
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that pursuant to section
2 235-68, Hawaii Revised Statutes, commonly referred to as the
3 Hawaii Real Property Tax Act, whenever real property in the
4 State is transferred, the buyer or transferee is required to
5 withhold a percentage of the amount realized from the transfer.
6 However, an exemption to this requirement is granted if the
7 seller or transferor is a "resident person" and is not required
8 to recognize any gain or loss on the transfer. Under the Hawaii
9 Real Property Tax Act, the term "resident person" currently
10 includes foreign partnerships, foreign limited liability
11 partnerships, foreign limited partnerships, and foreign limited
12 liability companies that are qualified to transact business in
13 the State.

14 The legislature also finds that, due to this exemption, the
15 State loses tax revenues whenever a nonresident fails to pay the
16 taxes due on a real property transfer. Removing foreign
17 partnerships, foreign limited liability partnerships, foreign



1 limited partnerships, and foreign limited liability companies
2 from the definition of "resident person" would ensure that taxes
3 would be properly withheld on all transfers involving
4 nonresidents.

5 The legislature further finds that subjecting nonresidents
6 to this withholding requirement would not increase their tax
7 burden, as the amount of taxes owed would remain the same. The
8 only difference would be the manner in which the taxes are
9 collected. The legislature therefore finds that imposing this
10 withholding requirement on nonresidents would promote the
11 State's legitimate interest in securing the payment of taxes
12 before the revenue leaves the State.

13 Accordingly, the purpose of this Act is to clarify that the
14 definition of "resident person" under the Hawaii Real Property
15 Tax Act does not include foreign partnerships, foreign limited
16 liability partnerships, foreign limited partnerships, or foreign
17 limited liability companies.

18 SECTION 2. Section 235-68, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) As used in this section:



1 "Nonresident person" means every person other than a
2 resident person.

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

5 "Resident person" means any:

6 (1) Individual included in the definition of resident in
7 section 235-1;

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

10 (3) Partnership formed or registered under chapter 425 or
11 425E;

12 [~~4~~] ~~Foreign partnership qualified to transact business~~
13 ~~pursuant to chapter 425 or 425E,~~

14 ~~(5)]~~ (4) Limited liability company formed under chapter
15 428 [~~or any foreign limited liability company~~
16 ~~registered under chapter 428~~]; provided that if a
17 single member limited liability company has not
18 elected to be taxed as a corporation, the single
19 member limited liability company shall be disregarded
20 for purposes of this section and this section shall be
21 applied as if the sole member is the transferor;



- 1 ~~[(6)]~~ (5) Limited liability partnership formed under
2 chapter 425;
- 3 ~~[(7)]~~ ~~Foreign limited liability partnership qualified to~~
4 ~~transact business under chapter 425;~~
- 5 ~~[(8)]~~ (6) Trust included in the definition of resident
6 trust in section 235-1; or
- 7 ~~[(9)]~~ (7) Estate included in the definition of resident
8 estate in section 235-1.

9 "Resident person" shall not include foreign partnerships
10 operating under section 425-3, foreign limited liability
11 partnerships operating under section 425-161, foreign limited
12 partnerships operating under section 425E-901, or foreign
13 limited liability companies operating under section 428-1001.

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

18 "Transferor" means any person disposing real property that
19 is located in Hawaii."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on July 1, 2050, and
2 shall apply to real estate dispositions that occur on or after
3 January 1, 2021.



Report Title:

Income Tax Law; HARPTA; Resident Person; Foreign Entities

Description:

Clarifies that the definition of "resident person" under the Hawaii Real Property Tax Act does not include foreign partnerships, foreign limited liability partnerships, foreign limited partnerships, or foreign limited liability companies. Effective 7/1/2050. Applies to real estate dispositions that occur on or after 1/1/2021. (SD1)

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

