

# INTRODUCTION TO HARPTA LAW



**Local Hawaii Real Estate**

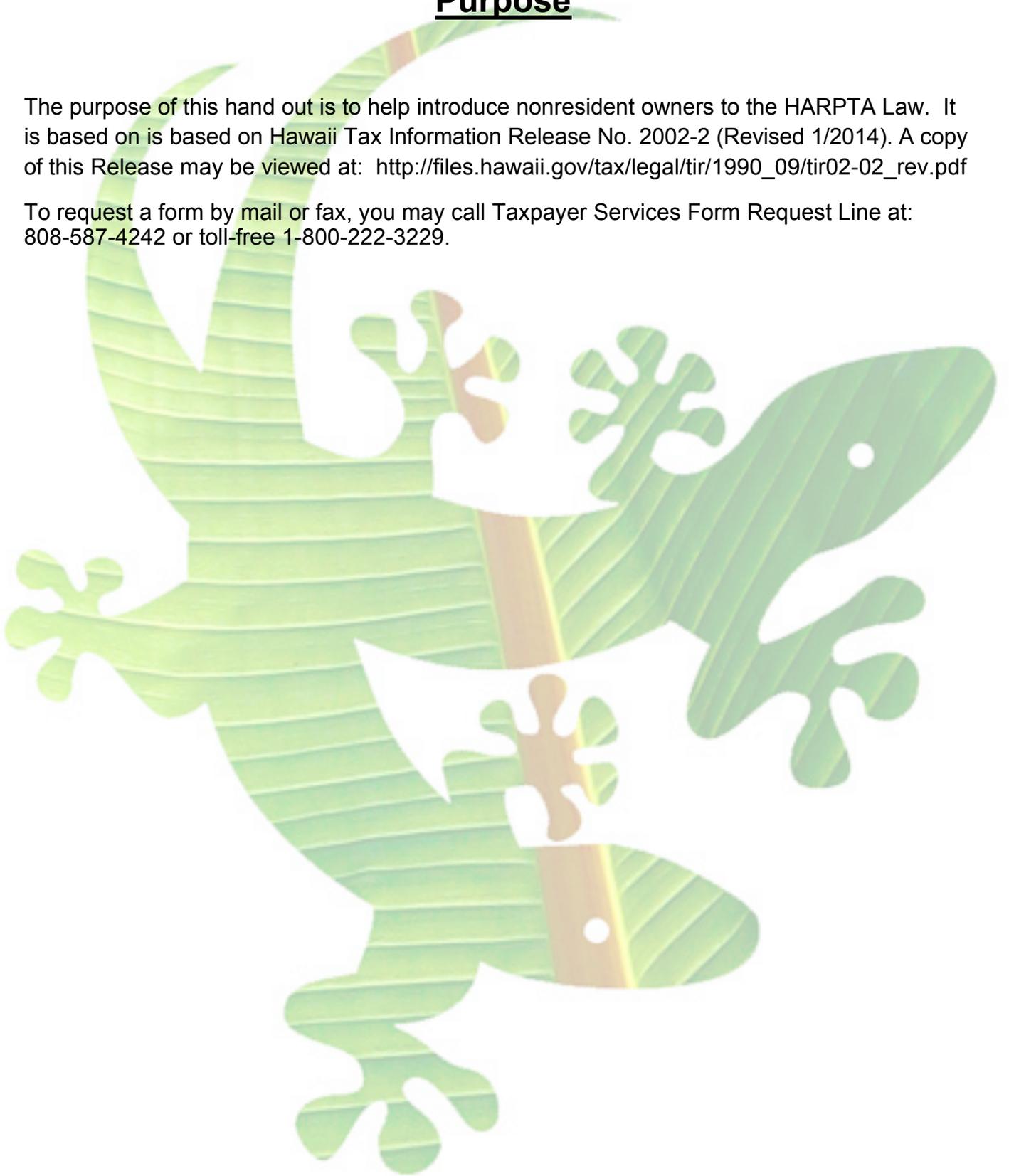
**Honesty • Integrity • Commitment**

260 Kamehameha Ave, Suite 214, Hilo, Hawaii 96720

## **Purpose**

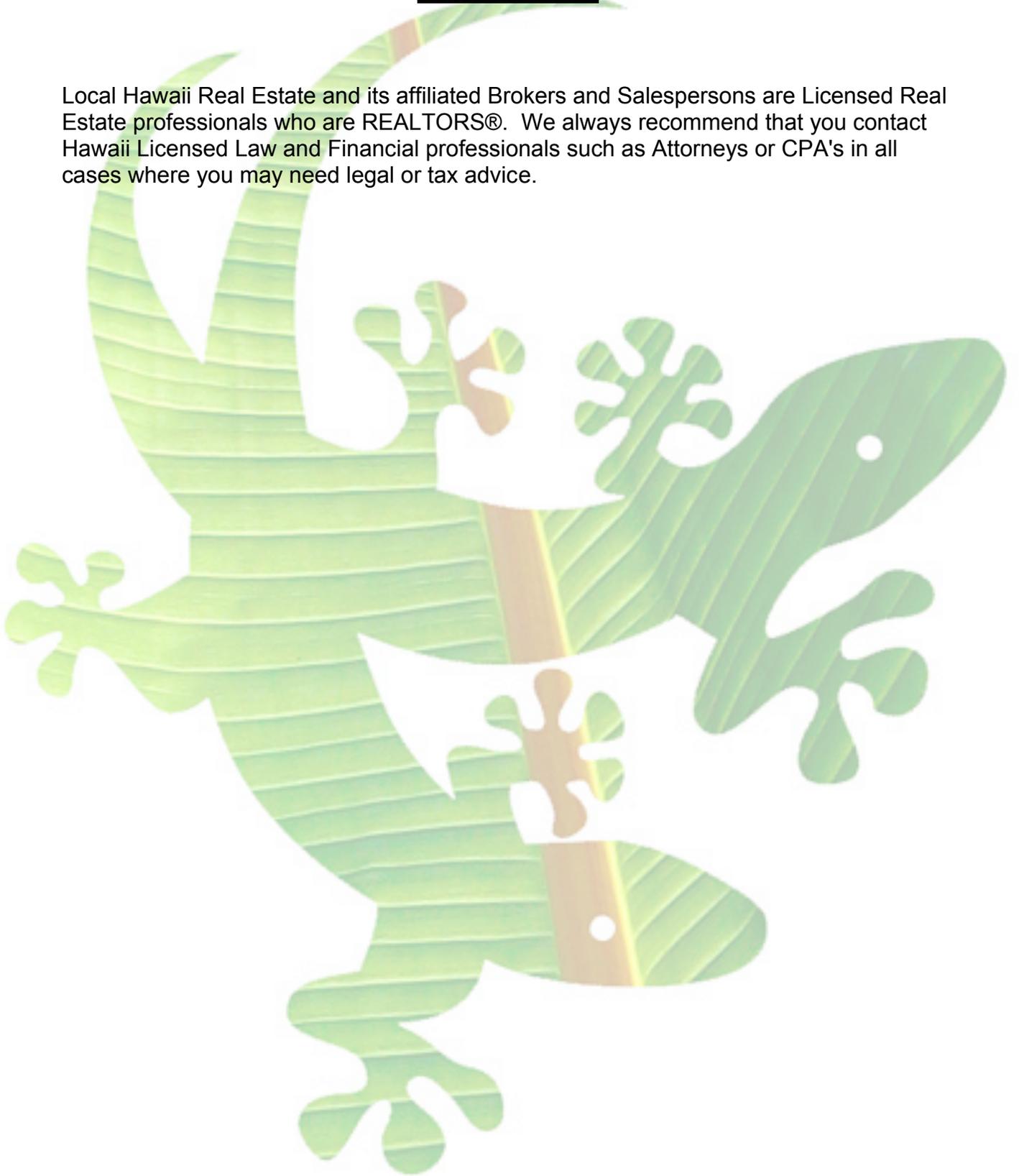
The purpose of this hand out is to help introduce nonresident owners to the HARPTA Law. It is based on Hawaii Tax Information Release No. 2002-2 (Revised 1/2014). A copy of this Release may be viewed at: [http://files.hawaii.gov/tax/legal/tir/1990\\_09/tir02-02\\_rev.pdf](http://files.hawaii.gov/tax/legal/tir/1990_09/tir02-02_rev.pdf)

To request a form by mail or fax, you may call Taxpayer Services Form Request Line at: 808-587-4242 or toll-free 1-800-222-3229.



## **Legal Notice**

Local Hawaii Real Estate and its affiliated Brokers and Salespersons are Licensed Real Estate professionals who are REALTORS®. We always recommend that you contact Hawaii Licensed Law and Financial professionals such as Attorneys or CPA's in all cases where you may need legal or tax advice.



## **What is HARPTA?**

HARPTA is the short name we use to refer to the Hawaii Real Property Tax Law on nonresidents. Under HARPTA, an estimate of the transferor's (owner's) capital gains tax that will be due Hawaii is withheld at closing and paid to the Hawaii Department of Taxation as a "prepayment" of the tax a non-resident seller owes on the sale of real estate. Prior to HARPTA, the State of Hawaii had no lawful way of collecting a tax unless the nonresident owner filed a Hawaii income tax return for the year of the sale.

## **How does HARPTA define nonresident?**

A nonresident owner for purposes of HARPTA is basically an owner who does not file a Hawaii resident tax return.

## **How is HARPTA enforced?**

The HARPTA Law requires a buyer to withhold 5% of the sales price and send it to the Hawaii Department of Taxation as a "**prepayment**" of the tax a nonresident transferor or property owes on the sale of real estate. Under the law, it is the Buyer's obligation to withhold the tax. In practice, provided that instructions are given to escrow, the amount to be withheld can be shown on the settlement statement and the Escrow Officer would remit the withholding amount to the Department of Taxation on behalf of Seller and Buyer, unless one of the specified exclusions apply.

The Following are the most common exceptions:

- a) There is no taxable gain on the sale and an approved N-288B form has been received from the state.
- b) There are insufficient proceeds from the sale to pay the withholding and an approved N-288B form has been received from the state. If some proceeds are available and there has been gain, the state may adjust the withholding to a lesser amount.
- c) The capital gains tax due on the sale of a personal residence has been excluded by having owned and occupied the property for two out of the past five years and a N-289 form has been completed.
- d) In the year prior to the sale the property was used as a primary residence and the sales price is \$300,000 or less and the seller has completed a N-289 form.
- e) The owner is in the military and selling their primary residence and has completed a N-289 form.
- f) The owner conducts an IRC 1031 tax-deferred exchange.

## **What is an IRC 1031 tax-deferred exchange?**

Section 1031 of the Internal Revenue Code (IRC) provides for the deferment of capital gains taxes realized on the sale of investment real estate when it is exchanged for other investment real estate. Under IRC section 1031, if you sell investment real estate and buy more expensive investment real estate within a prescribed time frame, you can defer capital gains taxes on the property you are selling.

