
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 "Department" means the department of taxation.

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

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

10 "Resident person" means any:

11 (1) Individual included in the definition of resident in
12 section 235-1;

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

15 (3) Partnership formed or registered under chapter 425 or
16 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 is located in 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
14 days 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~~]:

17 (1) If one or more individual transferors furnishes to the
18 transferee an affidavit by the transferor stating the
19 transferor's taxpayer identification number, that for
20 the year preceding the date of the transfer the
21 property has been used by the transferor as a

1 principal residence, and that the amount realized for
2 the property does not exceed \$300,000[-];

3 (2) If the transferee furnishes an affidavit to the
4 department that the transferee acquired the real
5 property pursuant to foreclosure or a deed in lieu of
6 foreclosure;

7 (3) If the amount realized by the transferor includes real
8 property located in Hawaii the fair market value of
9 which is equal to or greater than the fair market
10 value of the real property acquired by the transferee;
11 or

12 (4) If the amount realized on the disposition of real
13 property that is a time share interest as defined in
14 section 514E-1 does not exceed \$100,000.

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

1 (h) Any person held liable for the tax under subsection
2 (b) due to a failure to deduct and withhold on the disposition
3 of real property as required, shall be relieved of that
4 liability to the extent that the department has collected an
5 amount of tax equal to the transferor's tax liability related to
6 the disposition. This subsection shall not relieve any person
7 from liability for interest or any penalties otherwise
8 applicable in respect of any failure to deduct and withhold."

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

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

13

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. (SD1)

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