taxation does not give any specific examples of a business filing for relief under Chapter 234, HRS, in the Briefing Manual. For the purposes of this report typical examples of relief under Chapter 234 for homeowners with general excise tax liability were culled by the Department of Taxation in order to quantify the actual relief being offered.

> **Example 3.** Mr. and Mrs. John Doe's home and furnishings were partially destroyed by a natural disaster. Also, the building that the Does were renting for their business was completely destroyed. The fair market value of the house and lot before the natural disaster was $325,000, and $250,000 after the disaster. Mr. and Mrs. Doe's car, household furnishings and appliances, worth $10,000 before the natural disaster, were totally destroyed. Their business property, which was totally destroyed, was worth $20,000 before the disaster.
>
> Mr. and Mrs. Doe received $45,000 from their insurance company and a loan from the Small Business Administration for $10,000. They also received $500 for clothing from the Red Cross. Federal tax benefits were $3,000.
>
> The Doe's suffered a net loss of $105,000 (Total value before the disaster of $355,000 reduced by the $250,000 total value after the disaster). The Does' total Schedule I deductions are $63,500, consisting of $45,000 (insurance proceeds), +$5,000 (the total amount of the loss in excess of $100,000), + $3,000 (Federal tax benefits), + $10,000 (SBA loan), + $500 (clothing allowance). The Doe's certifiable loss is $41,500. Although the certifiable loss in this example is $41,500, the maximum relief available is $35,000, with a maximum general excise tax relief of $25,000.

If Mr. and Mrs. Doe have a real property tax bill of $1,000 a year and a retail business that grosses approximately $500,000 a year, which would calculate to a general excise tax bill

of $20,000 a year, their total relief granted in the first year would be $21,000. The second year the $1,000 real property tax bill would be forgiven but only $5,000 of their general excise tax bill would be forgiven because the maximum general excise tax relief is $25,000. In the third through fifth year after the disaster the Does would have their $1,000 real property tax bill forgiven amounting to an additional $3,000. Over the five-year period the Doe's will recover $30,000 or seventy-two percent of their certified loss or more than thirty percent of their net loss. In this example the Does' were able to recoup through general excise tax forgiveness $5,000 more than the actual loss to their business.

The above examples indicate that the more assets a taxpayer has the more likely they are to recover a larger percentage of their losses. One could surmise that the taxpayers who have the best opportunity to recover to the fullest extent of Chapter 234, HRS, are those with large commercial property holdings and retail establishments.

Administrative Issues

The procedure that is used to account for the relief offered under Chapter 234, HRS, is complicated and time consuming. The statute gives no clear administrative guidelines concerning the records or transfer of information between the different government agencies involved. The Department of Taxation sets up a separate ledger for each claimant for tracking purposes. To ensure that proper amounts are claimed for each of the five years information must be exchanged regularly between the county and the State. The form attached as Appendix F is used by the Department of Taxation to monitor the amounts of the relief taken over the years by each claimant.

Administratively, Chapter 234, HRS, is also a burden for the taxpayer. As can be seen from the form used to monitor the relief over the five-year period, each year there may be other benefits (i.e. state income tax, federal income tax) that need to be computed. This requires the taxpayers to complete their tax returns twice to determine what their tax benefit is for each claim year.

Economically, when the State offers this type of tax relief it can raise the federal adjusted gross income of the taxpayer and therefore increase the federal income tax due for that taxpayer. In this manner, the "Tax Relief for Natural Disasters" law operates to take away income from the State and make the taxpayer pay at least a portion of it to the federal government.

Other State of Hawaii Relief

Chapter 209, Hawaii Revised Statutes, (disaster relief and rehabilitation) was also enacted in 1961 and provides several different kinds of assistance. Similar to chapter 234, chapter 209 is activated by the Governor's proclamation determining a state disaster. This law goes beyond applying to simply natural disasters and could be invoked when the Governor determines that some "unfortunate, sudden, and extraordinary occurrence" has caused "losses and suffering of such character and magnitude as to require and justify rehabilitative assistance from the State."[19] Assistance, in the form of funds to the Housing Finance and Development Corporation, to construct housing units on public land is authorized in Part II.[20] Part III[21] authorizes commercial and personal loans at a simple interest rate of five percent over twenty years.[22] Commercial loans not to exceed $75,000,[23] can be made to "purchase inventory, equipment, and machinery; to construct, repair, or restore buildings; to provide operating funds; and to refinance outstanding business loans on equipment and buildings; provided that the loans shall be used to rehabilitate the business of the disaster victim as nearly as possible to its predisaster level."[24] Personal loans, not in excess of $35,000,[25] may be made "for the purpose of meeting necessary expenses or to satisfy serious needs of individuals and families which arose as an immediate and direct result of a disaster."[26] The amount of these loans received are considered recovered amounts and must now be deducted from the total loss when calculating the certified loss of the natural disaster victim.

Part IV of Chapter 209 authorizes extended benefits up to thirteen weeks for unemployment compensation.[27] This benefit can vary from individual to individual depending upon the person's employment status before the disaster and what the length of time is before an employer can begin to rehire employees.

Other State Provisions Related to Natural Disasters

Income Tax Deduction. The Hawaii state income tax law has always excluded from gross income any losses of property as the result of certain natural disasters.[28] Before statehood, the deduction specifically included loss due to shipwreck, but today it includes any natural disaster to the extent not compensated by insurance. The deduction can be taken in the year of the loss or can be spread out over five years.

General Excise Tax Exemption. In 1993, the Legislature reversed a Department of Taxation Tax Information Release[29] and offered additional assistance under the general excise tax law by exempting amounts received under property and casualty insurance policies for damage or loss of inventory used in a business located within a portion of the State that has been declared a natural disaster area by the Governor under section 209-2, HRS.[30]

Transient Accommodations Tax. The transient accommodations tax law also provides a special Iniki exemption. The exemption applies to amounts received by facilities located on the island of Kauai that are defined as hotels or hotel/condos under section 486K-1, Hawaii Revised Statutes.[31] The exemption applies to all funds received between May 1, 1993, through December 31, 1994. The exemption is scheduled to be repealed January 1, 1995.

Hawaii Hurricane Relief Fund. The Hawaii Hurricane Relief Fund was established by Act 339, Session Laws of Hawaii 1993,[32] and was created to "assess the availability of insurance from all sources and be empowered to take steps to provide coverage should the private market prove unreliable."[33] There is a hurricane relief trust fund that will be funded by a special fee that is tied to the principal amount of the debt secured by a mortgage.[34] The fund will be used to pay claims in the event of a hurricane. Additional funding for the Hawaii Hurricane Relief Fund will come from premiums paid by homeowner/insureds and therefore can not be considered an economic benefit to victims of natural disasters because the insured will still have to pay for the insurance at market rates that have not been determined yet.

Disposition of Public Lands to Victims of Natural Disaster. State law provides for immediate relocation and rehabilitation of disaster victims by making public lands available when a natural disaster strikes.[35] The Department of Land and Natural Resources (DLNR) administers this program. Reports from DLNR indicate that since the inception of the program in 1962 there has been only limited use of the statute primarily with regard to the lava flow and tidal wave disasters. No exact statistics are maintained.

The Board of Land and Natural Resources also offered a rent waiver program in the wake of Iniki. The program allowed any Kauai lessee or permittee of state property that incurred damage an initial six-month waiver of lease rents that could be extended by three months. These waivers amounted to $1,037,109 for 219 properties.[36]

Major Disaster Fund. Finally, Chapter 127, HRS, provides for a major disaster fund.[37] The fund is used at the discretion of the Governor for immediate relief in the event of a major disaster. This fund is used mainly to pay for equipment rental or leasing or personnel required in emergency situations and is administered by the Civil Defense Agency. The only part of this fund that may directly relate to an individual's economic benefit is the allocation of matching funds for federal disaster funds that are used under the Federal Emergency Management Agency's Individual Family Grant Program.[38]

Federal Disaster Assistance

Public Law 81-875, the Federal Disaster Act of 1950 was the first expression of Congress formulating a general disaster aid policy,[39] although P.L. 81-875 was directed almost entirely toward the public sector.[40] The Federal Emergency Management Agency

(FEMA) was established on April 1, 1979, and is the lead federal agency in administering and coordination of all assistance during disasters or emergencies where there has been a Presidential declaration. The programs, regulations and policies are governed by Public Law 93-288, as amended by Public Law 100-707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

"FEMA's mission is to help put things back the way they were."[41] It is a coordinating agency that develops and facilitates the delivery of effective emergency management during all phases of national security and catastrophic emergencies. FEMA works closely with state and county governments by funding emergency programs and providing technical guidance and training. FEMA has participated in the recovery of four natural disasters[42] in Hawaii approving 22,577 individual cases and providing $46,0221,051.64[43] in financial assistance to victims.

FEMA coordinates several regular assistance programs. The Disaster Housing Assistance Program may provide funds to obtain rental housing or emergency repairs for any individual or family whose home is made unliveable as a result of a disaster. It is through FEMA that funding becomes available for the Individual and Family Grant Program (IFGP). The IFGP is a program that grants up to $11,500 to families to meet disaster related needs or necessary expenses which are not covered by other disaster assistance programs. Although the majority of funding is federal this program is administered by the state Department of Human Services.[44]

FEMA is also responsible for coordinating both personal and commercial loans through the Small Business Administration. The maximum amounts for these type of loans are as follows:

TYPE OF PROPERTY	MAXIMUM LOAN AMOUNT
Residential real property	$100,000
Personal property	$ 20,000
Business facilities, inventory, etc.	$500,000

Some programs for assistance have been provided by other federal agencies but have been offered on a special short-term basis and it cannot be assumed these programs will be available in the future. The Department of Housing and Urban Development (HUD) offered three different kinds of housing-related economic assistance in the aftermath of Hurricane Iniki. The FHA mortgage loan program allowed those who qualify to proceed without a downpayment. For people in Hawaii that meant there was no need to come up with a $10,000 downpayment to purchase a home for $200,000.[45] Low-income renters were offered Section 8 certificates that required the low-income renters to pay only thirty percent of their income towards the rental of housing that is within reasonable limits according to the area.[46] On Kauai, the reasonable limit for housing a family of four in a two-bedroom rental is $1056.