## **Is there a web site with information about 1031 of the Internal Revenue Code?**

The Internal Revenue Service URL is: [http://www.irs.gov/irb/2008-10\\_IRB/ar12.html](http://www.irs.gov/irb/2008-10_IRB/ar12.html)

### **Is Hawaii tax law for the sale of a personal residence similar to the Federal Taxpayer Relief Act of 1997?**

Current federal tax policy allows an owner to exclude up to \$250,000 of gain (single) or up to \$500,000 of gain (married) providing they have owned and occupied a property for at least two out of the past five years. Lower exclusions may be allowed under certain circumstances if the owner occupancy time frame has been less than two years. You may complete a Form N-289 should this law apply to you.

### **What if the collected amount is more than you owe?**

If the 5% withholding is more than a transferor owes, the transferor should file a Hawaii form N-288C after closing. The State of Hawaii Department of Taxation has no provision we know of for filing prior to closing so the correct or exact amount will be withheld.

The HAPTA Law states there are three ways that a transferor may apply for a refund of amounts withheld that exceed the transferor's tax liability.

- 1) a transferor may apply for a refund when the transferor files an income tax return for the year.
- 2) a transferor may file Form N-288C (Application for Tentative Refund of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests) to adjust the amount of tax withheld and receive an early refund of the amount that exceeds the transferor's tax liability for the transaction. The transferor must present sufficient information on Form N-288C regarding the basis; sales price, and gain on the property as determined by Hawaii income tax law. After reviewing Form N-288C, the Department will refund the amount withheld and paid over to the Department, which exceeds the tax on the gain. The transferor/taxpayer must still file a tax return after the end of the tax year, report the entire income for the year (from other sources as well as the transaction), and pay any additional tax due on the income or request a refund.
- 3) a transferor who is closing out the tax year in the State (i.e., leaving the State and has no other sources of income in the State) may file a short year tax return. Additionally, a transferor may be a one-time taxpayer because the entire Hawaii tax liability arises solely out of the single transfer of real property located in the State. This transferor, who is not conducting business in the State and does not have and will not have during the rest of the year any other taxable income in the State, also may file an early short year tax return.

### **What if there are insufficient proceeds from the sale to pay the withholding or if there is a loss on the sale rather than a gain?**

The withholding may not be required if there are insufficient proceeds from the sale or if there has been a capital loss rather than a capital gain. When either of these occurs, escrow will not close the transaction until a Hawaii form N-288B has been approved by the state (unless the seller agrees to pay the withholding). If the sale creates a capital

(Continued on next page)

loss or the proceeds available are insufficient, the owner must submit appropriate supporting documents to the state, these must include (as applicable):

- a) a copy of the closing statement when the property was purchased;
- b) documentation showing depreciation that has been claimed;
- c) documentation for any capital improvements;
- d) documentation for deferred gain from any prior sale(s) that adjusted the owner's buying basis;
- e) an estimated closing statement prepared by escrow.

To allow time for approval, the N-288B form must be submitted to the State of Hawaii Department of Taxation at least **ten days** prior to closing. Since an estimated closing statement prepared by escrow has to accompany the N-288B form, the N-288 form is usually submitted relatively late during the escrow process. If the N-288B form is rejected, there is usually insufficient time to submit a revised form and still meet the scheduled closing date. We have been informed N-288B rejections are quite common because of insufficient documentation.

**Local Hawaii Real Estate recommends that all owners have a Hawaii Licensed CPA or professional tax advisor prepare their N-288B form to document a capital loss so it will not be returned for insufficient documentation.**

### **GET Tax on Rental Property**

The N-288B form has a section where the owner indicates if the property has been a rental and if so, it wants the owner's Hawaii General Excise Tax (GET) number for the property. If you have not been paying the Hawaii GET on your rental income, you may have to pay your past GET and applicable penalties with interest in order to have your form N-288B approved.

### **Where I can find specific HARPTA forms?**

Online: [http://tax.hawaii.gov/forms/a1\\_b3\\_6harpta/](http://tax.hawaii.gov/forms/a1_b3_6harpta/)

More Forms and other tax information are available at the State of Hawaii Department of Taxation website: <http://tax.hawaii.gov>

To request a form by mail or fax, you may call the State of Hawaii Department of Taxation Taxpayer Services Form Request Line at 808.587.7572, or toll-free at 800.222.7572.

### **What if I want to talk to some one?**

More Hawaii State tax information may be found at:

Tel: 808.587.4242

Tel: 800.222.3229 (Toll- Free)

Telephone for the Hearing Impaired: 808.587.1418 or 800.887.8974 (Toll- Free)

Fax: 808.587.1488

**Samples of HARPTA Tax Forms**  
(as of 6/4/2017)

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**HAWAII WITHHOLDING TAX RETURN FOR  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

2017



NDF161

**Complete Lines 1 - 6.**

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

(Copy A of Form(s) N-288A and your check or money order **MUST** be attached.)

**To Be Completed by the Transferee/Buyer Required to Withhold**

<b>1</b> Name of transferee/buyer	Identification number (SSN or FEIN)		
Address (number and street)			
City, State, and Postal/ZIP Code (province, postal code, and country)			
<b>2</b> Description and location of property acquired (Include tax map key number)			
<b>3</b> Date of transfer	<b>4</b> Number of Forms N-288A attached	<b>5</b> Amount realized on the transfer	<b>6</b> Amount withheld

**Please  
Sign  
Here**

I hereby declare under penalties provided by section 231-36, HRS, that I have examined this return and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than individual, partner or member, fiduciary, or corporate officer) is based on all information of which preparer has any knowledge.

➤ \_\_\_\_\_ Signature of transferee/buyer (individual, partner or member, fiduciary, or corporate officer) \_\_\_\_\_ Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

**Paid  
Preparer's  
Use Only**

Preparer's signature Print preparer's name ➤ _____	Date _____	Check if self-employed ➤ <input type="checkbox"/>	Preparer's identification number _____
Firm's name (or yours if self-employed), address, and Postal/ZIP Code ➤ _____	Federal E.I. No. ➤ _____	Phone No. ➤ _____	

**General Instructions**

**Purpose of Form**

A 5% withholding obligation is generally imposed on the transferee/buyer when a Hawaii real property interest is acquired from a nonresident person. This withholding serves to collect Hawaii income tax that may be owed by the nonresident person. Use this form to report and transmit the amount withheld.

**Note:** You are not required to withhold if any of the exceptions listed on page 2 apply.

See Tax Facts 2010-1, *Understanding HARP-TA*, and Tax Information Release No. 2002-02 (Revised 1/2014), *Withholding of State Income Taxes on the Disposition of Hawaii Real Property*, for more information.

**Amount to Withhold**

Generally, you must withhold 5% of the amount realized on the disposition by the transferor. See *Amount realized* under *Definitions*, later.

**Joint Transferors/Sellers.**—If one or more nonresident persons and one or more resident persons jointly transfer a Hawaii real property interest,

first, determine the amount subject to withholding by allocating the amount realized from the transfer among the transferors/sellers based on their capital contribution to the property. For this purpose, a taxpayer and spouse are treated as having contributed 50% each. Second, withhold on the total amount allocated to nonresident transferors/sellers. Third, credit the amount withheld among the nonresident transferors/sellers as they mutually agree. The transferors/sellers must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the nonresident transferors/sellers.

**Who Must File**

A transferee/buyer of a Hawaii real property interest, including an individual, corporation, partnership, or fiduciary, must file Form N-288 to report and transmit the amount withheld. If two or more persons are joint transferees/buyers, each of them is obligated to withhold. However, the obligation of each will be met if one of the joint transferees/buyers withholds and transmits the required amount to

the State of Hawaii, Department of Taxation (Department).

**When to File**

A transferee/buyer must report and transmit to the Department the tax withheld by the 20th day after the date of transfer. Timely mailing of Forms N-288 and N-288A by U.S. mail will be treated as timely filing.

Hawaii has adopted the Internal Revenue Code (IRC) provision to allow documents and payments delivered by a designated private delivery service to qualify for the “timely mailing treated as timely filing/paying rule.” The Department will conform to the Internal Revenue Service (IRS) listing of designated private delivery service and type of delivery services qualifying under this provision. Timely filing of mail which does not bear the U.S. Post Office cancellation mark or the date recorded or marked by the designated delivery service will be determined by reference to other competent evidence. The private delivery service can tell you how to get written proof of the mailing date.

## Where to File

Mail Form N-288, Copy A of Form(s) N-288A, and your check or money order to:

Hawaii Department of Taxation  
P.O. Box 1530  
Honolulu, Hawaii 96806-1530

## Form(s) N-288A and Your Check or Money Order Must Be Attached

Anyone who completes Form N-288 must also complete a Form N-288A, Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests, for each nonresident transferor/seller subject to withholding.

If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, prepare a separate Form N-288A for each nonresident transferor/seller. One Form N-288A should be filed for a taxpayer and spouse if they will be filing a joint return for the year in which they transferred their Hawaii real property interest. Copy A and your check or money order must be attached to Form N-288. Copy B must be sent to the transferor/seller. Copy C is for your records. To receive credit for the amount withheld, the transferor/seller must file a Hawaii income tax return.

## Penalties

In addition to the penalties provided under sections 231-34, 231-35, 231-36, and 231-39, Hawaii Revised Statutes (HRS), if a person is required but fails to withhold tax under section 235-68, HRS, that person is made liable for the tax.

## Definitions

**Nonresident person** means every person other than a resident person.

**Property or real property** has means all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to the land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use is necessary to the utility of the land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to the land, buildings, structures, fences, and improvements, excluding, however, any growing crops.

**Resident person** means any: (1) Individual included in the definition of "resident" in section 235-1, HRS; (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A, HRS; (3) Partnership formed or registered under chapter 425 or 425E\*, HRS; (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425E\*, HRS; (5) Limited liability company formed under chapter 428, HRS, or any foreign limited liability company registered under chapter 428, HRS; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of section 235-68, HRS, and section 235-68, HRS, shall be applied as if the sole member

is the transferor; (6) Limited liability partnership formed under chapter 425, HRS; (7) Foreign limited liability partnership qualified to transact business under chapter 425, HRS; (8) Trust included in the definition of "resident trust" in section 235-1, HRS; or (9) Estate included in the definition of "resident estate" in section 235-1, HRS.

**Transferee/Buyer** means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

**Transferor/Seller** means any person disposing real property which is located in Hawaii.

**Amount realized** means the sum of the cash paid, or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

**Date of transfer** means the first date on which consideration is paid or a liability is assumed by the transferee/buyer. Payment of consideration does not include the payment, before the passage of legal or equitable title (other than pursuant to an initial purchase contract), of earnest money, a good-faith deposit, or any similar sum primarily intended to bind the parties to the contract and subject to forfeiture. However, a payment that is not forfeitable may nevertheless be found to constitute earnest money, a good-faith deposit, or a similar sum.

