

A BILL

ENTITLED

AN ACT to Amend the Tax Collection Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Tax Collection (Amendment) Act, 2017, and shall be read and construed as one with the Tax Collection Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and construc-
tion.

Amendment of
section 40G of
principal Act.

2. Section 40G of the principal Act is amended in subsection (3) by—

- (a) deleting the word “and” appearing at the end of paragraph (b);
- (b) deleting the full stop appearing at the end of paragraph (c) and substituting therefor the word “; and”; and
- (c) inserting next after paragraph (c) the following paragraph—

“(d) where the amount referred to in paragraph (a) includes any amount in arrears under the *Property Tax Act*, a description of the property concerned.”.

Amendment of
heading and
section 41 of
principal Act.

3. The principal Act is amended—

- (a) in the heading appearing immediately before section 41, by inserting next after the word “Persons” the word “, etc.”;
- (b) in section 41 by—
 - (i) inserting next after the word “persons” in the marginal note the word “, etc.”;
 - (ii) deleting the words “poor and indigent, and unable to pay the tax, rate or duty upon such house, or cannot afford to pay more than a portion of such taxes, rates or duties” and substituting therefor the words “a person to whom any of the circumstances set out in section 44(1)(a) or (b) applies”;
 - (iii) deleting the words “Parish Council, or, in the cases of the parishes of Kingston and St. Andrew, the Kingston and St. Andrew Corporation,” and

substituting therefor the words “Local Authority having jurisdiction for the area concerned”.

4. Section 42 of the principal Act is amended by deleting the words “Parish Council, or, in the cases of the parishes of Kingston and St. Andrew, the Kingston and St. Andrew Corporation,” and substituting therefor the words “Local Authority having jurisdiction for the area concerned”. Amendment of section 42 of principal Act.

5. Section 43 of the principal Act is amended by deleting the words— Amendment of section 43 of principal Act.
(a) “Parish Council, or Kingston and St. Andrew Corporation, in every such case may” and substituting therefor the words “Local Authority having jurisdiction for the area concerned may, in every such case,”;
(b) “poor and destitute, and unable to pay the duties, rates or taxes for which he is liable, or to pay the whole of them” and substituting therefor the words “a person to whom any of the circumstances set out in section 44(1)(a) or (b) applies”:

6. Section 44 of the principal Act is repealed and the following substituted therefor— Repeal and replacement of section 44 of principal Act.

“Remission for destitute, elderly and disabled persons and pensioners.

44.—(1) For the purposes of section 11 of the *Property Tax Act*, the Minister may act in accordance with subsection (2) in any case where the Minister is satisfied from a report made to the Minister by the Commissioner General, or a Local Authority, that—

- (a) any person is so poor and destitute as to be unable to pay either current property tax or any arrears thereof, due to be paid by that person; or
- (b) the financial circumstances of any—
 - (i) person over the age of sixty-five years;

- (ii) person with a disability (within the meaning of the *Disabilities Act*) or;
- (iii) person who is unemployed and entitled to receive a pension under any law,

are such that the person is unable to pay either current property tax or any arrears thereof, due to be paid by that person.

- (2) The Minister may—
 - (a) direct the Commissioner General not to levy for any tax referred to in subsection (1); and
 - (b) remit such tax, either in whole or in part, in accordance with section 11 of the *Property Tax Act*.”

Insertion of
new sections
46A, 46B
and 46C in
principal Act.

7. The principal Act is amended by inserting next after section 46 the following sections—

“Order for
sale of
land.

46A.—(1) The Commissioner General may, in accordance with rules of court, apply to the Supreme Court (in this section and section 46C referred to as the Court) for an order of sale in respect of any land in respect of which—

- (a) any amount due and payable under the *Property Tax Act* is in arrears for at least four consecutive financial years before the financial year in which the first notification in respect thereof is published under subsection (2); and
- (b) the notifications required under subsection (2) have been published in respect of that land.

(2) Before making an application under subsection (1) in respect of land, the Commissioner General shall cause a notice of intention to apply under subsection (1) in respect of the land, to be published—

- (a) in a conspicuous location on the property in question; and
- (b) in a daily newspaper in circulation throughout Jamaica, on at least two occasions falling at least fourteen days apart, with the last such publication being not less than one month before the date of the application under subsection (1) in respect of the land.

(3) For the purposes of subsection (2), any error in the description of the land contained in the published notice shall not render the notice ineffective under that subsection if the land is adequately identified therein.

(4) Upon a date being fixed for the hearing of an application under subsection (1), the Commissioner General shall cause a notice thereof to be published in a daily newspaper in circulation throughout Jamaica, at least fourteen days before the date fixed for the hearing, and—

- (a) a notice so published shall be deemed to be sufficient notice of the hearing; and
- (b) any person who claims an interest in land in respect of which an application is made under subsection (1) is entitled to be heard on the application.

