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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Section 235-68, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§235-68 Withholding of tax on the disposition of real  
4 property by nonresident persons. (a) As used in this section:

5           "Nonresident person" means every person other than a  
6 resident person.

7           "Property" or "real property" has the meaning as the same  
8 term is defined in section 231-1.

9           "Resident person" means any:

- 10           (1) Individual included in the definition of resident in  
11           section 235-1;
- 12           (2) Corporation incorporated or granted a certificate of  
13           authority under chapter 414, 414D, or 415A;
- 14           (3) Partnership formed or registered under chapter 425 or  
15           425E;
- 16           (4) Foreign partnership qualified to transact business  
17           pursuant to chapter 425 or 425E;



1 (5) Limited liability company formed under chapter 428 or  
2 any foreign limited liability company registered under  
3 chapter 428; provided that if a single member limited  
4 liability company has not elected to be taxed as a  
5 corporation, the single member limited liability  
6 company shall be disregarded for purposes of this  
7 section and this section shall be applied as if the  
8 sole member is the transferor;

9 (6) Limited liability partnership formed under chapter  
10 425;

11 (7) Foreign limited liability partnership qualified to  
12 transact business under chapter 425;

13 (8) Trust included in the definition of resident trust in  
14 section 235-1; or

15 (9) Estate included in the definition of resident estate  
16 in section 235-1.

17 "Transferee" means any person, the State and the counties  
18 and their respective subdivisions, agencies, authorities, and  
19 boards, acquiring real property [~~which~~] that is located in  
20 Hawaii.

21 "Transferor" means any person disposing real property that  
22 is located in Hawaii.



1 (b) Unless otherwise provided in this section, every  
2 transferee shall deduct and withhold a tax equal to five per  
3 cent of the amount realized on the disposition of Hawaii real  
4 property. Every person required to withhold a tax under this  
5 section is made liable for the tax and is relieved of liability  
6 for or upon the claim or demand of any other person for the  
7 amount of any payments to the department made in accordance with  
8 this section.

9 (c) Every transferee required by this section to withhold  
10 tax under subsection (b) shall make a return of the amount  
11 withheld to the department of taxation not more than twenty days  
12 following the transfer date.

13 (d) No person shall be required to deduct and withhold any  
14 amount under subsection (b), if the transferor furnishes to the  
15 transferee an affidavit by the transferor stating the  
16 transferor's taxpayer identification number and:

17 (1) The transferor is a resident person; provided that a  
18 transferor who claims residency based on a business in  
19 Hawaii is not a resident, if the business:

20 (A) Is not organized under the laws of the State;

21 (B) Does not maintain and staff a permanent office in  
22 the State; and



1           (C) Does not have any business activities in the  
2           State; provided that the mere holding of real  
3           property in the State for investment purposes  
4           does not constitute a business activity; or

5           (2) That by reason of a nonrecognition provision of the  
6           Internal Revenue Code as operative under this chapter  
7           or the provisions of any United States treaty, the  
8           transferor is not required to recognize any gain or  
9           loss with respect to the transfer;

10          (3) A brief description of the transfer; and

11          (4) A brief summary of the law and facts supporting the  
12          claim that recognition of gain or loss is not required  
13          with respect to the transfer.

14          This subsection shall not apply if the transferee has actual  
15          knowledge that the affidavit referred to in this subsection is  
16          false.

17          (e) An application for a withholding certificate may be  
18          submitted by the transferor to the department setting forth:

19           (1) The name, address, and taxpayer identification number,  
20           if any, of the parties to the transaction and the  
21           location and general description of the real property  
22           to be transferred; and



1           (2) A calculation and written justification showing that  
2           the transferor will not realize any gain with respect  
3           to the transfer; or

4           (3) A calculation and written justification showing that  
5           there will be insufficient proceeds to pay the  
6           withholding required under subsection (b) after  
7           payment of all costs, including selling expenses and  
8           the amount of any mortgage or lien secured by the  
9           property.

10           Upon receipt of the application, the department shall  
11           determine whether the transferor has realized or will realize  
12           any gain with respect to the transfer, or whether there will be  
13           insufficient proceeds to pay the withholding. If the department  
14           is satisfied that no gain will be realized or that there will be  
15           insufficient proceeds to pay the withholding, it shall issue a  
16           withholding certificate stating the amount to be withheld, if  
17           any.

18           The submission of an application for a withholding  
19           certificate to the department does not relieve the transferee of  
20           its obligation to withhold or to make a return of the tax under  
21           subsections (b) and (c).



1           (f) No person shall be required to deduct and withhold any  
2 amount under subsection (b) if one or more individual  
3 transferors furnishes to the transferee an affidavit by the  
4 transferor stating the transferor's taxpayer identification  
5 number, that for the year preceding the date of the transfer the  
6 property has been used by the transferor as a principal  
7 residence, and that the amount realized for the property does  
8 not exceed \$300,000.

9           (g) The department may enter into written agreements with  
10 persons who engage in more than one real property transaction in  
11 a calendar year or other persons to whom meeting the withholding  
12 requirements of this section are not practicable. The written  
13 agreements may allow the use of a withholding method other than  
14 that prescribed by this section or may waive the withholding  
15 requirement under this section.

16           (h) Every nonresident person who is a transferor shall  
17 submit to the bureau of conveyances a tax clearance issued by  
18 the department of taxation stating that the transferor has filed  
19 all tax returns and paid all taxes, penalties, and interest owed  
20 to the State before recording any transfer of title of real  
21 property involving the transferor.



1        (i) The director of taxation shall prepare forms as may be  
2 necessary to satisfy the requirements of this section. The  
3 director may also require a nonresident transferor to furnish  
4 information to ascertain the person's compliance with the  
5 requirements of this section and may adopt rules to effectuate  
6 this section pursuant to chapter 91."

7        SECTION 2. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9        SECTION 3. This Act shall take effect upon its approval  
10 and shall apply to taxable years beginning after December 31,  
11 2009.

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INTRODUCED BY:



JAN 14 2010



**Report Title:**

Disposition of Real Property by Nonresident Persons; Tax Clearance Certificate

**Description:**

Requires a nonresident seller of real property located in Hawaii to furnish to the bureau of conveyances a tax clearance certificate issued from the department of taxation that certifies that the seller has paid all general excise, transient accommodations, and income taxes as a condition to recording a change in title on the real property.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