An individual's **Identification number** is the social security number. The IRS issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The ITIN issued by the IRS must be used as the individual's identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write "Applied For". For any other person, the identification number is the federal employer identification number (FEIN). For a single member LLC that has not elected to be taxed as a corporation, where the only member is an individual, the identification number would be the social security number of the individual. For a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, the identification number would be the social security number of the individual. For all other trusts, the identification number would be the FEIN of the trust.

## Exceptions

You are not required to withhold if the transferor/seller furnishes to you Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, stating that:

- 1) The transferor/seller is a resident person, or
- 2) That by reason of a nonrecognition provision of the IRC as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or

- 3) For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000.

If you receive a certification, you cannot withhold any tax, unless you know that the certification is false. The certification must be signed by the individual, a responsible officer of a corporation, a member or general partner of a partnership, or the trustee, executor, or equivalent fiduciary of a trust or estate.

**Belated notice or false certification.**—If after the date of transfer you receive notice that the certification you received is false, you can rely on the certification and not withhold on consideration paid before you received the notice. However, you must withhold the full 5% of the amount realized from any consideration that remains to be paid, if possible. You must do so by withholding and paying over the entire amount of each successive payment of consideration until the full 5% has been withheld and paid to the Department. These amounts must be reported and transmitted to the Department by the 20th day following the date of each payment.

## Withholding Certificate Issued by the Department of Taxation

A withholding certificate may be issued by the Department to reduce or eliminate withholding on dispositions of Hawaii real property interests by nonresident persons. The certificate may be issued if 1) the transferor/seller will not realize any gain with respect to the transfer, or 2) there will be insufficient proceeds to pay the withholding required after payment of all costs.

Attach a copy of the approved Form N-288B, Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interests.

## Specific Instructions

**Lines 1.**—Enter the name and identification number (social security number (SSN) or federal employer identification number (FEIN)) of the transferee/buyer. Enter the home address of the individual or the office address of the entity.

**Lines 2.**—Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse. Include the tax map key number.

**Line 5.**—Enter the amount realized. If the transferor/seller is reporting the gain under the installment method, (i.e., agreement of sales or purchase money mortgages) enter the principal portion of the total payments for the year.

**Line 6.**—Enter the amount withheld. If the amount required to be withheld has been reduced or waived by the Department, attach a copy of the approved Form N-288B. Also, if one or more of the transferors/sellers are exempt from the withholding and you are issuing the exempt transferor/seller a Form N-288A, attach a copy of the exempt transferor/seller's Form N-289.

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



Copy A **2017**

NFF161

For State of Hawaii, Department of Taxation.  
*See Instructions on back of this copy.*

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• ATTACH YOUR CHECK OR MONEY ORDER HERE •

1. Description and location of property transferred <i>(Include tax map key number)</i>		6. Transferor/Seller is: <input type="checkbox"/> An individual or revocable living trust <input type="checkbox"/> A partnership <input type="checkbox"/> A corporation <input type="checkbox"/> An S corporation <input type="checkbox"/> A trust or estate	
2. Date of transfer or installment payment date	3. Amount realized <i>(Your share of sales or contract price)</i>	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	● 8. Hawaii income tax withheld <i>(Your share of tax withheld)</i>
4. Transferee/Buyer's I.D. no. (SSN or FEIN)		● 9. Transferor/Seller's I.D. no. (SSN or FEIN) <i>(Enter only one I.D. no.)</i>	
5. Transferee/Buyer's name  Street address  City, state, and postal/ZIP code		● 10. Spouse's SSN  ● 11. Name of transferor/seller <i>(Enter only one name. See Instructions.)</i>  Transferor/Seller's street address  City, province or state, postal/ZIP code, and country	
● 12. Spouse's Name			

**THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.**  
ATTACH COPY A OF FORM(S) N-288A AND YOUR CHECK OR MONEY ORDER TO FORM N-288 (Payable to "Hawaii State Tax Collector")  
FORM N-288A

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

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For State of Hawaii, Department of Taxation.  
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2. Date of transfer or installment payment date	3. Amount realized <i>(Your share of sales or contract price)</i>	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	● 8. Hawaii income tax withheld <i>(Your share of tax withheld)</i>
4. Transferee/Buyer's I.D. no. (SSN or FEIN)		● 9. Transferor/Seller's I.D. no. (SSN or FEIN) <i>(Enter only one I.D. no.)</i>	
5. Transferee/Buyer's name  Street address  City, state, and postal/ZIP code		● 10. Spouse's SSN  ● 11. Name of transferor/seller <i>(Enter only one name. See Instructions.)</i>  Transferor/Seller's street address  City, province or state, postal/ZIP code, and country	
● 12. Spouse's Name			

**THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.**  
ATTACH COPY A OF FORM(S) N-288A AND YOUR CHECK OR MONEY ORDER TO FORM N-288. (Payable to "Hawaii State Tax Collector")  
FORM N-288A

## Instructions to Transferee/Buyer

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

Prepare Form N-288A for each nonresident transferor/seller subject to withholding. If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, prepare a separate Form N-288A for each nonresident transferor/seller. One Form N-288A should be filed for a taxpayer and spouse if they will be filing a joint return for the year in which they transferred their Hawaii real property interest. Attach Copy A of Form(s) N-288A and your check or money order to Form N-288.

### Joint Transferors/Sellers

If one or more nonresident persons and one or more resident persons jointly transfer a Hawaii real property interest, first, determine the amount subject to withholding by allocating the amount realized from the transfer among the transferors/sellers based on their capital contribution to the property. For this purpose, a taxpayer and spouse are treated as having contributed 50% each. Second, withhold on the total amount allocated to nonresident transferors/sellers. Third, credit the amount withheld among the nonresident transferors/sellers as they mutually agree. The transferors/sellers must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the nonresident transferors/sellers.

**Box 1** — Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse. Include the tax map key.

**Box 2** — Enter the date of transfer. For payments on an installment sale, enter the payment date of the installment.

**Box 3** — Enter the amount realized by the transferor/seller whose name appears on this form. If the transferor/seller is reporting the gain under the installment method, enter the principal portion of the total payments for the year.

**Box 4** — Enter the identification number (social security number or federal employer identification number) of the transferee/buyer.

**Box 5** — Enter the name and address of the transferee/buyer.

**Box 6** — Check the applicable box to indicate whether the transferor/seller is an individual or revocable living trust, a partnership, a corporation, an S corporation, or trust (including an irrevocable trust) or estate. If the transferor/seller is an LLC that files a partnership return, check the box for a partnership. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, check the box for an individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust,

check the box for an individual or revocable living trust. For all other trusts and estates, check the box for a trust or estate.

**Box 7** — Check the box, if applicable. The transferor/seller must provide written notification to the transferee/buyer prior to the transfer date if the transferor/seller will elect out of the installment method and report the gain in full in the year of sale. If a transferee/buyer does not receive written notification, the transferee/buyer shall assume that the transferor/seller will report the gain under the installment method.

**Box 8** — Enter the Hawaii income tax withheld by you for the transferor/seller whose name appears on this form. If there are two or more nonresident transferors/sellers, indicate the respective amounts withheld for each nonresident transferor/seller on a separate Form N-288A. If the amount required to be withheld has been waived or exempted, enter a zero (0). If the amount required to be withheld has been reduced or waived by the Department of Taxation, attach a copy of the approved Form N-288B. Also, if one or more of the transferor/sellers are exempt from the withholding and you are issuing the exempt transferor/seller a Form N-288A, attach a copy of the exempt transferor/seller's Form N-289.

**Box 9** — Enter the identification number, (social security number or federal employer identification number) of the transferor/seller. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, enter the social security number of the individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, enter the social security number of the individual. For all other trusts and estates, enter the federal employer identification number of the trust or estate.

**Box 10** — If the transferors/sellers are taxpayer and spouse filing a joint return, enter the spouse's social security number.

**Box 11** — Enter the name and address of the transferor/seller. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, enter the name and address of the individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, enter the name and address of the individual. For all other trusts and estates, enter the name and address of the trust or estate. Do not enter information relating to the fiduciary.

**Box 12** — If the transferors/sellers are taxpayer and spouse filing a joint return, enter the spouse's name.

**Note:** If the transferor/seller is a partnership, an S corporation, or a trust or estate, please attach a schedule showing the name, identification number, and amount of the withholding allocated to each partner or member, S corporation shareholder, or beneficiary of the trust or estate. For trusts and final-year estates, this schedule does not replace the election that needs to be made on Form N-40T.

**For definitions and rules, see the Instructions for Form N-288.**

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## Instructions to Transferee/Buyer

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

Prepare Form N-288A for each nonresident transferor/seller subject to withholding. If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, prepare a separate Form N-288A for each nonresident transferor/seller. One Form N-288A should be filed for a taxpayer and spouse if they will be filing a joint return for the year in which they transferred their Hawaii real property interest. Attach Copy A of Form(s) N-288A and your check or money order to Form N-288.

### Joint Transferors/Sellers

If one or more nonresident persons and one or more resident persons jointly transfer a Hawaii real property interest, first, determine the amount subject to withholding by allocating the amount realized from the transfer among the transferors/sellers based on their capital contribution to the property. For this purpose, a taxpayer and spouse are treated as having contributed 50% each. Second, withhold on the total amount allocated to nonresident transferors/sellers. Third, credit the amount withheld among the nonresident transferors/sellers as they mutually agree. The transferors/sellers must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the nonresident transferors/sellers.

**Box 1** — Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse. Include the tax map key.

**Box 2** — Enter the date of transfer. For payments on an installment sale, enter the payment date of the installment.

**Box 3** — Enter the amount realized by the transferor/seller whose name appears on this form. If the transferor/seller is reporting the gain under the installment method, enter the principal portion of the total payments for the year.

**Box 4** — Enter the identification number (social security number or federal employer identification number) of the transferee/buyer.

**Box 5** — Enter the name and address of the transferee/buyer.

**Box 6** — Check the applicable box to indicate whether the transferor/seller is an individual or revocable living trust, a partnership, a corporation, an S corporation, or trust (including an irrevocable trust) or estate. If the transferor/seller is an LLC that files a partnership return, check the box for a partnership. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, check the box for an individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust,

check the box for an individual or revocable living trust. For all other trusts and estates, check the box for a trust or estate.

**Box 7** — Check the box, if applicable. The transferor/seller must provide written notification to the transferee/buyer prior to the transfer date if the transferor/seller will elect out of the installment method and report the gain in full in the year of sale. If a transferee/buyer does not receive written notification, the transferee/buyer shall assume that the transferor/seller will report the gain under the installment method.

**Box 8** — Enter the Hawaii income tax withheld by you for the transferor/seller whose name appears on this form. If there are two or more nonresident transferors/sellers, indicate the respective amounts withheld for each nonresident transferor/seller on a separate Form N-288A. If the amount required to be withheld has been waived or exempted, enter a zero (0). If the amount required to be withheld has been reduced or waived by the Department of Taxation, attach a copy of the approved Form N-288B. Also, if one or more of the transferor/sellers are exempt from the withholding and you are issuing the exempt transferor/seller a Form N-288A, attach a copy of the exempt transferor/seller's Form N-289.