(5) On hearing an application under subsection (1), the Court may grant the application and make an order for the sale of the land concerned, if satisfied—

- (a) as to the matters set out in subsection (1)(a) and (b); and
- (b) that the notice referred to in subsection (4) has been given in accordance with that subsection.

(6) For the purposes of a hearing on an application under subsection (1), the certificate of the Collector of Taxes pursuant to section 50 shall constitute *prima facie* evidence of the liability to property tax in the amount specified in the certificate to be in arrears therefor, and the non-payment thereof.

(7) Where an order for the sale of land is made under this section, the following rules shall apply to the sale—

- (a) the sale shall be conducted by public auction at such time and in such manner as the Court may direct;
- (b) any person may bid for the land;
- (c) for the purpose of facilitating the completion of the sale in accordance with paragraph (a), the Court may grant a certificate in accordance with rule 55.7 of the Civil Procedure Rules, 2002;
- (d) the proceeds of the sale shall be applied as follows—
 - (i) firstly, in the payment of any taxes, duties and registration fees and other reasonable costs incidental

- to the sale (or, where applicable, the vendor's portion thereof);
- (ii) secondly, in reduction, or in sufficient satisfaction, of the total amount of the property tax due and payable in respect of the land at the time of the sale, together with the interest and penalties payable thereon, the costs assessed by the Court in respect of the application under subsection (1) and the costs up to the date of the sale of all other actions taken to recover the tax and the reasonable costs of the sale;
 - (iii) thirdly, in payment to mortgagees having a security over the land, in accordance with the respective priorities of the securities; and
 - (iv) any surplus shall be paid to the tax debtor concerned or, if such payment is not practicable, to the Accountant-General;
- (e) in the case of registered land, a certificate under rule 55.7 of the Civil Procedure Rules, 2002, together with a declaration by the Commissioner General, or a designate of the Commissioner General, that the duplicate certificate of title is not available shall be—
- (i) deemed to be sufficient proof of the matters referred to in section 81(3) of the *Registration of Titles Act*; and

(ii) treated as a sufficient application under section 82 of the Registration of Titles Act without further proof being furnished as to the loss or destruction of the duplicate certificate of title,

and the Registrar of Titles shall proceed accordingly.

(8) Any owner of land in respect of which an order of sale is made under this section may at any time before the land is sold pursuant to this section pay to the Commissioner General the amount due and payable under the Property Tax Act in respect of the land (including the interest and penalty due thereon), together with all reasonable costs of all actions and proceedings for the recovery of those sums up to the time of such payment and the costs assessed by the Court in respect of the application under subsection (1), and on such payment the Commissioner General shall apply to the Court to have the order for sale discharged.

(9) Where the surplus referred to in subsection (7)(b)(iv) (if any) is paid over to the Accountant General, the Accountant General shall pay the surplus to any person who establishes a claim thereto to the satisfaction of the Accountant General.

(10) Where there is any question as to whether or to whom any surplus should be paid by the Accountant General under subsection (9), the Accountant General shall seek an order for directions from the Court and the surplus shall be paid out in accordance with the order.

(11) Where any surplus held under subsection (9) or (10) remains unclaimed after ten years from the date of payment thereof to the Accountant General, the sum comprising the surplus shall lapse to and become part of the revenues of Jamaica and shall be paid into the Consolidated Fund.

(12) Where, at a hearing under subsection (1), any question arises as to the correct area of the land concerned, and the Court considers that the resolution of that question is necessary in order to determine the application, the Court—

- (a) shall require a certificate from the Commissioner of Land Valuations indicating the correct area of the land; and
- (b) if the area as indicated in that certificate is disputed, may appoint a commissioned land surveyor to determine the area, and, unless the Court otherwise determines, shall order the costs of such determination to be borne by the party disputing the correctness of the area as stated in the certificate.

Sale by
private treaty.

46B. Where land remains unsold after three attempts at sale under section 46A, the Commissioner General shall make reasonable efforts to sell the land by private treaty and, in selling the land by private treaty, shall owe a duty of care akin to that owed by a mortgagee selling under a power of sale.

Forfeiture.

46C.—(1) The Commissioner General may make an application under subsection (3) in any case where—

- (a) land remains unsold after three attempts at sale by public auction pursuant to section

46A and no sale by private treaty is entered into within twelve months after the date of the last attempt at sale by public auction under section 46A; and

- (b) the Commissioner General causes to be published on at least two occasions, at intervals of not less than fourteen days apart, in a daily newspaper in circulation throughout Jamaica, a notice stating the Commissioner General's intention to apply for a forfeiture order in respect of the land.

