

JAN 27 2010

S.B. NO. 2887

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 is located in Hawaii.

20 "Transferor" means any person disposing real property that
21 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; or
18 (2) That by reason of a nonrecognition provision of the
19 Internal Revenue Code as operative under this chapter
20 or the provisions of any United States treaty, the
21 transferor is not required to recognize any gain or
22 loss with respect to the transfer;



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

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

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

- 10 (1) The name, address, and taxpayer identification number,
- 11 if any, of the parties to the transaction and the
- 12 location and general description of the real property
- 13 to be transferred; and
- 14 (2) A calculation and written justification showing that
- 15 the transferor will not realize any gain with respect
- 16 to the transfer; or
- 17 (3) A calculation and written justification showing that
- 18 there will be insufficient proceeds to pay the
- 19 withholding required under subsection (b) after
- 20 payment of all costs, including selling expenses and
- 21 the amount of any mortgage or lien secured by the
- 22 property.



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

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

13 (f) No person shall be required to deduct and withhold any
14 amount under subsection (b) [~~if~~] :

15 (1) If one or more individual transferors furnishes to the
16 transferee an affidavit by the transferor stating the
17 transferor's taxpayer identification number, that for
18 the year preceding the date of the transfer the
19 property has been used by the transferor as a
20 principal residence, and that the amount realized for
21 the property does not exceed \$300,000 [~~-~~];



1 (2) If the transferee acquires the real property pursuant
2 to foreclosure or a deed in lieu of foreclosure; or

3 (3) If the amount realized by the transferor includes real
4 property located in Hawaii the fair market value of
5 which is equal to or greater than the fair market
6 value of the real property acquired by the transferee.

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

14 (h) Any person held liable for the tax under subsection
15 (b) due to a failure to deduct and withhold on the disposition
16 of real property as required, shall be relieved of that
17 liability to the extent that the department has collected an
18 amount of tax equal to the transferor's tax liability related to
19 the disposition. This subsection shall not relieve any person
20 from liability for interest or any penalties otherwise
21 applicable in respect of any failure to deduct and withhold."



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

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

5

INTRODUCED BY: *Anna Mercedes Ki*



Report Title:

Taxation; Disposition of Real Property; Withholding

Description:

Amends income tax code regarding the withholding of tax on the disposition of real property by nonresident persons.

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