**Box 9** — Enter the identification number, (social security number or federal employer identification number) of the transferor/seller. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, enter the social security number of the individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, enter the social security number of the individual. For all other trusts and estates, enter the federal employer identification number of the trust or estate.

**Box 10** — If the transferors/sellers are taxpayer and spouse filing a joint return, enter the spouse's social security number.

**Box 11** — Enter the name and address of the transferor/seller. If the transferor/seller is a single member LLC that has not elected to be taxed as a corporation, and the only member is an individual, enter the name and address of the individual. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, enter the name and address of the individual. For all other trusts and estates, enter the name and address of the trust or estate. Do not enter information relating to the fiduciary.

**Box 12** — If the transferors/sellers are taxpayer and spouse filing a joint return, enter the spouse's name.

**Note:** If the transferor/seller is a partnership, an S corporation, or a trust or estate, please attach a schedule showing the name, identification number, and amount of the withholding allocated to each partner or member, S corporation shareholder, or beneficiary of the trust or estate. For trusts and final-year estates, this schedule does not replace the election that needs to be made on Form N-40T.

**For definitions and rules, see the Instructions for Form N-288.**

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



**Copy B**      **2017**

Send to Transferor/Seller. This information is being furnished to the State of Hawaii, Department of Taxation. See Instructions on back of this copy.

NFF161

1. Description and location of property transferred (Include tax map key number)		6. Transferor/Seller is: <input type="checkbox"/> An individual or revocable living trust <input type="checkbox"/> A partnership <input type="checkbox"/> A corporation <input type="checkbox"/> An S corporation <input type="checkbox"/> A trust or estate	
2. Date of transfer or installment payment date	3. Amount realized (Your share of sales or contract price)	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	8. Hawaii income tax withheld (Your share of tax withheld)
5. Transferee/Buyer's name		9. Transferor/Seller's I.D. no. (SSN or FEIN) (Enter only one I.D. no.)	10. Spouse's SSN
Street address		11. Name of transferor/seller (Enter only one name. See Instructions.)	
City, state, and postal/ZIP code		12. Spouse's Name	
		Transferor/Seller's street address	
		City, province or state, postal/ZIP code, and country	

THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.

FORM N-288A

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



**Copy B**      **2017**

Send to Transferor/Seller. This information is being furnished to the State of Hawaii, Department of Taxation. See Instructions on back of this copy.

NFF161

1. Description and location of property transferred (Include tax map key number)		6. Transferor/Seller is: <input type="checkbox"/> An individual or revocable living trust <input type="checkbox"/> A partnership <input type="checkbox"/> A corporation <input type="checkbox"/> An S corporation <input type="checkbox"/> A trust or estate	
2. Date of transfer or installment payment date	3. Amount realized (Your share of sales or contract price)	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	8. Hawaii income tax withheld (Your share of tax withheld)
5. Transferee/Buyer's name		9. Transferor/Seller's I.D. no. (SSN or FEIN) (Enter only one I.D. no.)	10. Spouse's SSN
Street address		11. Name of transferor/seller (Enter only one name. See Instructions.)	
City, state, and postal/ZIP code		12. Spouse's Name	
		Transferor/Seller's street address	
		City, province or state, postal/ZIP code, and country	

THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.

FORM N-288A

**Instructions to Transferor/Seller**

Generally, if you are a nonresident person that disposes of real property located in Hawaii, 5% of the amount realized must be withheld by the transferee/buyer. Even though tax may or may not have been withheld, you are required to file a Form N-15, N-20, N-30, N-35 or N-40 to report the sale or other disposition.

Under Section 235-111, Hawaii Revised Statutes, any claim for credit or refund of an overpayment of taxes must be filed within three years from the due date of the return, or within two years from the time the tax was paid, whichever is later.

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**Instructions to Transferor/Seller**

Generally, if you are a nonresident person that disposes of real property located in Hawaii, 5% of the amount realized must be withheld by the transferee/buyer. Even though tax may or may not have been withheld, you are required to file a Form N-15, N-20, N-30, N-35 or N-40 to report the sale or other disposition.

Under Section 235-111, Hawaii Revised Statutes, any claim for credit or refund of an overpayment of taxes must be filed within three years from the due date of the return, or within two years from the time the tax was paid, whichever is later.

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



Copy C 2017

For Transferee's/Buyer's Records.

NFF161

1. Description and location of property transferred <i>(Include tax map key number)</i>		6. Transferor/Seller is: <input type="checkbox"/> An individual or revocable living trust <input type="checkbox"/> A partnership <input type="checkbox"/> A corporation <input type="checkbox"/> An S corporation <input type="checkbox"/> A trust or estate	
2. Date of transfer or installment payment date	3. Amount realized <i>(Your share of sales or contract price)</i>	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	8. Hawaii income tax withheld <i>(Your share of tax withheld)</i>
4. Transferee/Buyer's I.D. no. (SSN or FEIN)			
5. Transferee/Buyer's name			
Street address		11. Name of transferor/seller <i>(Enter only one name. See Instructions.)</i>	
City, state, and postal/ZIP code		12. Spouse's Name	
		Transferor/Seller's street address	
		City, province or state, postal/ZIP code, and country	

THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.

FORM N-288A

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**STATEMENT OF WITHHOLDING ON  
DISPOSITIONS BY NONRESIDENT PERSONS  
OF HAWAII REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



Copy C 2017

For Transferee's/Buyer's Records.

NFF161

1. Description and location of property transferred <i>(Include tax map key number)</i>		6. Transferor/Seller is: <input type="checkbox"/> An individual or revocable living trust <input type="checkbox"/> A partnership <input type="checkbox"/> A corporation <input type="checkbox"/> An S corporation <input type="checkbox"/> A trust or estate	
2. Date of transfer or installment payment date	3. Amount realized <i>(Your share of sales or contract price)</i>	7. If the transferor/seller is reporting the gain under the installment method, check box <input type="checkbox"/>	8. Hawaii income tax withheld <i>(Your share of tax withheld)</i>
4. Transferee/Buyer's I.D. no. (SSN or FEIN)			
5. Transferee/Buyer's name			
Street address		11. Name of transferor/seller <i>(Enter only one name. See Instructions.)</i>	
City, state, and postal/ZIP code		12. Spouse's Name	
		Transferor/Seller's street address	
		City, province or state, postal/ZIP code, and country	

THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2017 ONLY.

FORM N-288A

**FORM N-288B**  
(REV. 2016)

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**Application for Withholding Certificate  
 for Dispositions by Nonresident  
 Persons of Hawaii Real Property  
 Interest**

Copy A - For State of Hawaii, Department of Taxation

- File Copies A and B of this form with the Department of Taxation.
- DO NOT file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer reported on line 4a has passed.
- Please be sure to complete ALL lines and attach ALL supporting documentation OR your application will be rejected.
- See Instructions on the back of Copy B.

1 Name of applicant (Transferor/seller)	Identification number (SSN or FEIN)
Mailing address where you want withholding certificate sent	Daytime phone no. of applicant (     )
City, State, and ZIP code (province, postal code, and country)	

2 Names of all transferors/sellers (Attach additional sheets if more than one transferor/seller.)	Identification number (SSN or FEIN)
Address (number and street)	
City, State, and ZIP code (province, postal code, and country)	

3 Names of all transferees/buyers (Attach additional sheets if more than one transferee/buyer.)	I.D. no. (Last 4 numbers of the SSN or FEIN)
Address (number and street)	
City, State, and ZIP code (province, postal code, and country)	

4 Description of Hawaii real property transaction:

**a** Date of transfer (month, day, year). \_\_\_\_\_ **DO NOT** file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer has passed.

**b** Location and general description of property (Include tax map key number) \_\_\_\_\_

5 Check the box to indicate the reason a withholding certificate should be issued.  
**NOTE:** *The transferor/seller is required under section 235-92, HRS, to file an income tax return whether or not the person derives a taxable gain.*

**a** The transferor/seller will not realize any gain with respect to the transfer. (Complete **5a** on the back of Copy A.)

**b** There will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. (Complete **5b** on the back of Copy A.)

6 Was the property used at anytime as a rental? ..... Yes <input type="checkbox"/> No <input type="checkbox"/>	Hawaii Tax I.D. Number GE _____ - _____ - _____ - _____
If yes, enter your Hawaii Tax I.D. Number.	

<b>Please Sign Here</b>	I hereby declare under penalties provided by section 231-36, HRS, that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.		
	➤ _____ Signature	_____ Title (if applicable)	_____ Date
	➤ _____ Spouse's signature (if applicable)	_____ Title (if applicable)	_____ Date

**FOR OFFICIAL USE ONLY:**

Approved: \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_ Disapproved: \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Amount required to be withheld \$ \_\_\_\_\_

Signature \_\_\_\_\_

**FORM N-288B**  
(REV. 2016)

**5a.** Calculation and written justification showing that the transferor/seller will not realize any gain with respect to the transfer. Attach a copy of a tentative statement from your escrow company for this transaction showing the gross sales price. Also attach a copy of your closing escrow statement from your purchase or acquisition of this property. (Note: You must provide documentation for all items in the calculation.)

- 1. Sales Price \$ \_\_\_\_\_
  
  - 2. Cost or other basis (including selling expenses). *Attach a schedule or list below to indicate the breakdown of your calculations.*  
(If you checked "Yes" on line 6, page 1, or used the property for business purposes, provide your adjusted basis for the property, i.e., cost less depreciation. Also, attach a copy of your depreciation schedule, regardless of whether or not you have taken any depreciation.) Do not include any carryforward losses or net operating losses. \_\_\_\_\_
  
  - 3. Line 1 minus line 2. (If greater than zero, was the property used as your main home and do you qualify to exclude the **entire** gain? If yes, use Form N-103 as a worksheet and attach to Form N-288B. Otherwise, you **DO NOT** qualify for a waiver of the withholding. Do not file this form with the State of Hawaii, Department of Taxation.) \$ \_\_\_\_\_
- 
- 
- 

**5b.** Calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. Attach a copy of a tentative statement from your escrow company for this transaction showing the distribution of funds received.