(2) A notice under subsection (1)(b) shall contain a written statement of the particulars of the land concerned and the name (so far as is known) of the owners of the land.

(3) The Commissioner General may make an application to the Court for an order that land which is the subject of a notice under subsection (1)(b) be forfeited to the Crown, and the Court may grant the order if satisfied as to the matters set out in subsection (1).

(4) At any time before the Court makes a forfeiture order under subsection (3), any person claiming an interest in the land may pay to the Commissioner General the amounts due and payable under the *Property Tax Act* in respect of the land (inclusive of interest and penalties due thereon) together with the reasonable costs of all actions and proceedings for the recovery of those

sums up to the time of such payment, and upon proof of such payment the Court shall discharge the application for the order.

(5) Subject to subsection (6), where the Court makes a forfeiture order under this section against any land, the land vests absolutely in the Crown by virtue of the order.

(6) Where land against which a forfeiture order is made under this section—

(a) is subject to the *Registration of Titles Act*—

(i) the Crown is entitled to be registered as the owner of the property; and

(ii) the Commissioner of Lands has power on behalf of the Crown to do, or to authorize the doing of anything necessary or convenient to obtain the registration of the Commissioner of Lands as owner, including the execution of any instrument required to be executed by a person transferring an interest in the land;

(b) is not subject to the *Registration of Titles Act*, the Commissioner General shall cause the order to be recorded in the Record Office.

(7) For the avoidance of doubt, the Commissioner General may proceed under this

section notwithstanding any proceedings commenced under section 40C with respect to land concerned and, upon the making of a forfeiture order under this section in respect of the land, any lien thereon under section 40C shall lapse.”.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Tax Collection Act to enhance the compliance and enforcement capabilities of local authorities and Tax Administration Jamaica. The amendments include provision for remission of property tax (at the discretion of the Minister) in the case of persons over the age of sixty-five years, pensioners and disabled persons; and for orders of sale and forfeiture in respect of land in respect of which property tax is in arrears for at least four consecutive years.

The Bill is a companion measure to the Bills shortly entitled the *Land Valuation (Amendment) Act, 2017*, and the *Property Tax (Amendment) Act, 2017*.

AUDLEY SHAW
Minister of Finance and the Public Service

A BILL

ENTITLED

AN ACT to Amend the Tax Collection Act.

As introduced by the Honourable Minister of
Finance and the Public Service.

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SECTIONS 40G, 41, 42, 43 and 44 OF THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO AMEND

40G—(1)

(3) The list shall contain the following information in respect of each tax debtor in respect of whom a certificate has been registered—

- (a) the amount owed;
- (b) the name of the tax debtor; and
- (c) the type of tax that is comprised in the amount owed.

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Relief to Indigent Persons

41. Whenever it shall come to the knowledge of any Collector of Taxes, that any person in possession of a house, whether as owner or otherwise, which is liable to taxation under any law of this Island, is poor and indigent, and unable to pay the tax, rate or duty upon such house, or cannot afford to pay more than a portion of such taxes, rates or duties, he shall refrain from enforcing the payment of any such taxes, rates or duties, or portion thereof, until he has transmitted to the Parish Council, or, in the cases of the parishes of Kingston and St. Andrew, the Kingston and St. Andrew Corporation, a statement of the case, in which he shall give the name of the party, and the amount due by him for taxes, rates or duties, with a description of the house liable to the taxes, rates or duties, and any evidence he may have of the poverty of such person, or his inability to pay the whole of the tax, rate or duty with which he is charged.

SECTION 42 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

42. It shall be lawful in every such case for the Collector of Taxes, or other officer as aforesaid, to examine on oath (and he is hereby authorized to administer such oath), the person liable for the duties, rates or taxes, and any other person who may be willing to give information respecting his circumstances, and to take down in writing the statement of such persons, to be forwarded with his statement to the Parish Council, or, in the cases of the parishes of Kingston and St. Andrew Corporation.

SECTION 43 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

43. The Parish Council, or Kingston and St. Andrew Corporation, in every such case may institute such further inquiry as they shall consider necessary; and, when satisfied that the person is poor and destitute, and unable to pay the duties, rates or taxes for which he is liable, or to pay the whole of them,

shall report the case, with their recommendation, to the Minister, who may direct the Collector of Taxes not to levy for the same, or for the whole thereof, as the Minister shall think proper, or until such time as the Minister shall think proper.

SECTION 44 OF THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO REPEAL AND REPLACE

44. Whenever the Minister is satisfied from a report made to him by a Collector of Taxes, that any person is so poor and destitute, as to be unable to pay either current property tax or any arrears thereof, due by him, he may direct the Collector of Taxes not to levy for such tax or for such arrears thereof, and he may remit the same, either in whole or in part, and may wipe off all such remitted taxes from the tax roll accounts.