

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740

MEMO TO: Lance Okumura, Administrator
Real Property Tax Division
Department of Finance

V I A: Keith Regan, Director
Department of Finance

F R O M: Cheryl Tipton, Deputy Corporation Counsel

D A T E: May 24, 2004

SUBJECT: Maui County Code, Section 3.48.455

When we met on February 19, 2004, to discuss several matters related to tax cases, you asked for an interpretation of Section 3.48.455, Maui County Code ("MCC"), related to continuing home exemptions for the elderly who move from their home to a long-term care facility or adult residential care home. Your question relating to the time limits and application of paragraph (1) of Section 3.48.455(A) was not posed in connection with any particular case or set of facts, and this response has been prepared on that basis. In the event that you are confronted with a particular case or set of facts, you are encouraged to seek further advice at that time.

Ordinance No. 2374, Bill No. 84 (1994), amended MCC Section 3.48.455(A) to state as follows:

3.48.455 Exceptions. The following circumstances are exceptions to the requirements of sections 3.48.450 through 3.48.465. Notwithstanding any law to the contrary:

- A. A taxpayer who is sixty years of age shall continue to be entitled to the exemptions contained in sections 3.48.450 through 3.48.465 in the event the taxpayer moves from the home on which the exemption is granted to a long-term care facility or adult residential care home licensed to operate in the State, provided:

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1. For a period of one year, beginning January 1, 1995, a taxpayer may apply for the retroactive continuation of the home exemption if the taxpayer qualified under section 3.48.465 for any tax year from the tax year ended June 30, 1987 through the tax year ended June 30, 1995, but became disqualified because the taxpayer moved from the home to a long-term care facility or adult residential care home;
2. The director of finance may adopt rules and shall provide forms as may be necessary to administer this subsection;
3. Continuation of the home exemption shall entitle the taxpayer to the benefits of section 3.48.750 in effect during the applicable time period; and
4. The director of finance shall refund any moneys owing to the taxpayer due to the retroactive application of this section.

I have secured a copy of Council Committee Report No. 94-252 relating to Bill No. 84 and have attached a copy for your records.

The Committee Report states on page 3:

Your committee discussed the need to provide continued real property tax relief to elderly homeowners who move from their homes into long-term care facilities.

In addition, the digest of Bill No. 84 that was passed on October 21, 1994 states:

This bill proposes to amend Section 3.48.455, Maui County Code, to allow a taxpayer who is sixty years of age to continue to be entitled to the exemptions contained in Sections 3.48.450 through 3.48.465 in the event the

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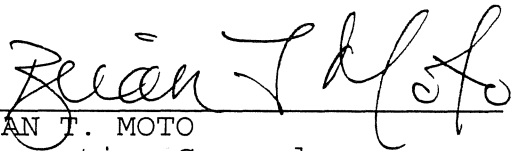
taxpayer moves from the home on which the exemption is granted to a long-term care facility or adult residential care home licensed to operate in the state.

The general rule is that new laws do not apply retroactively unless there is language or clear intent that the legislative body intended retroactive application. Section 1-3, Hawaii Revised Statutes; Clark v. Cassidy, 64 Haw. 74, 77, 636 P.2d 1344 (1981). MCC Section 3.48.455 provides for retroactive application for any tax year from the tax year 1986-1987 through tax year 1994-1995, but taxpayers were given only one year, beginning January 1, 1995, to apply for the retroactive home exemptions. If they did not file within that one-year period, they are not entitled to the exemptions for the earlier tax years. Since the one-year period ended long ago, the provisions of paragraphs(1)-(4) of Section 3.48.455(A) relating to retroactive home exemptions are no longer applicable.

What is still applicable and should be followed by the Real Property Tax Division is the language of Section 3.48.455(A) that permits elderly homeowners to continue to qualify for a home exemption despite the fact that they no longer actually occupy their homes but reside in long-term care facilities or licensed adult residential care homes:

A taxpayer who is sixty years of age shall continue to be entitled to the exemptions contained in sections 3.48.450 through 3.48.465 in the event the taxpayer moves from the home on which the exemption is granted to a long-term care facility or adult residential care home licensed to operate in the State...

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

Attachment

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COUNCIL OF THE COUNTY OF MAUI
FINANCE COMMITTEE

October 21, 1994

Committee
Report No. 94-252

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Finance Committee, having met on August 31, 1994 and October 5, 1994, makes reference to the following communications:

1. County Communication No. 94-276, from the Council Chair, concerning the need to revise Maui County Code Sections 3.48.450 through 3.48.470 (the "Home Exemption" provisions) to allow elderly persons in long-term care facilities to continue to qualify for a home exemption and the benefits of Section 3.48.750 (the "Max Tax" ordinance); and
2. County Communication No. 94-313, from the Council Chair, transmitting a copy of an August 22, 1994 letter from the Director of Finance containing the Director's remarks concerning the proposal.

At its August 31, 1994 meeting, your Committee met with the Director of Finance; the Accounting Systems Administrator, Department of Finance; and a Deputy Corporation Counsel.

Your Committee discussed the possibility of referring the matter to a Blue Ribbon Committee, a special committee to be established to consider the issues of long-term property tax relief.

Your Committee deferred the matter pending further discussion.

By memorandum dated September 7, 1994, the Council Chair transmitted a copy of an August 29, 1994 memorandum from a Deputy Corporation Counsel transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.465, MAUI COUNTY CODE, RELATING TO TAXPAYERS OVER SIXTY YEARS OF AGE".