Under the Section 8 Disaster Voucher Program, renters would be obligated to pay only thirty percent of their income towards the rent. Funds for this type of assistance were allocated from FEMA appropriations as a two-year program. This program while helpful today is not guaranteed to be available for future disasters.

The National Flood Insurance Program (hereinafter "NFIP") was established by Congress in 1968. The intent of the NFIP is to mitigate future damage and provide protection for property owners against potential losses from flooding. The NFIP is based on an agreement between the local community and the federal government. The local community must agree to implement measures to reduce future flood risks and the federal government agrees to to provide flood insurance to property owners within the community. This type of insurance covers only certain types of natural disasters that are caused by water damage from storms and tidal waves. It does not cover the type of damage from a windstorm or a hurricane.

Disaster Assistance Offered by the Counties

Currently, Chapter 234, HRS requires the counties to provide a refund of or forgive real property taxes up to the certified loss or $35,000. The terms of the relief through Chapter 234, HRS allow real property tax relief over a five-year period. This contrasts with the relief offered through county ordinances which is limited to the year of the disaster only.

After the Constitutional Convention of 1978, the real property tax came under the control of the counties, and each county enacted an ordinance that provided for remission of taxes in certain disasters.[47] Each county still carries an ordinance that authorizes the remission of taxes in cases of certain disasters. The ordinances of the counties of Maui, Kauai and Hawaii provide similar terms for the remission of real property taxes due to disasters.[48] The amount of remission is calculated by determining the percentage of property loss and applying that percentage to the remaining taxable year after the disaster. The City and County of Honolulu offers essentially the same terms but limits the amount of remission to the lesser of the total tax on the property for the tax year or $25,000. The City and County also provides that taxpayers are disqualified from remission under the county ordinance if they elect to make a claim under Chapter 234, HRS.[49]

State Survey

A survey of the forty-nine other states conducted in 1961 by the Legislative Reference Bureau concluded that other states generally did not give relief to individual victims of a natural disaster.[50] The same survey conducted thirty years later revealed similar results. A copy of the survey sent to the forty-nine states and Puerto Rico is attached as Appendix G.

Thirty-three states and Puerto Rico responded. Eighteen states (Alabama, Arkansas, Colorado, Kansas, Kentucky, Maine, Mississippi, Missouri, Nevada, New York, North Dakota, Oregon, Rhode Island Texas, South Dakota, Utah, Washington, Wyoming) responded that their State gives no relief to individual citizens suffering from disaster losses other than providing the state's twenty-five percent share contribution to match federal funds under Public Law 93-288, The Robert T. Stafford Disaster Relief and Emergency Assistance Act.[51] Missouri,[52] Pennsylvania,[53] North Dakota,[54] and Washington cited provisions of their State Constitutions that prohibit gifts of State funds to individuals.

California, Pennsylvania and Vermont,[55] authorized extensions for the filing of taxes or deferred payment schedules but on an ad hoc basis.

Some states claimed to make grants to individuals from state funds, but closer examination of the statutes cited revealed that those statutes refer to the state's twenty-five percent matching funds designated for the Individual Family Grant Program which is federal program. Nebraska cites an ambiguous section that provides that funds from the Governor's Emergency Fund may be used for "the furnishing of materials to any individual in connection with alleviating any hardship and distress...and receiving remibursement in whole or in part from such individual."[56] It is most likely that this fund would fall into the matching funds category that has been excluded from the survey of direct state aid. Pennsylvania passed three amendments to their Constitution to allow direct grants to individuals not exceeding $3,000 in 1973 and $4,000 in 1978.[57] An Attorney General Opinion confirms that these funds were allocated for the federal program.[58] West Virginia has a Disaster Recovery Board that administers a fund to assist persons, political subdivisions and local organizations for emergency services.[59]

Property tax relief is directed by the States to be granted by the political subdivisions when property in the political subdivision has been damaged in California, Idaho, Iowa, Minnesota, Montana and Ohio.[60] None of the property tax provisions provide for relief beyond the year after the natural disaster occurred.

Other assistance for victims of natural disasters is offered in a variety of ways. Puerto Rico provides farm insurance and agricultural loans,[61] Louisiana offers a sales tax refund for property that was destroyed by a natural disaster occurring in Louisiana,[62] and Arizona and Alaska offer grants of land after a natural disaster.[63] The land grant provisions in Arizona and Alaska are similar to those authorized under section 171-86 HRS.

Private Disaster Assistance

There have been many private individuals and groups that have rallied in the wake of the many disasters that Hawaii has faced in the last thirty years. Many of the individuals and groups provide immediate shelter, food and clothing as opposed to direct financial assistance. The focus of this report is direct economic assistance and of the many groups that have provided assistance to the victims of a natural disaster, the American Red Cross was the only consistent source that offered direct financial assistance with quantifiable guidelines.

American Red Cross. The services of the American Red Cross are available to all who are in need and were available to victims of a natural disaster before the enactment of Chapter 234, HRS. The criteria for Red Cross services is based on need and not on recoupment of losses. For those in need, financial assistance can amount to more than $1,000 per family for groceries, clothes, and emergency shelter,[64] up to $1,000 for emergency minor home repairs, and $500 for the replacement of occupational supplies and equipment.

Summary

The tax relief offered in Chapter 234, HRS generally provides more opportunity for those with more assets to recover a larger portion of their losses. The relief is not directly tied to the losses and in some cases it may provide an unfair advantage to business owners who have had their homes damaged in a natural disaster. It offers no opportunity for recovery to those who do not own a business or a home.

The application process for the taxpayer is cumbersome and time consuming as is the administration of the relief. Administration is difficult in terms of communication with the county for real property forgiveness and tracking the claims for relief over a five-year period.

Victims of a natural disaster have many more resources for assistance available to them today then were available in 1961 when the "Tax Relief for Natural Disasters" law was enacted. Most notable and most substantial are the federal programs coordinated through the Federal Emergency Management Agency (FEMA). The Robert T. Stafford Disaster Relief and Emergency Assistance Act has provided the resources for direct assistance to individuals that was not available to them in 1961. Since the establishment of FEMA in 1979, four of the eight disasters in Hawaii have warranted Presidential declarations that activated these federal funds. The total dollars to date that have been provided to victims of natural disasters in Hawaii as part of the FEMA federal programs amounts to $46,0221,052.

The results of a survey of the forty-nine other States and Puerto Rico indicate that no other State offers the same type of tax relief for natural disasters as does Hawaii. Several states provided that political subdivisions could provide real property tax refunds, but no State

mandated forgiveness over a five-year period. Louisiana offered a refund of sales tax on property used in the home that was destroyed as part of a natural disaster. Several other states provided similar programs to Hawaii in terms of loans for both commercial and personal purposes.

It is clear that there is more direct economic assistance available today to victims of a natural disaster. But that assistance does not necessarily come from the provisions of Chapter 234, especially if the victim does not own a home or a business.

ENDNOTES

1. Section 234-3, Hawaii Revised Statutes (Hereafter cited as "HRS").

2. 1993 Haw. Sess. Laws, Act 108.

3. Form ND-1, See Appendix D.

4. Section 234-4(b), HRS.

5. Ibid.

6. 1993 Haw. Sess. Laws, Act 154.

7. Ibid.

8. Ibid.

9. See Yamada v. Natural Disaster Claims Commission, 54 Hawaii 621, 513 P.2d 1001 (1973).

10. Hawaii, Department of Taxation, The Natural Disaster Claims Commission Briefing Manual, March 1993, Part IV, p. 2. (Hereafter "Briefing Manual").

11. Hawaii, Memorandum from Gary Ige, Deputy Attorney General, to Richard F. Kahle, Jr., Director of Taxation, March 1, 1993.

12. Interview with Ronald Choy, Technical Review Officer, Department of Taxation, October 27, 1993.

13. A different interpretation of the provision concerning the portion of losses resulting from insurable property in excess of $100,000 is to deduct the portion of any loss of an item that exceeds $100.000 that could have been insured. For example, a vessel valued at $150,000 would require a deduction from the total loss of $50,000. Only the portion of each property item that was in excess of $100,000 would be deducted. This interpretation would be consistent with the legislative history of the tax relief offered for two reasons. This interpretation does not operate to limit the total certified claim and allows the provisions of the law setting the limits of the amount of relief to operate independently of the calculation.

    The deduction of the portion of the loss of insurable property in excess of $100,000 may also have been included to provide for larger agricultural claims. Because agricultural crops have not been and are still not regularly insurable the only limits on the claims would be dictated by the other deductions and the

statutory limit.

The preceding interpretations of the language of the deduction of "all insurable property in excess of $100,000," would allow a calculation of a certified claim that is consistent with the original limits of relief of $500,000 in 1961, which was then lowered to $350.000 in 1962, the limit that remained in effect until 1974. Now that the total limit of tax relief offered under Chapter 234 is $35,000, this discussion on the interpretation of this deduction may be moot.

14. See Schedule 1.A, Form ND-1. See Appendix D.

15. Briefing Manual, Part X, p. 3.

16. Telephone interview with Gary Kiyota, Tax Administrator, Real Property Tax Division, Department of Finance, County of Hawaii, October 26, 1993.

17. $240,000 (net loss) less deductions of $147,500 ($140,000 (the total amount in excess of $100,000) + $6,500 (federal tax benefits) + $1,000 (temporary housing allowance) = $92,500.

18. Hawaii, Department of Business, Economic Development and Tourism, The State of Hawaii Data Book 1992, p. 531.

19. Hawaii Rev. Stat., sec. 209-1.

20. Hawaii Rev. Stat., sec. 209-16-17.

21. Hawaii Rev. Stat., secs. 209-26 to 34.

22. Hawaii Rev. Stat., sec. 209-30(b), (c).

23. 1993 Haw. Sess. Laws, Act 334.

24. Hawaii Rev. Stat., sec. 209-28(a).

25. 1993 Haw. Sess. Laws, Act 334.

26. Hawaii Rev. Stat., sec. 209-28(b).

27. Hawaii Rev. Stat., sec. 209-41.

28. Hawaii Rev. Stat., sec. 235-7(g).

29. Hawaii, Department of Taxation, Tax Information Release No. 92-7, December 21, 1992.

30. 1993 Haw. Sess. Laws, Act 129, §2.