- 1a. Sales price \$ \_\_\_\_\_
  
  - 1b. Sales proceeds to be received in forms other than cash (describe) \_\_\_\_\_ \_\_\_\_\_
  
  - 1c. Sales proceeds to be received in cash (Line 1a minus line 1b) \_\_\_\_\_
  
  - 2a. Selling expenses. *Attach a schedule or list below to indicate the breakdown of your calculations.* \$ \_\_\_\_\_
  
  - 2b. Mortgage(s) secured by the property sold to be paid off with cash proceeds \_\_\_\_\_
  
  - 2c. Other (list):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
  - 3. Add lines 2a through 2c \_\_\_\_\_
  
  - 4. Amount to be withheld. Line 1c minus line 3 (If less than zero, enter zero) \$ \_\_\_\_\_
- 
- 
-

**FORM N-288B**  
(REV. 2016)

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**Application for Withholding Certificate  
 for Dispositions by Nonresident  
 Persons of Hawaii Real Property  
 Interest**

Copy B - To be returned to Transferor/seller

- File Copies A and B of this form with the Department of Taxation.
- DO NOT file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer reported on line 4a has passed.
- Please be sure to complete ALL lines and attach ALL supporting documentation OR your application will be rejected.
- See Instructions on the back of Copy B.

**1** Name of applicant (Transferor/seller) \_\_\_\_\_

Mailing address where you want withholding certificate sent \_\_\_\_\_

City, State, and ZIP code (province, postal code, and country) \_\_\_\_\_

Daytime phone no. of applicant ( ) \_\_\_\_\_

**2** Names of all transferors/sellers (Attach additional sheets if more than one transferor/seller.) \_\_\_\_\_

Address (number and street) \_\_\_\_\_

City, State, and ZIP code (province, postal code, and country) \_\_\_\_\_

**3** Names of all transferees/buyers (Attach additional sheets if more than one transferee/buyer.) \_\_\_\_\_ I.D. no. (Last 4 numbers of the SSN or FEIN)

Address (number and street) \_\_\_\_\_

City, State, and ZIP code (province, postal code, and country) \_\_\_\_\_

**4** Description of Hawaii real property transaction:

**a** Date of transfer (month, day, year). \_\_\_\_\_ **DO NOT** file Form N-288B if the transfer of property has already taken place. The Department of Taxation will not approve Form N-288B after the date of transfer has passed.

**b** Location and general description of property (Include tax map key number) \_\_\_\_\_

**5** Check the box to indicate the reason a withholding certificate should be issued.  
**NOTE:** *The transferor/seller is required under section 235-92, HRS, to file an income tax return whether or not the person derives a taxable gain.*

**a** The transferor/seller will not realize any gain with respect to the transfer. (Complete **5a** on the back of Copy A.)

**b** There will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes, after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. (Complete **5b** on the back of Copy A.)

**6** Was the property used at anytime as a rental? ..... Yes  No

If yes, enter your Hawaii Tax I.D. Number. \_\_\_\_\_ Hawaii Tax I.D. Number GE \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**Please Sign Here**

I hereby declare under penalties provided by section 231-36, HRS, that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.

➤ \_\_\_\_\_ Signature \_\_\_\_\_ Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

➤ \_\_\_\_\_ Spouse's signature (if applicable) \_\_\_\_\_ Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

**FOR OFFICIAL USE ONLY:**

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_

Month Day Year Month Day Year

Amount required to be withheld \$ \_\_\_\_\_

Signature \_\_\_\_\_

INSTRUCTION  
**FORM N-288B**  
(REV. 2016)

STATE OF HAWAII — DEPARTMENT OF TAXATION  
**Instructions for Form N-288B**  
**Application for Withholding Certificate for Dispositions by**  
**Nonresident Persons of Hawaii Real Property Interest**

**NOTE:** References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

## General Instructions

### Purpose of Form

Use Form N-288B to apply for a withholding certificate to waive or adjust withholding on dispositions by nonresident persons of Hawaii real property interest. Use this form only for applications based on (1) a claim that the transferor/seller will not realize any gain with respect to the transfer, or (2) a claim that there will be insufficient proceeds to pay the withholding required under section 235-68(b), Hawaii Revised Statutes (HRS), after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property. If a nonresident transferor/seller transfers two or more Hawaii real property interests, one Form N-288B should be filed for each property transferred.

### Who Can Apply for a Withholding Certificate

The transferor/seller can file Form N-288B. If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, a separate Form N-288B should be filed for each nonresident transferor/seller applying for a withholding certificate. One Form N-288B should be filed for a taxpayer and spouse if they will be filing a joint return for the year in which they transferred their Hawaii real property interest.

### Withholding Certificate

Upon receipt of Form N-288B, the State of Hawaii, Department of Taxation (Department) shall determine whether the transferor/seller has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. After the form has been approved or disapproved, a copy of the form will be returned to the transferor/seller, who shall thereafter transmit the form to the transferee/buyer.

If the Department is satisfied that no gain will be realized, the Department will waive the withholding requirement and the transferee/buyer is not required to withhold any tax. The transferee/buyer shall attach a copy of the Form N-288B to Forms N-288 and N-288A, which must still be filed with the Department.

If the Department is satisfied that there will be insufficient proceeds to pay the withholding, the Department will adjust the amount required to be withheld and the transferee/buyer shall withhold the adjusted amount and submit the payment, Form N-288, Form N-288A, and Form N-288B to the Department.

### When to File Form N-288B

Form N-288B must be filed with the Department no later than 10 working days prior to the date of

transfer. **Forms N-288B filed later than 10 working days prior to the date of transfer will not be accepted and will be returned to the transferor/seller. The Department will not approve Forms N-288B after the date of transfer reported on line 4a has passed.** Timely mailing of Form N-288B by U.S. mail or any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code will be treated as timely filed. See Tax Information Release No. 97-3 for more information.

### Where to Send Form N-288B

**Copies A and B** of Form N-288B must be mailed or hand delivered to the taxation district office listed below which is located in the county where the closing of the sale is taking place, or the county in which the property is located. After the form has been approved or disapproved, copy B of Form N-288B will be returned to the transferor/seller at the address specified on line 1. If copy B of Form N-288B is not submitted, a copy of the form will not be returned to the transferor/seller. We do not fax confidential information concerning Form N-288B, nor do we accept Form N-288B through fax.

## Specific Instructions

**Line 2.** Enter “Same as line 1” unless you are entering another address. If you entered a mailing address on line 1 that is not your actual address, enter your actual address on line 2. If there are multiple transferor/sellers, attach additional sheets giving the required information about each one, indicating ownership percentage and residency status.

**Line 3.** Enter the name, address, and identification number (last 4 numbers of the SSN or FEIN), if any, of the transferee/buyer. The Internal Revenue Service (IRS) issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The last 4 numbers of the ITIN issued by the IRS must be used as the individual’s identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write “Applied For”. If there are multiple transferee/buyers, attach additional sheets giving the required information about each one.

**Line 4.** Enter the appropriate information. In 4b, enter the address and description of the property. Include the tax map key number.

**Line 5.** If 5a is checked, 5a on the back of Copy A must be completed. If 5b is checked, 5b on the back of Copy A must be completed.

**NOTE:** The transferor/seller is required under section 235-92, HRS, to file an income tax return whether or not the person derives a taxable gain.

**Line 6.** If the property was used as a rental property at anytime by the transferor/seller(s), check the box marked “yes” and fill in the appropriate Hawaii Tax I.D. Number. If not, check the box marked “no”.

### Back of Copy A

**Line 5a(1).** Enter the gross sales price from the sale. Attach a copy of a tentative statement from your escrow company for this transaction showing the gross sales price, the transferor(s)/seller(s), and the transferee(s)/buyer(s).

**Line 5a(2).** In general, the cost or adjusted basis is the cost of the property plus purchase commissions and improvements, minus depreciation (if applicable). Increase the cost or other basis by any expense of sale, such as commissions and state transfer taxes. Attach a copy of your closing escrow statement from your purchase or acquisition of this property, invoices for improvements, depreciation schedules, and any other evidence of the basis of the property.

**Line 5a(3).** If the sale of the property was your main home and you qualify to exclude the **entire** gain, use Form N-103 as a worksheet. If you qualify to exclude the **entire** gain (line 22 is zero (0) or less) attach worksheet to Form N-288B. Otherwise, you DO NOT qualify for a waiver. Do not submit Form N-288B.

**Line 5b(1a).** Enter the gross sales price from the sale. Attach a copy of a tentative statement from your escrow company for this transaction showing the distribution of funds received, the transferor(s)/seller(s), and the transferee(s)/buyer(s).

**Line 5b(1b).** Enter the amount of sales proceeds to be received in forms other than cash, such as an agreement of sale or purchase money mortgage.

**Line 5b(2a).** Enter any expense of sale, such as commissions and state transfer taxes.

**Line 5b(2c).** Enter any other cost associated with the sale of the property, such as liens secured by the property.

### Signature

Form N-288B must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. If Form N-288B is being filed by a taxpayer and spouse, both must sign the form. In addition, Form N-288B may be signed by an authorized agent with a power of attorney.

## MAILING ADDRESSES

OAHU DISTRICT OFFICE  
OFFICE AUDIT BRANCH - N-288B  
P. O. BOX 259  
HONOLULU, HAWAII 96809-0259  
(830 PUNCHBOWL STREET, #228)  
808-587-1644

MAUI DISTRICT OFFICE  
RE: N-288B  
54 S. HIGH STREET, #208  
WAILUKU, HAWAII 96793-2198  
808-984-8500

HAWAII DISTRICT OFFICE  
RE: N-288B  
75 AUPUNI STREET, #101  
HILO, HAWAII 96720-4245  
808-974-6321

KAUAI DISTRICT OFFICE  
RE: N-288B  
3060 EIWA STREET, #105  
LIHUE, HAWAII 96766-1889  
808-274-3456

STATE OF HAWAII—DEPARTMENT OF TAXATION  
**APPLICATION FOR TENTATIVE REFUND OF WITHHOLDING  
ON DISPOSITIONS BY NONRESIDENT PERSONS OF HAWAII  
REAL PROPERTY INTERESTS**

THIS SPACE FOR DATE RECEIVED STAMP



NCF161

For calendar year **2017**  
or other tax year beginning ● \_\_\_\_\_, 2017  
and ending ● \_\_\_\_\_, 20\_\_\_\_\_

(NOTE: References to "married" and "spouse" are also references to "in a civil union" and "civil union partner," respectively.)

NOTE: DO NOT file this form unless you have received notification from the Department of Taxation that we have received your withholding payment.