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ordinance). When he returned home, his home exemption was eventually restored; however, the real property taxes had risen considerably and were no longer frozen at the earlier Max Tax cap.

Your Committee discussed the need to provide continued real property tax relief to elderly homeowners who move from their homes into long-term care facilities. Your Committee requested that the Deputy Corporation Counsel and the Director of Finance determine whether any revisions to the proposed bill are necessary to accomplish this. If necessary, the bill could be revised at the Council meeting.

Your Committee recommended passage of the proposed bill amending Section 3.48.455 of the Maui County Code.

Your Finance Committee RECOMMENDS the following:

1. That Bill No. 84 (1994), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 3.48.455, MAUI COUNTY CODE, RELATING TO EXCEPTIONS TO THE REQUIREMENTS OF SECTIONS 3.48.450 THROUGH 3.48.465 AND 3.48.750" PASS FIRST READING and BE ORDERED TO PRINT;
2. That County Communication No. 94-276 be FILED; and
3. That County Communication No. 94-313 be FILED.


Adoption of this report is respectfully requested.

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COUNCIL OF THE COUNTY OF MAUI
FINANCE COMMITTEE

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Committee
Report No. 94-252




RICARDO MEDINA Chair




B. LYNN BRITTON Vice-Chair



GORO HOKAMA Member



ALICE L. LEE Member



MANUEL MONIZ, JR. Member

COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **COMMITTEE REPORT NO. 94-252** was adopted by the Council of the County of Maui, State of Hawaii, on the 21st day of October, 1994, by the following vote:

MEMBERS	Goro HOKAMA Chair	Dennis Y. NAKAMURA Vice-Chair	James H. APANA, Jr.	B. Lynn BRITTON	Patrick S. KAWANO	Alice L. LEE	Ricardo MEDINA	Manuel MONIZ, Jr.	Thomas P. MORROW
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye


COUNTY CLERK

ORDINANCE NO. _____

BILL NO. 84 (1994)

A BILL FOR AN ORDINANCE AMENDING
SECTION 3.48.455, MAUI COUNTY CODE,
RELATING TO EXCEPTIONS TO THE REQUIREMENTS
OF SECTIONS 3.48.450 THROUGH 3.48.465 AND 3.48.750

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 3.48.455, Maui County Code, is amended to
read as follows:

"3.48.455 Exceptions. The following circumstances are exceptions to the requirements of Sections 3.48.450 through 3.48.465. Notwithstanding any law to the contrary:

A. A taxpayer who is sixty years of age shall continue to be entitled to the exemptions contained in Sections 3.48.450 through 3.48.465 in the event the taxpayer moves from the home on which the exemption is granted to a long-term care facility or adult residential care home licensed to operate in the State, provided:

1. For a period of one year, beginning January 1, 1995, a taxpayer may apply for the retroactive continuation of the home exemption if the taxpayer qualified under Section 3.48.465 for any tax year from the tax year ended June 30, 1987 through the tax year ended June 30, 1995, but became disqualified because the taxpayer moved from the home to a long-term care facility or adult residential care home.

2. The director of finance may adopt rules and shall provide forms as may be necessary to administer this subsection.

3. Continuation of the home exemption shall entitle the taxpayer to the benefits of Section 3.48.750 in effect during the applicable time period, and

4. The director of finance shall refund any monies owing to the taxpayer due to the retroactive application of this section.

B. The use of a portion of any building or structure for the purpose of drying coffee and the use of a portion of real property, including structures, in connection with the planting and growing for commercial purposes, or the packing and processing for such purposes, of flowers, plants, or foliage, shall not affect the exemptions provided for by Sections 3.48.450

through 3.48.465."

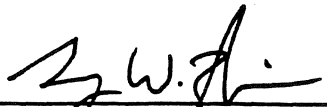
SECTION 2. New material is underscored. In printing this bill the County Clerk need not include the underscoring.

SECTION 3. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application and to this end the provisions of this ordinance are severable.

SECTION 4. Any taxpayer who was entitled to the full benefits of the max tax provisions under sections 3.48.450 through 3.48.465 of the Maui County Code shall remain entitled to such benefits under this ordinance.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

for 

J. P. SCHMIDT
Deputy Corporation Counsel
County of Maui
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DIGEST

ORDINANCE NO. _____
BILL NO. 84 (1994)

A BILL FOR AN ORDINANCE AMENDING
SECTION 3.48.455, MAUI COUNTY CODE,
RELATING TO EXCEPTIONS TO THE REQUIREMENTS
OF SECTIONS 3.48.450 THROUGH 3.48.465 AND 3.48.750

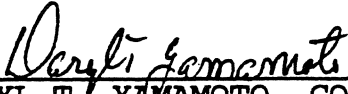
This bill proposes to amend Section 3.48.455, Maui County Code, to allow a taxpayer who is sixty years of age to continue to be entitled to the exemptions contained in Sections 3.48.450 through 3.48.465 in the event the taxpayer moves from the home on which the exemption is granted to a long-term care facility or adult residential care home licensed to operate in the State.

I, DARYL T. YAMAMOTO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 84 (1994) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 21st day of October, 1994, by the following vote:

AYES: Councilmembers James H. Apana Jr., B. Lynn Britton, Patrick S. Kawano, Alice L. Lee, Ricardo Medina, Manuel Moniz Jr., Thomas P. Morrow, Dennis Y. Nakamura, and Chair Goro Hokama.

NOES: None.

DATED at Wailuku, Maui, Hawaii, this 24th day of October, 1994.



DARYL T. YAMAMOTO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.

(MN: October 27, 1994)