> It is interesting to note here the inconsistency of this exemption, for "amounts received under ...insurance policies for damage or loss of inventory used in...a business located within the State..that is declared a natural disaster area by the governor pursuant to section 209-2."[emphasis added] A declaration under section 209-2, HRS, may include disasters other than natural, while a declaration under section 234-2, HRS, applies exclusively to natural

disasters. The language of the exemption in Act 129 only allows the exemption in natural disasters declared under section 209-2, HRS. The Bureau was unable to determine whether this limitation on the exemption was intended.

31. 1993 Haw. Sess. Laws, Act 129.

32. 1993 Haw. Sess. Laws, Act 339.

33. Ibid., §1.

34. Ibid., section -16 of §2.

35. Hawaii Rev. Stat., sec. 171-86.

36. Fiscal Office, Department of Land and Natural Resources.

37. Hawaii Rev. Stat., sec. 127-11.

38. Sections 127-1 through 127-9, Hawaii Revised Statutes, have been indefinitely suspended through legislative action that repealed the expiration date of Chapter 128, (Civil Defense and Emergency Act) in 1961. According to Roy Price, Vice-Director of the Civil Defense Agency, the disaster relief agency and disaster advisory council as described in Chapter 127 do not exist. The civil defense agency and the civil defense advisory council, as described in Chapter 128, have been the operating agencies during the suspension. It appears that sections 127-1 through 9 have been carried on the books as part of a legislative procedural error and that section 127-11 should be moved to Chapter 128 to correctly reflect the administrative body of the fund as the Civil Defense Agency. Section 127-10 should be appropriately modified and assimilated into Chapter 128.

    Interview with Roy C. Price, Sr., Vice Director of Civil Defense Agency, Department of Defense, by Pamela Martin, Researcher, Legislative Reference Bureau on December 9, 1993.

39. Gedan, Joseph M., Disaster Relief: Considerations For State Action, Legislative Reference Bureau, Honolulu, 1961, p. 10. (Hereinafter cited as Gedan.)

40. U.S., Senate Committee on Public Works, Disaster Assistance Report of the Committee on Public Works United States Senate to Accompany S. 3619 Together with Individual Views, (Washington: U.S. Government Printing Office, 1970) p. 2.

41. Stanfield, Rochelle L., "Conflicting Aims," National Journal, September 4, 1993, p. 2130.

42. DR 671-Hurricane Ewa; DR 808-New Years Flooding; DR 864-Lava Flows; DR 961 Hurricane Iniki.

43. Letter from William Medigovich, Regional Director, Federal Emergency Management Agency, to Samuel B. K. Chang, Director, Legislative Reference Bureau, dated August 2, 1993.

44. The State is required to provide 25% of the funds for this program with the federal government providing 75%. The state funds for this program are allocated in the major disaster fund, §127-11, HRS.

45. Telephone interview with Jill Hurt, Department of Housing and Urban Development, October 6, 1993.

46. Telephone interview with Michael Flores, Deputy Manager/Director, Housing Management Division, Department of Housing and Urban Development, October 8, 1993.

47. §-8.4.2 Revised Ordinances of the City and County of Honolulu; §3.48.230 Maui County Code; §5A-4.2, Kauai County Code; §19-36, Hawaii County Code.

48. See §3.48.230 Maui County Code; §5A-4.2, Kauai County Code; §19-36, Hawaii County Code.

49. Sec. 8-4.2(g) Revised Ordinances of the City and County of Honolulu.

50. Gedan, p. 13.

51. 42 United States Code 5178.

52. Art. III, Section 38(a), Constitution of Missouri.

53. Article III, Section 29 of the Pennsylvania Constitution.

54. Art X, Section 18, North Dakota Constitution.

55. Act No. 124, 1992 Regular Session, Vermont Legislature.

56. §81-829.42 Reissue Revised Statutes of Nebraska, 1943.

57. Act No. 13, Laws of Pennsylvania, Session of 1973 and Act 1978-51, Laws of Pennsylvania, Session of 1978.

58. Att'y Gen. Ops. No. 78-15 (Pennsylvania, August 11, 1978).

59. WV Code §§ 15-5-4b, 24 & 25.

60. §170 Rev. & Tax Code, California Statutes; §63-1705 Idaho Code(Taxation of Large-size Forest Tracks only); §445.62 Iowa Code; §273.123 Minnesota Statutes; §15-16-611 Montana Code Annotated; §319.38 Ohio Revised Code.

61. Act No. 12, of December 1966, Puerto Rico.

62. §315.1 Louisiana Revised Statutes (attached as Appendix H).

63. Arizona Revised Statues, title 26, chapter 2, Article 2 (sec. 26-321 et seq.); §38.05.870 Alaska Statutes.

64. Amount may include up to $115 a week for groceries, $110 per person for clothing, up to $40 per person for transportation needs, $70 for an infant seat, funds for one month rent and a security deposit, $40 for bed linens, $15 for towels. Figures are quoted from the American Red Cross Standardized Emergency Assistance Price List.

Chapter 5

DISCUSSION AND ANALYSIS

Tax Relief as Policy for Rehabilitation after a Natural Disaster

Chapter Two of this report points out that in 1961 the people of Hawaii were suffering from several different natural disasters that had happened over the course of a relatively short period of time. Theorizing that the rehabilitation phase of the recovery process needed longer-term assistance, the Legislature sought a way to provide for the recovery of losses and enacted the "Tax Relief for Natural Disasters" law. It provided relief from income, general excise and real property tax liability over a five-year period. On its face, the measure appeared to provide the long-term assistance that would allow people to recoup their losses. Unfortunately, the goal of providing economic relief to the general public through this law has not been particularly effective.

The policy of offering tax relief to recoup the losses of victims of a natural disaster assumes that victims of a natural disaster have a tax liability. This is not always the case. In 1961 when there was opportunity to recoup some of the loss through income tax liability there may have been a broader scope of victims with potential recovery claims. Now, because the income tax relief was repealed in 1974, the number of victims of a natural disaster who may recover under Chapter 234, HRS, is reduced. The relief is not a refundable credit and can only be realized to the extent a natural disaster victim has a tax liability under the county real property tax ordinances or the general excise tax law. This necessarily means that the relief offered under Chapter 234 is exclusively for owners of real property and businesses. Natural disasters often damage the property of individuals outside these classes.

It is difficult to determine the number of taxpayers that may be eligible for the relief offered under Chapter 234, HRS, but if we assume that victims of a natural disaster are educated similarly as to their relief opportunities, a comparison of federal and state claims may provide some useful information. Comparing the number of cases approved for federal assistance through the Federal Emergency Management Agency (FEMA) to the number of taxpayers with certified claims through the state Tax Relief for Natural Disasters law it is apparent that very few of those who receive assistance through FEMA are eligible for a claim under Chapter 234.

	Dept. of Taxation No. of Certified Claims	FEMA No. of Cases Approved
Hurricane Ewa 11/82	0	1,757
New Years Storm 12/87	348	1,337
Lava Flows 1990-91	103	259
Hurricane Iniki 9/92	976 (filed not yet certified)	19,224

The recent 1993 amendment to Chapter 234, HRS, requiring all claims commissions to deduct the amounts of loans received by a claimant as a result of the natural disaster when calculating the amount of a certified loss serves to further limit the number of eligible claimants. This deduction for loans lowers the amount of the certified loss and operates to exclude those who do not have the cash in the bank to rebuild, while rewarding those who have the resources to rebuild without borrowing.

The tax relief is also not tied directly to the damage. This defect provides windfall gains and unfair taxing conditions. Under the current law a business owner may have general excise tax liability forgiven based on a claim for losses to the businesses owner's residence even though there was no damage to the business. This presents an unfair business advantage and provides a windfall gain to those who have had the misfortune (or fortune?) to have losses outside of the business.

The original policy of providing rehabilitative assistance to the general public in the wake of a natural disaster through tax relief has proved to be flawed. In addition, whatever assistance that was originally provided to the general public has been eroded through the repeal of the income tax relief and the recent requirement that loans received by claimants be deducted from the total loss when calculating the certified claim amount. The tax relief appears to have disintegrated from assistance to the general public into potentially, a windfall gain opportunity for those with large bank accounts and who own real property or businesses.

Application of Chapter 234

Appendix E charts all the Proclamations claiming a disaster situation from 1961 through 1993. The natural disasters where claims commissions were authorized are highlighted. There appears to be no pattern from administration to administration regarding when relief under the "Tax Relief for Natural Disasters" law is authorized. Noticeably absent from the list of commissions convened to certify claims of loss due to natural disasters is a commission for claims related to Hurricane Iwa, although it is not the only natural disaster where a Governor's Proclamation did not authorize tax relief under Chapter 234, Hawaii

Revised Statutes. It is unclear why the authority for tax relief was not proclaimed for Hurricane Iwa. Governor Ariyoshi did not respond to inquiries by the Legislative Reference Bureau on this matter. A closer examination of other proclamations of natural disasters that did not authorize tax relief might be interpreted as a policy during Governor Ariyoshi's administration that only authorized tax relief in drought conditions.

The natural disasters chart in Appendix E also reveals that during Governor Burns administration there was no authorization at all for tax relief even though there were seven different natural disaster proclamations. On the other end of the spectrum, Governor Waihee has authorized tax relief under Chapter 234 for each of the five disasters proclaimed during his administration.

The President of the United States has declared Hawaii a natural disaster area four times since 1979. Those declarations were made for Hurricane Iwa in 1982, the New Year's Eve rainstorm flooding on December 29, 1987 through January 2, 1988, the lava flows in Puna in 1991 and most recently Hurricane Iniki in 1992. No relief was offered under Chapter 234 for Hurricane Iwa, but there was relief for the three other disasters. Again, there seems to be no pattern as to the authorization of tax relief under Chapter 234.

The uneven, arbitrary manner in which Chapter 234, HRS, has been authorized does not offer the State or the general public any regular guaranteed relief after a natural disaster as it was intended. The irregular nature of the convening of a claims commission under Chapter 234, HRS, has the same effect of ad-hoc legislation that might be offered in the wake of a disaster.