Name (If joint return, give first names and initials of both) ● _____	Last Name ● _____	● Your Social Security Number _____
Name (Corporation, Partnership, Trust, or Estate) ● _____		● Spouse's Social Security Number _____
Trade Name/Doing Business As (DBA) Name or C/O ● _____		● Federal Employer I.D. No. _____
Address (number and street) ● _____		Daytime Phone No. (    ) _____
City, State, and Postal/ZIP Code (province, postal code, and country) ● _____		

Description of Hawaii real property transaction:

<p>a. Date of transfer (month, day, year) _____</p> <p>b. Location and general description of property _____ _____</p>	<p><b>Check only ONE box:</b></p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Others (Corporation, Partnership, Trust, or Estate)</p>
--	--

c. Tax map key number \_\_\_\_\_

Was the property used at anytime as a rental? Yes  No  If yes, enter your Hawaii Tax I.D. Number: **GE** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
and indicate the start date and end date of the rental activity: (month, day, year) \_\_\_\_\_ to (month, day, year) \_\_\_\_\_

1. Enter the amount withheld on Form N-288A. (Attach a copy of Form N-288A) .....	1 ●	
2. Sales price .....	2	
3. Cost or other basis (see Instructions) .....	3	
4. Gain. Line 2 minus line 3 (see Instructions for installment sales) .....	4	
5. Enter the tentative tax on the gain (see Instructions) .....	5 ●	
6. <b>REFUND</b> of amount withheld. Line 1 minus line 5. ( <b>This line MUST be filled in.</b> ) .....	6 ●	

<b>Please Sign Here</b>	I hereby declare under penalties provided by section 231-36, HRS, that I have examined this application and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete.		
	● _____ Signature	_____ Title (If applicable)	_____ Date
	● _____ Signature	_____ Title (If applicable)	_____ Date

**MAILING ADDRESS**  
HAWAII DEPARTMENT OF TAXATION  
P. O. BOX 1530  
HONOLULU, HAWAII 96806-1530

**FORM N-288C INSTRUCTIONS  
(REV. 2016)**

**General Instructions**

**Purpose of Form**

Use Form N-288C to apply for a refund of the amount withheld on dispositions by nonresident persons of Hawaii real property interests which is in excess of the transferor/seller's tax liability for the transaction. Form N-288C should be filed if the Hawaii income tax return (Form N-15, N-20, N-30, N-35, or N-40) for the year is not yet available. If available, the transferor/seller should file the appropriate tax return instead of filing Form N-288C. Also, Form N-288C will be rejected if it is filed after the due date of the tax return.

**IMPORTANT: If Form N-288C was filed, the transferor/seller must still file a Hawaii income tax return (Form N-15, N-20, N-30, N-35, or N-40) after the end of the taxable year, report the entire income for the year (from other sources as well as the transaction), and pay any additional tax due on the income or request a refund.**

**Who May File an Application**

The transferor/seller may file Form N-288C.

**NOTE: Under Section 235-111, Hawaii Revised Statutes, any claim for credit or refund**

*of an overpayment of taxes must be filed within three years from the due date of the return, or within two years from the time the tax was paid, whichever is later.*

**Where to Send Form N-288C**

File Form N-288C with the Hawaii Department of Taxation (Department). See the front of the form for the mailing address.

**Specific Instructions**

**NOTE: Before you begin to fill in Form N-288C, you should review the notification you received from the Department that we have received your withholding payment to make sure that the information contained in it is correct. If any information is not correct, please return a copy of the notification to the Department with the corrected information.**

At the top of Form N-288C, enter the taxable year of the transferor/seller if it is other than a calendar year.

Also, enter the name, address, and identification number (social security number or federal employer I.D. number), if any, of the transferor/seller applying for a refund of the amount withheld. The name and identification number entered **MUST** be the same as the name and identification number entered for the transferor/seller on Form N-288A, or as corrected

on the copy of the notification you returned to the Department. If the transferor/seller was issued an individual taxpayer identification number (ITIN) by the IRS, enter the ITIN. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write "Applied For".

Also, enter the information describing the Hawaii real property transaction. In b, enter the address and description of the property. In c, enter the tax map key number.

**Line 2.** Enter the gross sales price from the sale. Attach a copy of your closing escrow statement from your sale of this property.

**Line 3.** In general, the cost or adjusted basis is the cost of the property plus purchase commissions and improvements, minus depreciation (if applicable). Increase the cost or other basis by any expense of sale, such as commissions and state transfer taxes. Do not include any carryforward losses, net operating losses or suspended passive activity losses. Complete the *Computation of cost or other basis* worksheet below and enter the amount from line 4 of the worksheet to the front of Form N-288C, line 3.

**Line 4.** Line 2 minus line 3. If you are reporting the gain under the installment method, attach a separate sheet showing the principal payments received during the taxable year and the gross profit percentage. Multiply the amount of the principal payments by the gross profit percentage and enter the result on line 4.

**Line 5.** If you are a C corporation, multiply line 4 by 4% and enter the result on line 5. If you are a person other than a C corporation, you must use the tax rate schedules to the left to determine the amount to enter on line 5.

**Note:** These tax rates apply to long-term capital gains. For short-term capital gains, use the tax rates in the 2016 income tax booklets to determine the amount to enter on line 5.

For partnerships, S corporations, trusts, or estates, the gain on line 4 must be allocated among each partner or member, S corporation shareholder, or beneficiary of the trust or estate (member). Calculate the tax liability for each member. Enter the total tax liability of all members on line 5. Attach a schedule showing the name, identification number, and the amount of gain and tax liability allocated to each member. Also, show the computation of the tax liability for each member.

**Signature**

Form N-288C must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate or by an authorized agent with a power of attorney. If you file your income tax return as married filing a joint return, your spouse must also sign this form.

**NOTE: Incomplete forms will be returned to the transferor/seller. Please fill out all items.**

**2017 Tax Rate Schedules**

**Schedule I**

**SINGLE INDIVIDUALS AND MARRIED INDIVIDUALS FILING SEPARATE RETURNS**

<b>If the taxable income is:</b>	<b>The tax shall be:</b>
Not over \$2,400 .....	1.40% of taxable income
Over \$2,400 but not over \$4,800 .....	\$34.00 plus 3.20% over \$2,400
Over \$4,800 but not over \$9,600 .....	\$110.00 plus 5.50% over \$4,800
Over \$9,600 but not over \$14,400 .....	\$374.00 plus 6.40% over \$9,600
Over \$14,400 but not over \$19,200 .....	\$682.00 plus 6.80% over \$14,400
Over \$19,200 but not over \$24,000 .....	\$1,008.00 plus 7.20% over \$19,200
Over \$24,000 .....	\$1,354.00 plus 7.25% over \$24,000

**Schedule II**

**MARRIED INDIVIDUALS FILING JOINT RETURNS AND CERTAIN WIDOWS AND WIDOWERS**

<b>If the taxable income is:</b>	<b>The tax shall be:</b>
Not over \$4,800 .....	1.40% of taxable income
Over \$4,800 but not over \$9,600 .....	\$67.00 plus 3.20% over \$4,800
Over \$9,600 but not over \$19,200 .....	\$221.00 plus 5.50% over \$9,600
Over \$19,200 but not over \$28,800 .....	\$749.00 plus 6.40% over \$19,200
Over \$28,800 but not over \$38,400 .....	\$1,363.00 plus 6.80% over \$28,800
Over \$38,400 but not over \$48,000 .....	\$2,016.00 plus 7.20% over \$38,400
Over \$48,000 .....	\$2,707.00 plus 7.25% over \$48,000

**Schedule III**

**HEAD OF HOUSEHOLD**

<b>If the taxable income is:</b>	<b>The tax shall be:</b>
Not over \$3,600 .....	1.40% of taxable income
Over \$3,600 but not over \$7,200 .....	\$50.00 plus 3.20% over \$3,600
Over \$7,200 but not over \$14,400 .....	\$166.00 plus 5.50% over \$7,200
Over \$14,400 but not over \$21,600 .....	\$562.00 plus 6.40% over \$14,400
Over \$21,600 but not over \$28,800 .....	\$1,022.00 plus 6.80% over \$21,600
Over \$28,800 but not over \$36,000 .....	\$1,512.00 plus 7.20% over \$28,800
Over \$36,000 .....	\$2,030.00 plus 7.25% over \$36,000

**Computation of cost or other basis worksheet**

1. Purchase price of property		\$ _____
2. Add: Improvements	\$ _____	
Selling expenses	_____	
Other (list) _____	_____	
3. Less: Depreciation	_____	
Other (list) _____	_____	
4. Adjusted basis of property. (Line 1 plus line 2, minus line 3)		\$ _____

**STATE OF HAWAII — DEPARTMENT OF TAXATION**  
**CERTIFICATION FOR EXEMPTION FROM THE**  
**WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII**  
**REAL PROPERTY**

(To be completed by transferor/seller and given to transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval.)

Section 235-68, Hawaii Revised Statutes (HRS), provides that a transferee/buyer of Hawaii real property must withhold tax if the transferor/seller is a nonresident person. To inform the transferee/buyer that withholding of tax is not required upon the disposition of Hawaii real property by \_\_\_\_\_ (name of transferor/seller), the undersigned hereby certifies the following:

Transferor/seller's identification number (Last 4 numbers of the SSN or FEIN) \_\_\_\_\_

Transferor/seller's address (home address for individuals, office address for corporations, partnerships, trusts, or estates)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The withholding of tax is not required upon the disposition of Hawaii real property because (check whichever box is applicable):

- 1 The transferor/seller is a resident person as defined in section 235-68, HRS. **Resident person** means any: (1) Individual included in the definition of "resident" in section 235-1, HRS; (2) Corporation incorporated or granted a certificate of authority under Chapter 414, 414D, or 415A, HRS; (3) Partnership formed or registered under Chapter 425 or 425E\*, HRS; (4) Foreign partnership qualified to transact business pursuant to Chapter 425 or 425E\*, HRS; (5) Limited liability company formed under Chapter 428, HRS, or any foreign limited liability company registered under Chapter 428, HRS; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of section 235-68, HRS, and section 235-68, HRS, shall be applied as if the sole member is the transferor; (6) Limited liability partnership formed under Chapter 425, HRS; (7) Foreign limited liability partnership qualified to transact business under Chapter 425, HRS; (8) Trust included in the definition of "resident trust" in section 235-1, HRS; or (9) Estate included in the definition of "resident estate" in section 235-1, HRS.  
**\*Note:** Chapter 425E, HRS, replaced chapter 425D, HRS, effective July 1, 2004.
- 2 That by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. (See Instructions) (Complete A and B below.)

A. Brief description of the transfer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3 For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000. (See Instructions)

\_\_\_\_\_ (name of transferor/seller) understands that this certification may be disclosed to the State of Hawaii, Department of Taxation by the transferee/buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

I declare, under the penalties set forth in section 231-36, HRS, that this certification has been examined by me, and to the best of my knowledge and belief, it is true, correct, and complete. In the case of corporations, partnerships, trusts, or estates, I further declare that I have authority to sign this document on behalf of \_\_\_\_\_ (name of transferor/seller).

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Instructions for Form N-289**  
**CERTIFICATION FOR EXEMPTION FROM THE**  
**WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII**  
**REAL PROPERTY**

(NOTE: References to “married” and “spouse” also means “in a civil union” and “civil union partner”, respectively.)

**GENERAL INSTRUCTIONS**

**Purpose of Form**

Use Form N-289 to inform the transferee/buyer that the withholding of tax is not required upon the disposition of Hawaii real property if (1) the transferor/seller is a resident person, (2) by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or (3) for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000.

**Who Can Complete Form N-289**

The transferor/seller can complete Form N-289.

