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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. The largest source of state revenues is from  
2 the payment of various taxes by residents and nonresidents.  
3 During these tough economic times it is especially important for  
4 the State to protect and improve upon the collection of its  
5 various taxes in order to provide widespread financial support  
6 to social programs, infrastructure projects, and public  
7 education. One area of tax collections that the State can  
8 improve upon is the withholding tax requirement under the Hawaii  
9 Real Property Tax Act.

10           According to sales data acquired from the Honolulu Board of  
11 Realtors, it is estimated that the sales revenue generated from  
12 the transfer of single family homes, apartments, and  
13 condominiums across the State in 2008 was over \$9,800,000,000.  
14 If two per cent of those sellers were nonresidents that were  
15 subject to the Hawaii Real Property Tax Act withholding  
16 requirements, then the State would have received over \$9,800,000  
17 in Hawaii Real Property Tax Act withholdings. If it is further

1 assumed that ten per cent of the sales transactions that  
2 involved those nonresident sellers failed to comply with the  
3 Hawaii Real Property Tax Act withholding requirements in section  
4 235-68, Hawaii Revised Statutes, then under that assumption the  
5 State had a shortfall in Hawaii Real Property Tax Act  
6 withholding tax revenues of over \$980,000 for 2008. The  
7 legislature further finds that this analysis is based upon the  
8 2008 calendar year, which experienced nearly a thirty per cent  
9 decline in the sales of single family homes, apartments, and  
10 condominiums from the prior year, according to the Honolulu  
11 Board of Realtors. Thus, a potential shortfall of Hawaii Real  
12 Property Tax Act withholding tax revenues by the State in any  
13 given year could easily exceed \$1,300,000, this amount becomes  
14 far greater if there is a larger number of nonresident sellers  
15 of real property in Hawaii or a larger percentage of those  
16 nonresident seller transactions that do not comply with the  
17 Hawaii Real Property Tax Act withholding requirements.

18 The purpose of this Act is to ensure that the Hawaii Real  
19 Property Tax Act withholding requirements are properly adhered  
20 to by requiring a tax payment verification form to be furnished  
21 to the bureau of conveyances as a precondition to recording any  
22 transfer in title of the real property. This Act will help to

1 ensure that all Hawaii Real Property Tax Act withholding tax  
2 revenues are captured by the State and will also improve on  
3 capturing additional income tax revenues from the sale of real  
4 property in Hawaii by nonresidents who may otherwise not file a  
5 State income, general excise, or transient accommodation tax  
6 return.

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

9 **"§235-68 Withholding of tax on the disposition of real**  
10 **property by nonresident persons.** (a) As used in this section:

11 "Nonresident person" means every person other than a  
12 resident person.

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

15 "Resident person" means any:

16 (1) Individual included in the definition of resident in  
17 section 235-1;

18 (2) Corporation incorporated or granted a certificate of  
19 authority under chapter 414, 414D, or 415A;

20 (3) Partnership formed or registered under chapter 425 or  
21 425E;

- 1 (4) Foreign partnership qualified to transact business  
2 pursuant to chapter 425 or 425E;
- 3 (5) Limited liability company formed under chapter 428 or  
4 any foreign limited liability company registered under  
5 chapter 428; provided that if a single member limited  
6 liability company has not elected to be taxed as a  
7 corporation, the single member limited liability  
8 company shall be disregarded for purposes of this  
9 section and this section shall be applied as if the  
10 sole member is the transferor;
- 11 (6) Limited liability partnership formed under chapter  
12 425;
- 13 (7) Foreign limited liability partnership qualified to  
14 transact business under chapter 425;
- 15 (8) Trust included in the definition of resident trust in  
16 section 235-1; or
- 17 (9) Estate included in the definition of resident estate  
18 in section 235-1.

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

1 "Transferor" means any person disposing real property that  
2 is located in Hawaii.

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

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

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

- 19 (1) The transferor is a resident person; or  
20 (2) That by reason of a nonrecognition provision of the  
21 Internal Revenue Code as operative under this chapter  
22 or the provisions of any United States treaty, the

1 transferor is not required to recognize any gain or  
2 loss with respect to the transfer;  
3 (3) A brief description of the transfer; and  
4 (4) A brief summary of the law and facts supporting the  
5 claim that recognition of gain or loss is not required  
6 with respect to the transfer.