The Effect of Other Relief Available Today on Claims Under Chapter 234, HRS

In 1961, the Federal Emergency Management Agency (FEMA) did not exist. Established in 1979, FEMA is the lead federal agency in administering and coordinating all assistance when the President of the United States has declared a disaster or emergency situation. Since its inception it has awarded a total of $46,022,052 in assistance in four different disaster situations to individual victims in the State of Hawaii. The amount of FEMA funds received must be deducted when computing a claimants' certified loss. The average amount of FEMA assistance to each individual ranged from $1,142 for Hurricane Ewa victims to $5,800 for victims of the Puna lava flows. (Victims of the New Year's Eve Flood 1987-88 received an average $1,365, with victims of Hurricane Iniki receiving an average of $2,117.) FEMA assistance obviously operates to lower the total certified claim amount and may eliminate the eligibility of some taxpayers for claims under Chapter 234, HRS. This argument applies to all federal programs that are expanded or whose eligibility rules are "relaxed" in accordance with federal laws that provide assistance both in terms of grants and loans in times of emergency.[1]

On the contrary, FEMA funds are only available when the President makes a declaration. In Hawaii, there have been three other disasters when authorization for relief to taxpayers under Chapter 234, HRS, has been made even though there was no Presidential declaration. With respect to those disasters, FEMA funds have not affected the claims at all.

FEMA funds are usually issued to victims within the first month to six months after a disaster. FEMA funds are different in nature from the tax relief offered because the funds are received close to the disaster as opposed to the tax relief offered in Chapter 234, HRS, which is spread out over five years.

While FEMA and other federal agencies have contributed to the possible relief of victims of a natural disaster, this aid has not affected the policy of Chapter 234, HRS. FEMA funds have been accounted for in terms of not allowing for double recovery by deducting the amounts received in computing the certified loss. On the other hand, recent legislation amending Chapter 234, HRS that requires the amount of loans that claimants receive be deducted from their total loss when computing their certified loss does not follow the policy of providing claimants an opportunity to recoup their losses. When calculating the certified loss, deductions are to prohibit double recovery but the loans should not be deducted from the total losses because it is assistance that has to be paid back and does not represent recovery. This legislation operates to eliminate claimants who do not have the capital to rebuild or repair damage from natural disasters.

What is Lost if Chapter 234 is Repealed?

The structure of the relief as currently offered under Chapter 234, HRS provides for a claims commission to certify and instruct the amount of a claim to both the Director of Taxation and the Director of Finance of each county. The repeal of Chapter 234, HRS would necessarily mean the loss of real property and general excise tax relief over a five-year period following a natural disaster. It would also eliminate the claims commission. Real property tax relief would still be available under county ordinances currently in place but only for the year of the disaster. All four county ordinances are in line with other states that mandate or suggest real property tax forgiveness or refunds. The claims commission would no longer be required.

If Chapter 234 is Repealed, Can Other Provisions be Enacted to Provide Alternative Relief to Victims of Natural Disasters?

The real property tax provisions of the relief offered currently in Chapter 234, HRS, could be enacted in Chapter 46, HRS, (Counties; General Provisions). Concern as to the authority of the State to dictate natural disaster tax relief is addressed below.

The issue of control for real property tax relief during natural disasters has been the subject of some debate. The City and County of Honolulu refused to make refunds directed by the Natural Disaster Claims Commission appointed to certify losses from the New Year's Eve flooding on December 31, 1987. The City and County of Honolulu took the position that all real property tax functions, powers and duties can only be exercised exclusively by the counties, and therefore the State had no legislative authority and because Chapter 234, HRS is state law, providing state relief, real property relief offered should be paid entirely by the State without county contribution.[2] The Attorney General disagreed.

The State responded by stating that historically, the Director of Taxation had collected real property taxes and would then remit appropriate funds to each county. The amount due to the counties reflected the amounts subtracted for the costs of administering the tax and when appropriate the costs of refunding real property taxes under Chapter 234, HRS. The Attorney General also cited Section 6, Article VII of the Hawaii Constitution, that states the creation and powers of the counties "shall not limit the power of the legislature to enact laws of statewide concern." Drawing from the case of City and County of Honolulu v. Ariyoshi, 67 Haw. 412 (1984), a case that determined the compensation of county officials is a matter of statewide concern and may be integrated with the compensation structure of State officials, the Attorney General concluded that natural disasters are a matter of statewide concern. This position has been accepted by the City and County of Honolulu and has not been challenged further by the counties. A recent letter from a Deputy Corporation Counsel of the City and County of Honolulu confirms this position (See Appendix I).

The letter indicates that the county has the expertise of evaluating real property loss and would appreciate the opportunity to supply input on the market value of losses. By allowing the county to evaluate the loss independently of the State and any claims commission, another major problem of the cumbersome coordination by the City and County and the State is handled effectively. The Legislature could provide general parameters of the relief required by the counties that reflect the five year provisions currently offered in Chapter 234, HRS without a claims commission. Still, the City and County of Honolulu takes the position that the City would like to have real property tax relief for natural disasters fully administered by the county under the Revised Ordinances of Honolulu and not directed by State law.[3] All the counties currently provide for real property tax remissions in natural disaster situations so real property tax relief would still exist in some form.

The repeal of the general excise tax relief under Chapter 234, HRS, could be enacted in some form under the general excise tax law (Chapter 237, HRS), but it would be ineffective to provide the relief as it is currently structured under Chapter 234, HRS. The general excise tax relief currently offered under Chapter 234, HRS, is based on loss of real and personal property that is valued by a claims commission. The type of the loss is not related to the amount of claim that can be made against the general excise tax liability. The amount of the claim should be tied to the property lost in a trade or business and should exclude real property loss. The Department of Taxation does not have the personnel or expertise to evaluate each loss. For simplification purposes the value of the loss could be based on a notarized casualty loss form and be monitored much the way current tax returns are monitored, by random audit. In cases where the disaster has been so great that there is a Presidential declaration, the value of loss claims could be based on FEMA documentation.

The end result is that both real property tax relief and general excise tax relief could be resurrected in some form if Chapter 234, HRS is repealed.

Other Alternative Forms of Relief

Special Rainy Day Fund. The Auditor has recently completed a Study of Emergency and Budget Stabilization Funds.[4] The study focused on rainy day funds that are "intended to reduce a state's vulnerability to economic fluctuations"[5] but many of the concepts can be carried over into an emergency fund intended for relief from natural disasters. The study concluded that the State of Hawaii does not have a steady predictable expenditure pattern and a rainy day fund is one of Hawaii's options for budget stabilization. Natural disasters are not predictable either. A rainy day fund could be established by appropriation or by earmarking certain taxes paid to go into a natural disaster fund that is capped at some designated limit. The fund could be used to pay grants to people who are victims of a natural disaster. When the fund drops below the designated limit revenues are directed to the rainy day fund until the designated limited is reached.

Incorporate provisions of relief within specific chapters. The incorporation into other laws of the general excise tax and real property tax relief has already been discussed. Earlier chapters of this study pointed out that the transient accommodations tax law has a temporary provision providing an exemption from the tax for affected taxpayers for a period of time as result of Hurricane Iniki.

An example from Louisiana can be applied to Hawaii by allowing for a refund of tax paid on property lost in a natural disaster. Anyone can apply for this refund by showing that the tax was paid. This could operate much like the medical services excise credit that would allow anyone with losses to recoup the tax paid on the lost property. Provisions in the

structure of the credit could prevent double recovery by requiring deductions for lost property claimed elsewhere, for example under section 235-7(f), HRS.

Summary

The policy of assisting victims of natural disasters through tax relief has operated in an inequitable manner. Over the years, the relief under Chapter 234, HRS has not been authorized for every natural disaster that has occurred. When it has been authorized, the structure of the relief may provide windfall profits to some and exclude those who have substantial losses but have taken out loans in order to aid in their own recovery. The relief offered excludes all who do not own real property or a business.

Repealing Chapter 234, HRS, would eliminate the five-year relief provisions but similar relief could be authorized through other laws. The City and County of Honolulu has recognized the State's authority under "statewide concern" provisions of the Constitution of the State of Hawaii to mandate provisions of tax relief for natural disasters and believes it has the expertise to value losses in a natural disaster. Incorporating general excise tax relief and other forms of relief within other existing laws of the Hawaii Revised Statutes would be more effective at making the relief correlate to the loss.

An alternative to tax relief for providing assistance to victims of a natural disaster may be to offer grants. A rainy day fund for this purpose may be an option for Hawaii.

ENDNOTES

1. See Chapter 4 of this report.

2. Letter to Richard F. Kahle, Jr., Director of Taxation, dated February 10, 1989, from Kevin Wakayama, Deputy Attorney General.

3. See Appendix I, page 2.

4. Hawaii Auditor, Study of Emergency and Budget Stabilization Funds, Report No. 93-13, (Honolulu, November 1993).

5. Ibid. Overview.

Chapter 6

FINDINGS AND RECOMMENDATIONS

Findings

1. Chapter 234, Hawaii Revised Statutes was initially enacted to provide a mechanism for recovery of losses to victims of a natural disaster. The terms of the calculation of the certified loss were to ensure that there was no double recovery for losses. Once the amount of the certified loss was defined by the claims commissions, the amount was taken by the taxpayer, in terms of a refund or forgiveness of real property, general excise and income tax liability. The relief is similar to a tax credit as opposed to a deduction from taxable income such as casualty losses, under section 235-7(f), HRS.

2. The deduction from income under section 235-7(f), HRS, for losses due to casualty including natural disasters is often confused with the "Tax Relief for Natural Disasters" law, but should be distinguished. The deduction, which can be taken either in the year of the loss or spread out over five years, has been allowed in some form under the income tax law since 1896, and is still valid today. Any benefit taken under this section is deducted from the total loss when calculating the certified loss under the "Tax Relief for Natural Disasters" law.

3. The policy to authorize tax relief to provide a mechanism for recovery was flawed because it assumed that all victims would be able to take advantage of the tax relief. In fact, the relief operated to provide recovery only for those who had tax liability, either in terms of income, real property or general excise tax. For those that had tax liability, the recovery of losses was limited to the relief that could be taken to the extent of that tax liability. For those with no income, general excise or real property tax liability there was no relief available. As of 1974, when the provisions allowing relief from income tax liability through Chapter 234 were repealed, only those taxpayers with general excise or real property tax liability (i.e., owners of businesses or real property) may benefit from Chapter 234.

4. The structure of the "Tax Relief for Natural Disasters" law operates to provide a larger percentage of recovery to those with more assets. Recent legislation further supporting this finding requires loans to be deducted from the total loss when calculating the certified loss. This is contrary to the policy of providing assistance to allow victims to recover their losses.

5. The amount of tax relief available is not tied to the damage. The claim amount is determined by the value of real and personal property losses that may or <u>may</u> <u>not</u> have anything to do with a trade or business but relief may be taken through the general excise tax liability.