**Where to Send Form N-289**

Form N-289 must be completed by the transferor/seller and given to the transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval. The transferee/buyer is to retain Form N-289 and NOT forward it to the Department of Taxation if ALL the transferor/sellers have provided a certification of exemption on Form N-289 to the transferee/buyer. If one or more, but not all of the transferor/sellers has provided a certification of exemption on Form N-289 to the transferee/buyer, the transferee/buyer shall attach a copy of the Form N-289 to Forms N-288 and N-288A, which must still be filed with the Department of Taxation.

**SPECIFIC INSTRUCTIONS**

At the top of Form N-289, enter the transferor/seller’s name, identification number (last 4 numbers of the social security number, individual identification number or federal I.D. number), and address. The Internal Revenue Service (IRS) issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The ITIN issued by the IRS must be used as the individual’s identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write “Applied For”.

Check the applicable box to indicate the reason the withholding of tax is not required upon the disposition of Hawaii real property.

**Box number 1.** Check box number 1 if the transferor/seller is a resident person as defined in section 235-68, HRS.

**Box number 2.** Check box number 2 if by reason of a nonrecognition provision of the Internal Revenue Code as

operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. Complete sections A and B requesting a brief description of the transfer and a brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

**Box number 3.** Check box number 3 if for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and the amount realized for the property does not exceed \$300,000. The “amount realized” means the sum of the cash paid, or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

**NOTE:** *Although the withholding of tax may not be required upon the disposition of Hawaii real property, the transferor/seller is required under section 235-92, HRS, to file an income tax return to report the sale or other disposition.*

**Signature**

Form N-289 must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. In addition, Form N-289 may be signed by an authorized agent with a power of attorney.

**Where to Get Information**

Information is available on the Department’s website at **tax.hawaii.gov** or you may contact a customer service representative at:

Voice: 808-587-4242  
1-800-222-3229 (Toll-Free)

Telephone for the Hearing Impaired:  
808-587-1418  
1-800-887-8974 (Toll-Free)

Fax: 808-587-1488

E-mail: Taxpayer.Services@hawaii.gov

Mail: Taxpayer Services Branch  
P.O. Box 259  
Honolulu, HI 96809-0259

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

FREDERICK D. PABLO  
DIRECTOR OF TAXATION

JOSHUA WISCH  
DEPUTY DIRECTOR

January 7, 2014

## **TAX INFORMATION RELEASE NO. 2002-2 (REVISED 1/2014)**

RE: Withholding of State Income Taxes on the Disposition of Hawaii Real Property

Section 235-68, Hawaii Revised Statutes (HRS), provides for the withholding of tax on the disposition of Hawaii real property by nonresident persons and is commonly referred to as "HARPTA". Section 235-68, HRS, requires every transferee/buyer<sup>1</sup> to withhold and pay to the Department of Taxation (Department) 5 percent of the amount realized on the disposition of Hawaii real property, unless the disposition is exempt from withholding.

This withholding requirement is similar to the federal withholding tax on the disposition of United States real property. See section 1445, Internal Revenue Code (IRC) of 1986, as amended, relating to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). To the extent that they are applicable and practicable, the Department follows the provisions of FIRPTA and the regulations applicable to IRC section 1445.

This Tax Information Release (TIR) supersedes TIR No. 90-14 and TIR No. 91-7.

### **I. Disposition of Hawaii Real Property<sup>2</sup> by a Nonresident Person is Subject to Withholding**

#### **A. Definition of Nonresident Person**

The term "nonresident person" means every person other than a resident person. Section 235-68(a), HRS.

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<sup>1</sup> "Transferee" means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii. Section 235-68(a), HRS.

<sup>2</sup> "Property" or "real property" means real property as the term is defined in section 231-1, HRS; specifically, all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to the land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use is necessary to the utility of the land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to the land, buildings, structures, fences, and improvements, excluding, however, any growing crops.

**B. Definition of Resident Person**

"Resident person" means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A;
- (3) Partnership formed or registered under chapter 425 or 425E;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425E;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of section 235-68 and section 235-68 shall be applied as if the sole member is the transferor/seller;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

The residency status of a person is determined at the time of the disposition of the property; i.e., if the person is not a Hawaii resident when the sale closes, the transferee/buyer must withhold 5 percent of the amount realized unless the sale is exempt from withholding.

**C. Residency Status of a Partnership or a Limited Liability Company (LLC)**

In general, the residency status of the partnership or a LLC, not its partners or members, determines whether withholding is required on the disposition of Hawaii real property. Thus, a partnership formed under chapter 425, HRS, or a LLC formed under chapter 428, HRS, is a resident person, and withholding is not required. Withholding also is not required if a foreign<sup>3</sup> partnership or LLC is registered to transact business in Hawaii. See section I.B. Conversely, withholding is required if a foreign partnership or LLC is not registered to transact business in Hawaii.

Irrespective of the withholding of taxes, the partnership or LLC must later file an informational Hawaii income tax return at the end of its tax year. Regardless of whether withholding is required, both resident and nonresident partners or members must file a Hawaii income tax return to report the disposition of Hawaii real property.

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<sup>3</sup> A foreign partnership or LLC means an entity that was formed under the laws of any jurisdiction except Hawaii.

However, where a single-member LLC has not elected to be taxed as a corporation, the withholding provisions are to be applied without regards to the existence of the LLC, and instead the residency of the single-member would be considered to determine whether withholding is required on the disposition of Hawaii real property. Regardless of whether withholding is required, both resident and nonresident single-members must file a Hawaii income tax return to report the disposition of Hawaii real property.

#### **D. Joint Transferors/Sellers<sup>4</sup>**

If a nonresident person and a resident person jointly dispose of Hawaii real property, the transferee/buyer is required to withhold the tax on the amount realized by the nonresident person.

The amount subject to withholding may be determined by allocating the amount realized based upon the capital contributions made to purchase the property; if an allocation cannot be determined, 50 percent of the amount realized is presumed to be allocated to the nonresident person.

Unless the circumstances require otherwise, spouses are treated as each receiving 50 percent of the amount realized.

In order that the withheld amount be properly reported by the transferee/buyer and properly credited by the Department to the transferor's/seller's account, each transferor/seller should notify the transferee/buyer about the allocation of the amount realized prior to the date of transfer. This notification may be delayed for good cause, but should be made no later than the tenth day after the date of transfer.

## **II. Withholding Not Required**

Withholding of tax is not required for a disposition of Hawaii real property if the transferor/seller furnishes to the transferee/buyer a certification (Form N-289) that establishes:

- The transferor/seller is a resident person;
- By reason of a nonrecognition provision of the IRC as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer; or
- For the year preceding the date of the transfer, the property has been used by the transferor/seller as a principal residence and the amount realized for the property does not exceed \$300,000.

Although the withholding of tax may not be required, the transferor/seller is required to

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<sup>4</sup> "Transferor" means any person disposing real property that is located in Hawaii. Section 235-68(a), HRS.

file a Hawaii income tax return to report the sale or other disposition.

**A. Withholding Not Required if an IRC Nonrecognition Provision is Applicable**

Examples of IRC nonrecognition provisions include the disposition of real property under sections: 102 (with respect to gifts and inheritances), 332 (with respect to complete liquidations of subsidiaries), 337 (with respect to nonrecognition for property distributed to parent in complete liquidation of subsidiary), 351 (with respect to transfer to corporation controlled by transferor), 721 (with respect to nonrecognition of gain or loss on contribution), 1031 (with respect to exchange of property held for productive use or investment), and 1041 (with respect to transfers of property between spouses or incident to divorce). If withholding is not required, the transferor/seller must furnish to the transferee/buyer Form N-289.

**B. Withholding Not Required if the Property is Used as a Principal Residence and the Amount Realized Does Not Exceed \$300,000**

Withholding of tax is not required if, for the year preceding the date of the disposition, the real property has been used by the transferor/seller as a principal residence and the amount realized for the property does not exceed \$300,000. If withholding is not required, the transferor/seller must furnish to the transferee/buyer Form N-289.

**III. Withholding on an Agreement of Sale or a Purchase Money Mortgage**

**A. Hawaii Adopts IRC Installment Method Provision**

Hawaii adopts IRC section 453 (with respect to the installment method), which provides that the gain from a disposition of property where the transferor/seller is to receive at least one payment after the tax year in which the disposition took place must be reported under the installment method, unless the transferor/seller elects otherwise.

**B. Withholding on an Agreement of Sale or a Purchase Money Mortgage**

Tax on payments on an agreement of sale or a purchase money mortgage the transferee/buyer makes to the transferor/seller shall be withheld as follows:

- (1) In situations where the transferor/seller reports the gain under the installment method, the transferee/buyer must withhold the annual amount of the tax from the first payment of each year for the term of the agreement of sale or the purchase money mortgage. The withholding of tax applies only to the principal portion of the total payments for the year and does not apply to any interest amounts. The amount withheld must be paid over to the Department by the twentieth day after the first payment of the year is made.

- (2) In situations where the transferor/seller elects out of the installment method under IRC section 453, the transferee/buyer must withhold on the entire amount realized (excluding interest amounts). The amount withheld must be paid over to the Department by the twentieth day after the date of transfer.

The transferor/seller must provide written notification to the transferee/buyer prior to the date of transfer if the transferor/seller will elect out of the installment method and report the gain in full in the year of sale. If the transferee/buyer does not receive this written notification, the transferee/buyer shall assume that the transferor/seller will report the gain under the installment method.

**Example 1:** Hawaii real property is sold on Agreement of Sale or Purchase Money Mortgage by a nonresident person for \$1,100,000:

• Cash down payment	\$200,000
• Assumption of existing mortgage	400,000
• 5-year purchase money mortgage or agreement of sale	<u>500,000</u>
Total amount realized	\$1,100,000

- (1) If the transferor/seller reports the gain under the installment method, the assumption of an existing mortgage is treated as the receipt of cash for withholding purposes. The amount that must be withheld at the time of closing, therefore, is 5 percent of the sum of the amount of the cash down payment and the assumption of the existing mortgage ( $5\% \times [\$200,000 + \$400,000] = \$30,000$ ).

With respect to the purchase money mortgage, if principal payments of \$100,000 are paid each year, then \$5,000 ( $5\% \times \$100,000$ ) must be withheld by the transferee/buyer at the beginning of each year.

If, instead, the \$500,000 is under a 5 year agreement of sale, \$25,000 ( $5\% \times \$500,000$ ) must be withheld by the transferee/buyer when the agreement of sale is completed.

- (2) If the transferor/seller (nonresident person) elects out of the installment method, the amount that must be withheld at the time of closing is \$55,000 ( $5\% \times \$1,100,000$ ).

#### **IV. Waiver or Adjustment of Withholding**

The transferor/seller may apply for a withholding certificate to waive or adjust withholding on a disposition of Hawaii real property if:

- The transferor/seller will not realize any gain with respect to the transfer, or
- There will be insufficient proceeds to pay the withholding after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property.

Although the withholding of tax may be waived, the transferor/seller is required to file a Hawaii income tax return to report the sale or other disposition.