7 This subsection shall not apply if the transferee has actual  
8 knowledge that the affidavit referred to in this subsection is  
9 false.

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

12 (1) The name, address, and taxpayer identification number,  
13 if any, of the parties to the transaction and the  
14 location and general description of the real property  
15 to be transferred; and

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

19 (3) A calculation and written justification showing that  
20 there will be insufficient proceeds to pay the  
21 withholding required under subsection (b) after  
22 payment of all costs, including selling expenses and

1           the amount of any mortgage or lien secured by the  
2           property.

3           Upon receipt of the application, the department shall  
4 determine whether the transferor has realized or will realize  
5 any gain with respect to the transfer, or whether there will be  
6 insufficient proceeds to pay the withholding. If the department  
7 is satisfied that no gain will be realized or that there will be  
8 insufficient proceeds to pay the withholding, it shall issue a  
9 withholding certificate stating the amount to be withheld, if  
10 any.

11           The submission of an application for a withholding  
12 certificate to the department does not relieve the transferee of  
13 its obligation to withhold or to make a return of the tax under  
14 subsections (b) and (c).

15           (f) No person shall be required to deduct and withhold any  
16 amount under subsection (b) if one or more individual  
17 transferors furnishes to the transferee an affidavit by the  
18 transferor stating the transferor's taxpayer identification  
19 number, that for the year preceding the date of the transfer the  
20 property has been used by the transferor as a principal  
21 residence, and that the amount realized for the property does  
22 not exceed \$300,000.

1 (g) The department may enter into written agreements with  
2 persons who engage in more than one real property transaction in  
3 a calendar year or other persons to whom meeting the withholding  
4 requirements of this section are not practicable. The written  
5 agreements may allow the use of a withholding method other than  
6 that prescribed by this section or may waive the withholding  
7 requirement under this section.

8 (h) Unless otherwise provided in this section, every  
9 nonresident person that is a transferee under this section shall  
10 submit to the bureau of conveyances a certified Hawaii real  
11 property tax act payment verification form issued from the  
12 department verifying that the transferee properly made a return  
13 of the amount withheld to the department pursuant to the  
14 requirements set forth in this section. Submission of a  
15 certified Hawaii real property tax act payment verification form  
16 to the bureau of conveyances shall be a precondition to  
17 recording any transfer of title by a nonresident person that is  
18 a transferee under this section.

19 (i) Unless otherwise provided in this section, every  
20 nonresident person that is a transferor under this section shall  
21 obtain a certified tax clearance certificate from the department  
22 verifying that the transferor has filed all required returns and



1 paid all required taxes, penalties, and interest. To comply  
2 with the requirements of this subsection, the nonresident  
3 transferor shall submit a tax clearance application to the  
4 department no later than fifteen days after the transfer date of  
5 the real property. Failure of the nonresident transferor to  
6 comply with the requirements of this subsection may subject the  
7 nonresident transferor to fines, penalties, and interest.

8 (j) The director of taxation shall prepare forms as may be  
9 necessary to satisfy the requirements of subsections (h) and  
10 (i). The director may also require a nonresident transferee or  
11 transferor under this section to furnish information to  
12 ascertain the person's compliance with the requirements of  
13 subsections (h) or (i), as applicable, and may adopt rules  
14 necessary to effectuate the purposes of this subsection pursuant  
15 to chapter 91."

16 SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on January 1, 2010.

**Report Title:**

HARPTA Withholding Tax; Tax Clearance Certificate; HARPTA  
Payment Verification Form

**Description:**

Requires a nonresident buyer of real property located in Hawaii to furnish to the bureau of conveyances a Hawaii Real Property Tax Act (HARPTA) payment verification form issued from the department of taxation that certifies that the HARPTA withholding requirements were satisfied as a precondition to recording a change in title on the real property. Requires the seller to submit a certified tax clearance certificate as a condition to transferring real property title. (SD2)