6. There is no set rationale for triggering the operation of Chapter 234 and as a result the application of the relief does not have a clear pattern from administration to administration. This makes it difficult to predict when Chapter 234 is likely to be applied, and the law therefore operates in a fashion similar to other ad-hoc legislation that may be enacted during post-natural disaster sessions.

7. The law is ambiguous or silent as to the administration of the relief. There are no guidelines as to how, what kind of, or how long records are required to be kept by the Department of Taxation.

8. The amount and type of other relief that is available to victims of natural disasters are much greater today than what existed in 1961.

9. A survey conducted by the Legislative Reference Bureau in 1961 and 1993 indicates that no other State has offered or offers the type of relief under Chapter 234, HRS, as general legislation.

10. All four counties have ordinances that provide for real property tax relief for natural disasters. The ordinances do not offer as extensive relief as Chapter 234, HRS, and limit the remission of real property taxes to the portion remaining of the year in which the disaster occurred. The City and County of Honolulu and the County of Hawaii favor repealing the real property tax provisions of Chapter 234.

11. The state Department of Taxation favors repealing Chapter 234, HRS.

Recommendations

1. Chapter 234, Hawaii Revised Statutes should be repealed. The operation of Chapter 234, HRS, has not achieved its purpose of providing recovery of losses for all victims of a natural disaster. The theory of offering tax relief for natural disasters to provide recovery of losses for victims of a natural disaster is flawed. Recovery through Chapter 234, HRS is inequitable and exclusionary and has operated to provide windfall gain to some and no benefit to others. Now that the real property taxes and general excise taxes are administered by separate political systems it is also administratively inefficient and cumbersome to provide relief as structured in Chapter 234, HRS. Economic natural disaster assistance relating to general tax relief for natural disasters should be dealt with on an ad-hoc basis that can reflect the current economic situation of the State and the magnitude of the disaster.

2. If the Legislature decides to retain tax relief as a form of relief from natural disasters, it is inefficient to provide a separate chapter for that type of relief and any tax relief offered should be incorporated into tax liabilities structured in the respective tax laws.[1]

The policy of offering tax relief to victims of a natural disaster should be examined in terms of commercial and personal focuses.

Commercial enterprises should receive assistance through business tax liability avenues such as the general excise tax or transient accommodations tax when a natural disaster strikes and damages the business. The relief should apply directly to the damage to avoid unfair advantage. Commercial claims for loss should reflect damage done to property used in a trade or business.

Personal relief can be offered in a variety of alternative forms but, if allowed, all claim amounts should be related to personal property lost. If tax relief is to be offered there should be a mechanism for refunds of losses for those that do not have any tax liability. For example, the legislature could reinstate the type of relief from income tax liability originally enacted but treat it as a credit under the income tax law that allows a refundable amount per year, with a limit over time. Provisions would be necessary to prohibit double recovery for those with a tax liability and who take a deduction under section 235-7(f), HRS.

Real property tax relief can be re-enacted in Chapter 46, HRS (Counties; General Provisions) with each county having responsibility to value the damage. The counties could administer and provide relief through parameters which are set out in Chapter 46, HRS. There would be no need for a claims commission or communication with the state Department of Taxation.

A problem that arises when offering general provisions for tax relief in the separate tax laws is valuation of the losses. By placing the real property tax relief with the counties the responsibility of valuation is placed with the counties, but the valuation of the other tangible property may create some issues of documentation of losses. The tax system is based on self-reporting, and it may be appropriate to maintain the integrity of that system by allowing taxpayers to declare their losses and police the system with random audits, as it functions today. Limiting the amount of maximum relief could eliminate some overstatement of losses.

3. Repeal Chapter 127, HRS (Disaster Relief). Sections 127-1 through 127-9, HRS, are indefinitely suspended and are duplicated in substance in Chapter 128, HRS (Civil Defense and Emergency Act). Section 127-10 should be re-enacted and appropriately amended in Chapter 128, HRS. Section 127-11 should be re-enacted in Chapter 128, HRS to reflect the current operating situation and administration of the Major Disaster Fund.

ENDNOTE

1. The Department of Taxation is "not in favor of recommendation number 2, to the extent it concerns state taxes". Memorandum from Richard F. Kahle, Jr., Director of Taxation, to Samuel B. K. Chang, Director, Legislative Reference Bureau, dated January 10, 1994.

Appendix A

HOUSE OF REPRESENTATIVES
SEVENTEENTH LEGISLATURE, 1993
STATE OF HAWAII

H.B. NO. 1405 H.D. 1

A BILL FOR AN ACT

RELATING TO TAX RELIEF FOR NATURAL DISASTER LOSSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. During the time since chapter 234, Hawaii Revised Statutes, was enacted in 1961, many new natural disaster relief benefits have become available. Hurricane Iniki, the extended damage caused by it, and the extensive payout under chapter 234, Hawaii Revised Statutes, particularly by Kauai (of which part or all may have been underwritten by the State) call the present flexibility of chapter 234 into question. In light of current relief available at the federal, state, and county level, chapter 234 should be reviewed.

The purpose of this Act is to require the legislative reference bureau to review chapter 234, Hawaii Revised Statutes.

SECTION 2. The legislative reference bureau shall study chapter 234, Hawaii Revised Statutes, and present its findings and recommendations to the legislature twenty days before the convening of the 1994 regular session. The study shall review the reason for the enactment and legislative history of chapter 234. It shall review, compare, and set forth the federal, state, and county tax, loan, and other benefits available when chapter

234, Hawaii Revised Statutes, was enacted and in 1993. The study shall set forth the natural disaster relief provided by other states. The study shall make recommendations concerning whether chapter 234, Hawaii Revised Statutes, should be repealed, or amended, and if so, in what manner.

SECTION 3. This Act shall take effect upon its approval.

STATE OF HAWAII
ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

UNITED STATES CONGRESS

Senate:
Hiram L. Fong
Oren E. Long

House of Representatives:
Daniel K. Inouye

STATE EXECUTIVE OFFICERS

Governor of Hawaii.....William F. Quinn
Lieutenant Governor.....James K. Kealoha

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REGULAR SESSION 1961

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Vice-President.....Hebden Porteus
Clerk.....Walter G. Chuck

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D—Democrats 11
R—Republicans 14

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Third District—(Hawaii)
Yoshito Takamine (D)

Fourth District—(Hawaii)
Takeshi Kudo (D)

Fifth District—(Hawaii)
Akoni Pule (D)

Sixth District (Lanai, Molokai)
Pedro Dela Cruz (D)

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*Hiroshi Kato replaced Robert W. B. Chang on March 27, 1961.

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FIRST LEGISLATURE, STATE OF HAWAII, GENERAL SESSION 1961


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Floor Leader


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Chairman, Labor


Takeshi Kudo
Chairman,
Water Resources


Akoni Pulo
Chairman, Printing


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and Military Affairs


E. Teruya


Sakae Amano
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General Welfare


Howard Y. Mi
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Asst. Majority
Floor Leader


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Floor Leader

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Government Effic

Hiroshi Kato
Chairman,
Small Business

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Ambrose J. Rosehill
Minority Floor Leader

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William E. Fernandes
Chairman,
Harbors and Airports

Manuel S. Henriques
Vice Speaker

Abel Medeiros

David K. Trask, Jr.
Chairman, County

Mamoru Yamas
Chairman,
Public Employm

Herman T. F. Lum

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General Session of Senate - 1961
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Legislative Reference Bureau
Request No. 7941
December, 1960

NATURE AND ESTIMATES OF STATUS OF SPECIAL DISASTER LEGISLATION IN HAWAII, 1955-1960

Legislation	Subject	Administered By	Authorized, Possible or Probable Relief[1]	Relief Granted or in Progress[1]	As of Date	Comment
			1955 PUNA ERUPTIONS			
Act 207, Regular Session, 1955	Tax refunds and forgivenesses	Department of Taxation and Claims Commission created by Act	$1,170,763 (certified losses of 78 claimants)	$708,823 (74 claimants)	12/59	Most claimants are recovering either much more or much less than the average percentage recovery.
Public Law 844 84th Congress, 1956 and Act 23, Regular Session, 1960	Land exchanges and sales to disaster victims	Department of Land and Natural Resources	$34,130 (for surveying)	Awaiting survey to implement disposition	11/60	Original congressional act contained no appropriation. State appropriation was made for surveying in 1960.
Act 168, Regular Session, 1955	Emergency loans to farmers	Farm Loan Board[2]	$100,000	$93,125 (35 loans)	11/60	Poor repayment experience. No payments received on 24 loans totaling $65,000. Only 4 out of 35 loans are not delinquent.
			1959 HURRICANE "DOT"			
Act 19, Regular Session, 1960	Tax refunds and forgivenesses	Department of Taxation and Claims Commission created by Act	$2,361,802 (certified losses of 168 claimants)	$638,944 (82 claimants)	9/60	Too early to analyze results.

Compiled by Joseph M. Gedan

Legislation	Subject	Administered By	Authorized, Possible or Probable Relief[1]	Relief Granted or in Progress[1]	As of Date	Comment
			1959-1960 PUNA ERUPTIONS			
Chapter 102, Revised Laws of Hawaii 1955	Farm loans	Department of Economic Development	Funds available from farm loan revolving fund	$94,405 (excludes bank participation)	10/60	No special legislation for these loans. Granted to victims who qualified under regular program.
Act 19, Regular Session, 1960	Disposal of public lands for residential purposes without auction	Department of Land and Natural Resources	25 applications	19 lots distributed	11/60	Estimated that no more applications will be received.
			1960 TSUNAMI			
			150-175 will receive lots	137 lots distributed	11/60	15 more applicants determined eligible.
Act 4, Special Session, 1960	Disposal of public lands for commercial purposes without auction	Department of Land and Natural Resources	40-50 will receive lots	21 approved	11/60	Approval of applications and planning of commercial subdivision under way.
Act 7, Special Session, 1960	Construction of dwellings	Hawaii Housing Authority	$500,000	30-35 units planned with state funds 80 units planned with federal funds	11/60	State project--site being studied to determine economic feasibility of construction. Federal-local project--50 units will be completed by March, 1961. Remaining 30 have been approved.

Legislation	Subject	Administered By	Authorized, Possible or Probable Relief[1]	Relief Granted or in Progress[1]	As of Date	Comment
Act 6, Special Session, 1960	Commercial disaster loans	Department of Economic Development	$600,000	11 loans made ($196,938) 11 applications pending ($169,645)	11/60	8 additional applications will be received ($80,000). Anticipated loans to other eligible victims ($150,000). Estimated $596,583 will be loaned.
Acts 3 and 5, Special Session, 1960	Acquisition, clearance redevelopment and sale of area damaged	Hawaii Redevelopment Agency and Housing and Home Finance Agency (federal government)	($25,000 state ($25,000 county ($2,500,000 bonds, (state share (($5,000,000 grants, (federal government	$50,000 spent for survey and planning	11/60	Federal approval of project awaiting submission of a report by the Hawaii Redevelopment Agency.
15 USCA 661 (1959)	Loans with federal funds in participation with local banks	Small Business Administration (federal government)		197 applications received ($10,985,269)	11/18/61	Filing date for application recently extended. Estimat 12 to 15 million dollars will be loaned for commercial and housing purposes.
Act 11, Special Session, 1960	Extension of unemployment compensation benefits	Department of Labor and Industrial Relations	$300,000	$21,000	11/60	Payments to those newly cov... have been made. Costs of added benefits lik... bring total to less than $5...
Chapter 108, Revised Laws of Hawaii 1955	Welfare payments	Department of Social Services		$142 per month	7/60	Net cost of 13 new cases and increases in several old cases minus 11 cases closed.

[1]Data represent best available estimates.

[2]Functions transferred to Department of Economic Development.

Source: Inquiries made of departments concerned.

Appendix D

FORM ND-1
(Rev. 1992)
Page 1

State of Hawaii
_____ NATURAL DISASTER CLAIMS COMMISSION
(YEAR) **COUNTY OF** _____

NATURAL DISASTER CLAIM APPLICATION

(This space for official use only)

Claim No. _____

Date Received:

TYPE OR PRINT CLEARLY

A. APPLICANT INFORMATION

Name of Applicant *(Last, First, MI/Corporation etc.)*

1.

Name of Spouse *(Last, First, MI)*

2.

Current Mailing Address: Street City State Zip Code

3.

Applicant's Social Security No. (SSN)	Spouse's Social Security No.	
4.		

	Current phone	Business phone	Alternate phone
5. PHONE NUMBERS	( )	( )	( )

6. Applicant is (check one) ☐ An Individual ☐ A Partnership ☐ A Corporation ☐ Other (Explain) _____

7. Business ID Numbers (If applicable): Federal Employers ID No (FEIN) _____ General Excise No. _____

B. DISASTER LOSS INFORMATION

1. Date of Loss For Which This Claim Is Made: _____

2. Briefly Summarize How You Were Affected By This Disaster:

Address of Damaged Property: Street City State Zip Code

3.

4. Are You The Owner of This Property? ☐ Yes ☐ No

If Yes, provide Tax Map Key (TMK) _____

If No, provide owner's name and address below:

Name of Owner

Owner's Address: Street City State Zip Code

5. Are There Multiple Owners of This Property? ☐ Yes ☐ No (If Yes, provide the names and addresses of all owners.)

Name	Address

Applicant's name as shown on page 1	Applicant's SSN or FEIN No.

B. DISASTER LOSS INFORMATION - Continued

6. Is Anyone Else Claiming This Loss? ☐ Yes ☐ No (If Yes, provide name and address below.)

Name	Address

7. Was Your Business Damaged (includes rental property you own, but not farm property)? ☐ Yes ☐ No
(Attach Schedules I, I.A, II, and III)

8. Was your Farm Damaged (includes crops, livestock, farm bldgs., machinery, but not farm home)? ☐ Yes ☐ No
(Attach Schedules I, I.A, II, IV, and V)

9. Was Your Home Damaged? ☐ Yes ☐ No
(Attach Schedules I, I.A, and II)

10. Was Your Personal Property Damaged (includes vehicles)? ☐ Yes ☐ No
(Attach Schedules I, I.A, and III)

11. Have You Filed For Or Received Any Benefits For This Disaster From Any Public Or Private Agencies Or From Any Other Source? ☐ Yes ☐ No; If Yes, Provide the Amount.$ _____

12. Provide Name Of All Persons Residing In The Home At The Time Of The Disaster.

Name	Relationship	Name	Relationship

13. Damage Estimates:

a. Schedule II, Total Real Property Losses $ _____

b. Schedule III, Total Personal Property Losses $ _____

c. Schedule IV, Total Agricultural Crops & Livestock Losses $ _____

d. Schedule V, Total Agricultural Personal Property Losses $ _____

Total Losses Claimed $ _____

C. INSURANCE INFORMATION

1. Damage or Losses Caused By: ☐ Flood ☐ Wind ☐ Rain ☐ Fire ☐ Other (explain below)

_____

2. Insurance Coverage: ☐ No Insurance; ☐ Homeowners/Renters; ☐ Mobile Home; ☐ Flood

Policy No. & Insurance Company: _____

Agent's name and phone #: _____

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE I

Deductions Required Under Section 234-4(b), HRS

To be attached to your Natural Disaster Claim Application (Form ND-1)

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

1. Insurance benefits received or to be received:

Description of insured property	Insurance benefits received or to be received

Total insurance Benefits $ _____

2. Losses resulting from **Insurable Property** (whether or not insured) in Excess of $100,000 _____

3. Federal Tax Benefits (Total of amounts on all Schedules I.A, Part I, line 7 or Part II, line 8 attached.) _____

4. Other recoveries:

Nature of recovery	Amount received

Total Other Recoveries $ _____

5. **TOTAL RECOVERY** (Add lines 1 through 4) $ _____

ATTACH COPIES OF DOCUMENTS SUBSTANTIATING MAJOR AMOUNTS ABOVE

Schedule I, Continued
Deductions Required Under Section 234-4(b), HRS

Sec. 234-4(b), HRS, states "The losses to be certified to the director of taxation from the total losses recognized by the commission shall be computed by the commission by deducting:

(1) All insurance benefits received or to be received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster;

(2) The portion of the losses resulting from insurable property in excess of $100,000;

(3) Tax benefits from the Federal Internal Revenue Service; and

(4) Any other recoveries.

The balance remaining after the foregoing have been deducted from the total losses recognized shall be the loss certified to the director of taxation."

The Natural Disaster Claims Commission will use the information from Schedule I to determine the losses to be certified to the Director of Taxation. All information should be submitted in order that the claim be expedited.

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE I.A
COMPUTATION OF TAX BENEFITS

To be attached to your Natural Disaster Claim Application (Form ND-1)

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

PART I **Tax Benefits — Individual, Corporation, or Estate (Complete if deductions have been taken on the Federal or Hawaii Net Income Tax return on account of disaster damages)**

Period:

Calendar year 19 _____ or other tax year beginning _____, 19 _____, ending _____, 19 _____.

	A Federal	B State
1. Taxable income as shown on the income tax return filed.	$ _____	$ _____
2. Add: Amounts claimed on return as a casualty loss resulting from the natural disaster.		
a. Personal Use Property.	_____	_____
b. Property Used In a Trade or Business or for the Production of Income.	_____	_____
c. Other.	_____	_____
3. Taxable income before deduction for damage (Add lines 1 and 2).	$ _____	$ _____
4. Tax computed on amount in item 3.	$ _____	$ _____
5. Less: Tax computed on taxable income as shown on the income tax return filed.	_____	_____
6. Tax benefit (Subtract line 5 from line 4.)	$ _____	$ _____
7. Federal Tax Benefit. Amount from Column A, Line 6. (Also enter this amount on Schedule I, line 3.)	$ _____	
8. State Tax Benefit. Amount from Column B, line 6.		$ _____

ATTACH COPIES OF DOCUMENTS SUBSTANTIATING MAJOR AMOUNTS ABOVE

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

PART II **Tax Benefits — Partnership or S Corporation**
(Complete if deductions have been taken on an entity's Federal or Hawaii Net Income Tax return on account of disaster damages)
Completed by each partner or shareholder.

1. a. Name of ☐ Partnership ☐ S Corporation _____
   b. Name of partner or shareholder _____
2. Partner's or shareholder's profit and loss share percentage _____ %.
3. Recomputation of total entity's income or loss.

	A Federal	B State
a. Applicant's profit or loss per return filed.	$	$
b. Add amounts allowed on return as a deduction resulting from the disaster damage.		
c. Total income (or loss) before deduction for damage (Add line 1 and line 2)		
d. Distributive share without regard to deduction for disaster damage. (Multiply item 2 by item 3c.)	$	$
4. Recomputation of partner's or shareholder's taxable income:		
a. Taxable income per tax return filed.	$	$
b. Less: Distributive share per return filed		
c. Line 4a minus line 4b.	$	$
d. Taxable income without deduction for damage (Add line 3d and line 4c.)	$	$
5. Tax computed on amount on line 4d.		
6. Less: Tax computed on taxable income per return filed.		
7. Tax benefit. (Subtract line 6 from line 5.)	$	$
8. Federal tax benefit. Enter amount shown on Column A, line 7. Also enter this amount on Schedule I, line 3.	$	
9. State tax benefit. Enter amount shown on Column B, line 7.		$

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief, that no factual information has been omitted. I hereby certify that the losses listed herein were caused by the Natural Disaster declared by the Governor on _____.

_____
Signature

Subscribed and sworn to before me
this _____ day of _____, 19_____.

_____
Notary Public, _____ Judicial
Circuit, State of Hawaii.

My commission expires: _____

ATTACH COPIES OF DOCUMENTS SUBSTANTIATING MAJOR AMOUNTS ABOVE

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE II
LOSSES TO REAL PROPERTY

To be attached to your Natural Disaster Claim Application (Form ND-1)

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

1. Land Loss:

Tax Map Key #	Description of Damage	Fair Market Value Before Disaster	Fair Market Value After Disaster	Loss (difference between the Fair Market Value before and after the disaster)
	Total Land Loss:			$

2. Building and Improvements Loss:

Tax Map Key #	Description of Improvements	Fair Market Value Before Disaster	Fair Market Value After Disaster	
	Total Building and Improvement Loss:			$

3. **TOTAL REAL PROPERTY LOSSES — Total of Item 1 and Item 2**
(Also enter this amount on Form ND-1, line 13a) $

ATTACH SUBSTANTIATION FOR MAJOR AMOUNTS CLAIMED

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE III
LOSSES TO PERSONAL PROPERTY

To be attached to your Natural Disaster Claim Application (Form ND-1)

Examples: Furniture & Household Appliances
Clothing
Store Merchandise — Inventory
Office Fixtures

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

Qty	Description of Personal Property	Age	Acquisition Cost	Fair Market Value		Loss (difference) between the Fair Market Value before and after the disaster)
				Before Disaster	After Disaster	
TOTAL PERSONAL PROPERTY LOSSES (Also enter this amount on Form ND-1, line 13b.)						$

ATTACH SUBSTANTIATION FOR MAJOR AMOUNTS CLAIMED

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE IV
LOSSES TO CROPS AND LIVESTOCK

To be attached to your Natural Disaster Claim Application (Form ND-1)

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

ROPS	Maturity at Time of Loss (Months)	Quantity (Lbs. or # of Plants)	Acreage or Sq. Footage	Estimated Loss
TOTAL CROP LOSSES				$

VESTOCK LOSS ther than breeding stock)	Age at Time of Loss (Months or Years)	Quantity	Estimated Loss
TOTAL LIVESTOCK LOSSES			$

REEDING STOCK LOSS	Age at Time of Loss (Months or Years)	Sex	Quantity	Estimated Loss
TOTAL BREEDING STOCK LOSSES				$

OTAL CROP, LIVESTOCK, AND BREEDING STOCK LOSSES (Also enter this amount on Form ND-1, line 13c.)	$

ATTACH SUBSTANTIATION FOR MAJOR AMOUNTS CLAIMED

STATE OF HAWAII

_____ NATURAL DISASTER CLAIMS COMMISSION

(YEAR) COUNTY OF _____

SCHEDULE V
LOSSES TO AGRICULTURAL PERSONAL PROPERTY

To be attached to your Natural Disaster Claim Application (Form ND-1)

Examples: Tractors and Vehicles
Packing Supplies & Field Boxes
Tools and Implements
Fertilizer, Herbicides & Insecticides

Applicant's name as shown on Form ND-1	Applicant's SSN or FEIN No.

Qty	Description of Agricultural Personal Property	Age	Acquisition Cost	Fair Market Value		Loss (difference) between the Fair Market Value before and after the disaster)
				Before Disaster	After Disaster	
TOTAL AGRICULTURAL PERSONAL PROPERTY LOSSES (Also enter this amount on Form ND-1, line 13d.)						$

ATTACH SUBSTANTIATION FOR MAJOR AMOUNTS CLAIMED

Applicant's name as shown on page 1	Applicant's SSN or FEIN No.

The information provided on this form is needed to determine your eligibility for and the amount of tax relief for natural disaster losses as provided under Chapter 234, Hawaii Revised Statutes (HRS). This information may be shared with insurers of your damaged property to ensure that benefits are not duplicated.

APPLICANT CERTIFICATION AND AUTHORIZATION

For all tax relief for natural disaster losses for which I have applied and for which I may become eligible to receive,

I CERTIFY THAT:

- No other claim for the losses claimed here is being made by me or any other person;
- The damage loss for which this claim is made occurred within the proclamation period as a result of the disaster proclaimed; and
- All facts given in this application, including any schedules attached to this application and supporting schedules, are true and complete to the best of my knowledge and belief.

I AUTHORIZE:

- Any private or governmental agency or organization, including property insurers, to release to the Natural Disaster Claims Commission (Commission) or its authorized agent whatever information may be necessary to review or process my claim for tax relief for natural disaster losses.
- The Commission for this disaster or its agents to verify the information on the application and to contact me to schedule an appointment to inspect my damaged property if necessary.
- The Commission for this disaster or its authorized agent or representative to examine, or make copies of my income tax returns that may be filed with the Department of Taxation of the State of Hawaii and the Internal Revenue Service for the limited purpose of determining losses incurred as a result of this natural disaster.

I AGREE to notify and repay the State of Hawaii and/or the County from which tax relief is received within 60 days of receipt if I receive benefits from any other source, including insurance settlements, which duplicates tax relief received through this application.

I CERTIFY THAT I HAVE READ, OR HAD READ TO ME, AND UNDERSTAND THE CONTENTS OF THIS APPLICATION.

Applicant's Signature	Date	Spouse's Signature	Date

Title (if applicant is other than an individual)

Subscribed and sworn to before me
this _____ day of _____, 19_____

Notary Public, _____ Judicial Circuit, State of Hawaii

My commission expires: _____

PROCLAMATIONS AUTHORIZING AID FOR DAMAGE CAUSED BY DISASTERS

DATE OF DISASTER	TYPE OF DISASTER	PLACE OF DISASTER	AUTHORITY	LAWS AFFECTED	DATE PROCLAMTION SIGNED	GOVERNOR
January 18, 1960	Volcanic Eruption	Puna, Hawaii	HRS 359-10	HRS 9-20 to 9-46; & 166-4	August 30, 1960	Kealoha
May 23, 1960	Seismic sea wave	State of Hawaii	HRS 359-10	HRS 9-20 to 9-46; & 166-4	August 30, 1960	Kealoha
August 23, 1961	Economic (coffee)	Kona, Hawaii	Not Stated	HRS Chapter 102	August 23, 1961	Quinn
April 3, 1962	Shipping strike	State of Hawaii	Not Stated	HRS Chapter 357	April 3, 1962	Quinn
April 16, 1963	Rain and flooding	Kauai; C&C Honolulu	HRS 359-10	HRS 9-20 to 9-46; & 166-4	April 25, 1963	Burns
October 8, 1963	Economic (coffee)	Kona, Hawaii	Not Stated	HRS Chapter 102	October 8, 1963	Burns
Dec. 17, 1967-Jan. 6, 196	Rain and flooding	C&C Honolulu	HRS 358-12	Sole purpose*	January 16, 1968	Burns
			HRS 359-10	HRS 9-20 to 9-46; & 166-4	January 19, 1968	Burns
April 15-17, 1968	Rain and flooding	Hana, Maui	HRS 358-12	Sole purpose*	August 21, 1968	Burns
			HRS 359-10	HRS 9-20 to 9-46; & 166-4	August 21, 1968	Burns
October 3-4, 1968	Rain and flooding	North Kona, Hawaii	HRS 358-12	Sole purpose*	October 8, 1968	Burns
			HRS 359-10	HRS 9-20 to 9-46; & 166-4	October 8, 1968	Burns
Nov. 28-30, 1969	Rain and flooding	Kapaia, Kauai	HRS 358-12	Sole purpose*	January 20, 1969	Burns
			HRS 359-10	HRS 9-20 to 9-46; & 166-4	January 20, 1969	Burns
February 1, 1969	Rain and flooding	Koolaupko, Oahu	HRS 358	Not specifically stated	February 7, 1969	Burns
			HRS 359-10	HRS 9-20 to 9-46; & 166-4	February 11, 1969	Burns
April 26, 1973	Earthquake	County of Hawaii	HRS 127-11	Sole purpose*	May 3, 1973	Burns
April 19, 1974	Rain and flooding	Kauai; Maui; Honolulu	HRS 209-2	Part III, Chapter 209	April 26, 1974	Ariyoshi
			HRS 127-11	Sole purpose*	April 26, 1974	Ariyoshi
November 29, 197	Earthquake & tsunami	County of Hawaii	HRS 385-1	HRS 385**	December 12, 1975	Ariyoshi
			HRS 127-11	Sole purpose*	December 4, 1975	Ariyoshi
November 1977	Drought	Maui; Hawaii	HRS 234	HRS 234	April 18, 1978	Ariyoshi
Jan 8-14, 1980	Rain and flooding	State of Hawaii	HRS 209-2	Part III, Chapter 209	January 19, 1980	Ariyoshi
Nov. 22, 1982	Hurricane IWA	Kauai; Honolulu	HRS 127-11/209-2	Chapter 209	November 26, 1982	Ariyoshi
December 1983	Drought	County of Hawaii	HRS 127-11/234-2	Chapter 234	November 9, 1984	Ariyoshi
Dec. 2, 1987- Jan 2, 1988	Rain and flooding	Honolulu	HRS 127-11/209-2/234-2	Part III, Chapter 209; & Chapter 234	January 3, 1988	Waihee
Jan 24, 1983-Apr. 28, 199	Lava Flows	Puna, Hawaii	HRS 127-11; 171-85, 209-2; 234-2	Chapter 171-85, et. seq.; Chap. 209; Chap. 234	April 28, 1990	Waihee
extended					January 14, 1991	Waihee
Mar. 19-23, 1991	Rain and flooding	Honolulu	HRS 127-11; 155-9(4); 209-2; 234-	Chapters 155, 209, 234	March 26, 1991	Waihee
Dec. 13-14, 1991	Rain and flooding	Kauai	HRS 127-11/209-2/234-2	Part III, Chapter 209; & Chapter 234	December 16, 1991	Waihee
September 11, 199	Hurricane Iniki	Stae of Hawaii	HRS 127-11; 155-9(4); 171-85; 20	HRS 103-21 -57 and 464-4; Chapters 209 and 2	September 11, 1992	Waihee
			234-2; 128-10(1); 121-30	*		

* Sole purpose of authorizing the expenditure of State funds for the repair and restoration of pblic facilities in said a

** Additional unemployment compensation benefits shall be payable

Appendix F

NAME _____
CLAIM NO. _____

NATURAL DISASTER
CREDIT CARRYFORWARD SCHEDULE

		1991	1992	1993	1994	1995
Amount of Claim Allowed (Per Form ND-2, line 4.)	$ _____					
Adjustments:						
a. Chapter 235, HRS. - State Income Tax: (From Schedule 1A, Line 8) - Any other benefit: *						
_____						
_____						
_____						
_____						
_____		( )				
1991		( )				
1992			( )			
1993				( )		
1994					( )	
1995						( )
b. Chapter 237,HRS, General Excise Tax utilized (totals from back)		( )	( )	( )	( )	( )
c. Chapter 246,HRS, Real Property Tax utilized (totals from back)		( )	( )	( )	( )	( )
d. Total Adjustments		( )	( )	( )	( )	( )
Credit Carryforward to Future Years (line 1 minus line 2d.)		$ _____	$ _____	$ _____	$ _____	$ _____

djustments resulting from subsequent reimbursements or tax benefits.
se note: The above deductions pertain only to this disaster.

Please Note: When utilizing your certified loss, you are required to properly maintain and timely update this schedule. A copy must be attached to your general excise tax return.

Appendix G

STATE DISASTER RELIEF AID INQUIRY

STATE: _____

Please check A & B, or C and respond to all that applies.

A. Our State gives relief to individual citizens suffering disaster losses by: (Please list or attach statutory references or authority, amounts and other particulars as much as possible.)

1. Direct appropriations to individuals_____

_____

_____

_____

2. Grants to individuals from a state fund_____

_____

_____

_____

3. Special tax relief (other than the normal deductions for casualty losses) from income tax due, real property tax due, or business taxes due_____

_____

_____

_____

4. State supported insurance program in which state funds are expended for administrative expenses or for the payment of claims_____

_____

_____

_____

5. Grants of land, housing (other than temporary housing) or other property_____

_____

_____

_____

6. Other privileges such as land exchanges or special franchises which can be considered as a permanent economic gain to the disaster victim_____

_____

_____

_____

7. Special loans to disaster victims (other than loans to depressed businesses generally or to farmers on account of depressed farming conditions not occasioned by a sudden disaster)_____

_____

_____

_____

8. Other (please specify)_____

_____

_____

_____

B. The disaster relief specified in "A" has been given: (Check appropriate letter.)

____ (a) Pursuant to continuing legislative authorization for such relief.

____ (b) Following most disasters as a matter of precedent.

____ (c) On only one or a few occasions but not as a regular practice following most disasters.

C. Our State does not give relief to disaster victims on an individual basis other than:

____ (1) temporary relief for immediate needs (food, temporary housing, public welfare, employment services, miscellaneous social services, etc.)

____ (2) public works projects; or

____ (3) assistance to local political subdivisions.

D. Comments. (Please comment if neither "A" or "C" apply)_____

_____

_____

_____

Completed By: _____

TITLE: _____

ADDRESS: _____

_____

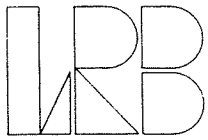
PHONE: _____

Would you like a completed study sent to the above address? (Please Circle)

Yes or No

Samuel B. K. Chang
Director

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0720



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

July 22, 1993

5114-A

Ms. Barbara Laughon, Librarian
Legislative Service Commission
77 S. High Street, 9th Floor
Columbus, Ohio 43266-0342

Dear Ms. Laughon:

The State of Hawaii is conducting a study to determine whether or not certain provisions in the Hawaii Revised Statutes related to tax relief for natural disasters should be repealed or amended. As part of the review process we are interested in how other states treat this issue. A search of the computerized legal databases has proved ineffective and unreliable due to the nature of the relief information we are seeking. We would appreciate if you would please fill out and return to us the attached inquiry. We will be happy to share the results of our study with you.

If you have any questions please contact Pamela Martin, at (808) 587-0666. Thank you for your time and attention to this matter.

Sincerely,

Samuel B.K. Chang
Director

SBKC:jkt
Encl.

ance with the Louisiana Tax Free Shopping Program (R.S. 51:1301 et seq.); such a refund will not violate either Const. Art. 6, § 29(C), or R.S. 39:698.5(C), where such refunds are made from sales tax monies that are surplus and not required to honor scheduled repayments of bond obligations. Op.Atty.Gen., No. 89-56, March 9, 1989.

§ 315.1. Sales tax refund

A. In the event tangible personal property, a part of and used in or about a person's home, apartment or homestead, in this state on which Louisiana sales tax has been paid by the owner of the property is destroyed by a natural disaster occurring in an area in Louisiana subsequently determined by the president of the United States to warrant assistance by the federal government, the owner thereof who was the purchaser who paid the Louisiana sales tax shall be entitled to reimbursement of the amount of the tax paid on such tangible personal property destroyed for which no reimbursement was received by insurance or otherwise. Upon receipt of a sworn statement of the owner as to the amount of the taxes paid under the provisions of this chapter on tangible personal property destroyed as aforesaid, the collector shall make refund to said owner in the amount to which he is entitled.

B. No refund shall be made under the provisions of this section unless a claim for refund covering the amount to which an owner is entitled is filed on or before the end of the third calendar year following the calendar year in which the property was destroyed.

C. The collector is authorized to prescribe the forms and regulations for use in carrying out the provisions of this Section.

Added by Acts 1970, No. 592, § 1. Amended by Acts 1972, No. 592, § 1; Acts 1973, No. 60, § 1.

Historical and Statutory Notes

The 1972 amendment rewrote the section, which had read:

"Any individual who suffers the loss of tangible personal property as a result of a natural disaster subsequently determined to warrant assistance by the federal government may file a claim with the state collector of revenue on such forms as the collector may prescribe and accompanied by such proof of loss as the collector may require, by rules and regulations established by him, for a refund of the state sales tax paid by the claimant upon any retail purchase made by him within two calendar years after the occurrence of the natural disaster causing such loss for the replacement of the tangible personal property so lost. The claim for such state sales tax refund shall be allowed for tax paid on the purchase of building materials purchased for the repair or replacement of one but only one dwelling and one but only one place of business and shall only be allowed if the materials were purchased and paid for by the claimant from a retail dealer for repair or replacement of the individual claimant's losses in such dwelling or place of business."

Section 2 of Acts 1972, No. 592 provided that this Act was to have retroactive effect back to August 17, 1969.

The 1973 amendment rewrote the section, which had read:

"In the event tangible personal property namely, a part of and used in or about a person's home, apartment or homestead, on which the sales tax has been paid to the wholesaler is destroyed by a natural disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government, purchaser who has paid the sales tax shall be entitled to reimbursement of the amount of the tax paid on such tangible personal property which has been destroyed. Upon receipt of a sworn statement of the purchaser as to the amount of the taxes paid under the provisions of this chapter on tangible personal property destroyed as aforesaid, the collector shall make refund to said purchaser in the amount of the tax collected.

Appendix I

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813
FAX NUMBER: (808) 523-4583

FRANK F. FASI
MAYOR

RONALD B. MUN
CORPORATION COUNSEL

November 15, 1993

Mr. Samuel B. K. Chang
Director
Legislative Reference Bureau
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Dear Mr. Chang:

This is in response to your request for the City and County of Honolulu's ("City") comments concerning Chapter 234 of the Hawaii Revised Statutes ("HRS"), and the significance of Ordinance 8-4.2 of the Revised Ordinances of Honolulu 1990, as amended ("ROH"). Both laws address real property tax relief in the event of a natural disaster.

In response to question No. 1, the City does not dispute the authority of the State to enact real property tax relief on matters of statewide concern. Article VIII, Section 3, of the Constitution of the State of Hawaii, reserved the taxing power to the State, "except that all functions, power and duties relating to the taxation of real property shall be exercised exclusively by the counties . . . ." The delegation of taxing power was transferred from the State to political subdivisions on July 1, 1981. HRS § 246A-2. Article VIII, Section 6, further states that Article VIII shall not limit the power of the legislature to enact laws of statewide concern. Therefore, the State is authorized by constitution, Article VIII, Section 6, and by statute, HRS Section 50-15, to pass general laws of statewide concern. Given the reservation of legislative authority evident in Article VIII, we are of the position that

HRS Chapter 234, which addresses the statewide concern of natural disaster relief, is valid.

While HRS Chapter 234 is a comprehensive tax relief scheme providing for relief from real property taxes, general excise taxes or income taxes, the City's sole interest is real property tax relief for the following reasons. Real property tax is the City's primary source of revenue. In view of the reality that the loss of our real property tax base would incapacitate the City in the event of a catastrophe, we are against exposing the City to tax relief en masse without maintaining absolute control and authority at the county level. Under HRS Chapter 243, the total loss and certified loss of real property equals the total amount of tax relief credit due for a period of five years. HRS § 234-4. Losses are determined solely by the Natural Disaster Claims Commission ("Commission") without input from the counties. Since the total loss of real property is based on the "market value" on the date of the natural disaster, HRS Section 234-4(b), the City has a serious interest in ensuring that the value determination is accurate and credible. Should taxpayers en masse elect to apply the entire or partial credit to real property tax relief--as opposed to general excise or income taxes--the county would be severely impacted by an inaccurate determination of the real property losses.

In response to question No. 2, ROH Section 8-4.2, as amended, was signed by the Mayor in April 1992. The ordinance change was proposed concurrently with State legislative proposals to amend HRS Chapter 234 by deleting real property tax relief therefrom or repealing the chapter. The intent was to have HRS Chapter 234 repealed or real property tax relief deleted therefrom, rather than to "co-exist" with ROH Section 8-4.2 (as currently amended), so that real property tax relief for natural disasters would be fully administered by the county.

One major problem encountered by the City is the coordination with the State in processing the tax refunds pursuant to losses certified under HRS Chapter 234. It has been cumbersome, unreliable and the duplication involved amounts to undesirable government waste. Since HRS Chapter 234 was originally

adopted, the counties have enacted ordinance changes to deal with natural disaster real property tax relief at the county level.

Our chief concern with HRS Chapter 234 is whether the City can handle its losses and continue to operate. Our preference is to have ROH Section 8-4.2 as the sole provision for natural disaster relief since it permits the City to police and manage its own losses incurred during a natural disaster through specific provisions for real property tax relief. If HRS Chapter 234 had been repealed as preferred by the City, there would be no reason to retain ROH Section 8-4.2(g). However, inasmuch as HRS Chapter 234 is thus far undisturbed, ROH Section 8-4.2(g) serves to disqualify a taxpayer from remission under ROH Section 8-4.2 if the taxpayer has been granted--for the same claim--real property tax relief under HRS Chapter 234. The significance of this amendment to ROH Section 8-4.2 is avoidance of twice providing a taxpayer relief under separate laws. The amendment basically limits the tax refund to one year if the taxpayer pursues the City's tax relief. Under ROH Section 8-4.2, the City's tax base is subject to volatility for a shorter period of one year in contrast to the five-year mandate of HRS Chapter 234.

Based on the foregoing reasons, the City believes that HRS Chapter 234 should be repealed or, at the least, the law amended to delete the provisions regarding real property tax relief available at the county level.

If you should have any further questions, please feel free to contact me at 523-4718.

Very truly yours,

NALANI P. WILSON-KU
Deputy Corporation Counsel

NPWK:lt

SOH-ACT171.NWK