##### **A. Transferor/Seller Will Not Realize a Gain or Incurs a Loss**

The amount realized is subject to withholding even if the transferor/seller will not realize a gain or incur a loss on the disposition of Hawaii real property. The transferor/seller, however, may request from the Department, a waiver from withholding by submitting Form N-288B (Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest) to the Department in the taxation district where the property is located no later than ten business days prior to the date of transfer.<sup>5</sup> The transferor/seller must include the calculation, justification, and all supporting documents<sup>6</sup> that establish that the transferor/seller will not realize a gain or incur a loss. Form N-288B must have the original (not faxed or photocopied) signature of the transferor/seller or the individual representing the transferor/seller by a power of attorney (not a general authorization granted by an escrow company) on Hawaii Form N-848.

If the Department determines that the transferor/seller will not realize a gain or incur a loss, the Department will approve the waiver and return Form N-288B to the transferor/seller.

The transferor/seller shall transmit the form to the transferee/buyer, who will no longer be required to withhold any tax. The transferee/buyer shall attach the Form N-288B to Forms N-288 (Hawaii Withholding Tax Return for Dispositions by Nonresident Persons of Hawaii Real Property Interests) and N-288A (Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests), which must still be filed with the Department by the transferee/buyer.

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<sup>5</sup> On Oahu, the form should be submitted to the Office Audit branch.

<sup>6</sup> Supporting documents include copies of documents establishing the transferor's/seller's basis in the property, escrow company closing statement, county real property records showing the purchase price, conveyance tax return showing taxes paid, title insurance policy, or executed sales or purchase agreements.

Hawaii adopts IRC section 121, which allows an exclusion of \$250,000 (\$500,000, married filing jointly) of gain derived from the sale or exchange of a principal residence.

**Example 2:** Mr. and Mrs. Aloha are Hawaii residents when they list their principal residence for sale before they move to California. Mr. and Mrs. Aloha are California residents when their residence is sold six months later for \$450,000. The sale of the residence is subject to withholding, but they may submit Form N-288B to apply for a waiver from withholding because IRC section 121 excludes the gain from the sale of a principal residence.

Withholding of tax is not required for military personnel stationed in Hawaii who sell a principal residence and can exclude the gain under IRC section 121. The military personnel must submit Form N-288B to the Department to apply for a waiver from the withholding.

**B. Transferor/Seller Realizes a Gain, but There are Insufficient Funds to Pay the Tax**

If the transferor/seller realizes a gain on the disposition of real property, but there are insufficient funds to fulfill the withholding requirement, the transferor/seller may apply to the Department in the taxation district where the property is located for an adjustment to the amount to be withheld. The transferor/seller must submit Form N-288B to the Department no later than ten business days prior to the date of transfer of the property. The transferor/seller must include an explanation for the insufficiency of funds and supporting documents.

The Department will adjust the withholding amount only when the circumstances clearly indicate that there are insufficient funds to fulfill the required amount to be withheld or the withholding is extremely burdensome to the parties and that without an adjustment the transaction cannot occur. Taxpayers are cautioned against applying for adjustments or submitting information that frivolously overstates the necessity for an adjustment in the withholding amount.

If the Department determines an adjustment to the withholding amount is correct, an adjusted withholding amount will be approved. The Department will return the form to the transferor/seller, who shall transmit the form to the transferee/buyer. The transferee/buyer then shall withhold the adjusted amount (if not completely waived) and submit the payment of tax, Form N-288B, Form N-288, and Form N-288A to the Department.

**C. Similarities and Differences Between the Hawaii Withholding Law and FIRPTA**

The Hawaii withholding law is similar to the FIRPTA withholding tax on the disposition of United States real property, which requires the transferee/buyer to withhold 10 percent of the amount realized by a foreign person. Both the Hawaii withholding law and FIRPTA do not allow travel expenses relating to the improvement or disposition of the property to be included in the adjusted basis of the property.

There are some differences, however, including the following:

- (1) The Hawaii withholding law does not allow an adjustment to the amount of State income tax withholding based on FIRPTA's "maximum tax liability" which adjusts the FIRPTA withholding amount if the transferor's/seller's maximum tax liability is less than the tax required to be withheld;<sup>7</sup>
- (2) The Hawaii withholding law does not include the value of tangible personal property (e.g., furniture and fixtures, equipment) in the adjusted basis of the property while FIRTPA may allow "associated personal property" to be included in the adjusted basis;<sup>8</sup>
- (3) The Hawaii withholding law does not recognize a tax rate reduction authorized under a tax treaty; and
- (4) The Hawaii withholding law requires the tax to be withheld and paid to the Department even though a determination for a waiver or reduction of the withholding amount is pending while FIRPTA does not require the payment until a determination is made by the IRS.

**D. Persons Engaging in Multiple Transactions or Withholding Requirements are Not Practicable**

The Department may enter into written agreements with persons who engage in more than one real property transaction a year or other persons to whom meeting the withholding requirements are not practicable. The written agreements may waive the withholding requirement or allow the use of a withholding method other than specified in section 235-68, HRS.

**V. Payment of Tax Withheld to the Department**

**A. Transferee/Buyer is Required to Withhold and Pay 5 Percent of the Amount Realized**

The transferee/buyer is required to withhold and pay 5 percent of the amount realized<sup>9</sup> to the Department, unless the transferor/seller furnishes a Form N-289 (Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property) to the transferee/buyer.

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<sup>7</sup> IRS Revenue Procedure 2000-35, section 4.06.

<sup>8</sup> Federal Form 8288-B, Specific Instructions, line 6c, relating to "associated personal property" and IRS Regulations section 1.897-1.

<sup>9</sup> "Amount realized" means the sum of the cash paid or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject immediately before and after the transfer. Generally, the amount realized is the sales or contract price.

Every transferee/buyer who is required to withhold the tax must report and pay the amount withheld to the Department by the twentieth day after the date of transfer, unless exempt from withholding.<sup>10</sup> The Department will accept as timely filed, withholding tax forms which are deposited in the U.S. mail and postmarked within the twenty-day time period following the date of transfer of the property.

**B. Transferee/Buyer Uses Forms N-288 and N-288-A to Pay the Tax**

A transferee/buyer uses Form N-288 and Form N-288A to report and pay the tax. There must be a Form N-288A for each transferor/seller (spouses filing a Hawaii income tax return jointly may use one Form N-288A).<sup>11</sup>

If the transferee/buyer receives a Form N-288B from the transferor/seller (this form is used to apply for a waiver or adjustment of amount withheld), this form should be attached to Forms N-288A and N-288.

If two or more persons are joint transferees/buyers, the full responsibility to withhold the tax falls on each person.

**C. Transferee/Buyer Must Withhold Tax for a Disposition That is Partially Exempt Under an IRC Nonrecognition Provision**

A disposition of real property, such as an exchange, defers income tax consequences because the gain or loss is not recognized under the IRC at the time of disposition. Some transactions, however, may result in partial recognition of gain (boot) by the transferor/seller. A disposition which results in partial recognition of gain by the transferor/seller is subject to withholding on the gain recognized.

**D. Transferee/Buyer Receives a False Form N-289**

If the transferee/buyer receives notice after the date of transfer that the Form N-289 (Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property) is false, the transferee/buyer may rely on the certificate provided and is not liable for the withholding of the tax on the consideration paid to the transferor/seller before receiving the notice.

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<sup>10</sup> "Date of transfer" means the first date on which consideration is paid or a liability is assumed by the transferee/buyer. Payment of consideration does not include the payment before passage of legal or equitable title of earnest money (other than pursuant to an initial purchase contract), a good-faith deposit, or any similar amount primarily intended to bind the parties to the contract and subject to forfeiture. A payment that is not forfeitable may also be considered earnest money, a good-faith deposit, or similar sum.

<sup>11</sup> Forms N-288A and N-288 are not required to be submitted to the Department if all transferors/sellers have provided a certification of exemption (Form N-289).

If, however, the full amount of the consideration has not yet been paid (e.g. installment sale), the transferee/buyer must withhold 5 percent of the amount of each periodic payment received. This amount must be paid to the Department by the twentieth day following the date the periodic payment is received.

If the transferee/buyer has actual knowledge that the Form N-289 received is false, the transferee/buyer is required to withhold and pay the tax. If the transferee/buyer is required to, but fails to withhold and pay the tax, the transferee/buyer is liable for the tax.

**E. Penalties for Not Withholding or Paying the Tax<sup>12</sup>**

A transferee/buyer who fails to file Form N-288 on a timely basis may be subject to a penalty of 5 percent of the amount of the tax (unless it is shown that the failure is due to reasonable cause and not due to neglect), if the failure is not more than a month, with an additional 5 percent for each additional month or fraction of a month, not exceeding 25 percent.<sup>13</sup>

A transferee/buyer who fails to pay the tax that is due to negligence or intentional disregard of the rules may be subject to a penalty of up to 25 percent of the amount of the tax (up to 50 percent if due to fraud as determined by the director of taxation).<sup>14</sup>

Interest on underpayment of tax or nonpayment of tax may be added at the rate of two-thirds of one percent a month or fraction of a month from the first calendar day after the date prescribed for payment of the tax.<sup>15</sup>

A transferee/buyer who wilfully fails to make a return, make a report, keep any records or supply any information regarding the withholding taxes may be convicted of a misdemeanor and be subject to one or any combination of a fine of not more than \$25,000, imprisonment of not more than one year or probation.<sup>16</sup>

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<sup>12</sup> Section 235-68(e), HRS, provided for a fine of not more than \$1,000 or imprisonment of not more than one year, or both, to any transferor/seller who wilfully supplied false or fraudulent information on an affidavit or withholding certificate. Section 235-68(e), HRS, was repealed by Act 92, SLH 1995. Under current law, the penalties in sections 231-34, 231-35, 231-36, and 231-39, HRS, apply to taxes imposed under Title 14, HRS, including the withholding of taxes on the disposition of Hawaii real property by nonresidents.

<sup>13</sup> Section 231-39(b)(1), HRS.

<sup>14</sup> Section 231-39(b)(2), HRS.

<sup>15</sup> Section 231-39(b)(4), HRS.

<sup>16</sup> Section 231-35, HRS.

A transferor/seller or transferee/buyer who wilfully attempts in any manner to evade or defeat the withholding of taxes or its payment may be convicted of a class C felony and be subject to one or any combination of a fine of not more than \$100,000 (not more than \$500,000 for corporations), imprisonment of not more than five years or probation.<sup>17</sup>

A transferor/seller or transferee/buyer who wilfully makes and subscribes any return, statement or other document required to be made regarding the withholding of taxes which contains or is verified by a written declaration that it is true and correct as to every material matter (or wilfully aids, assists in, procures, counsels or advises the preparation or presentation of any tax return, affidavit, claim, or other document required to be made which is fraudulent or false as to any material matter) may be convicted of a class C felony and be subject to one or any combination of a fine of not more than \$100,000 (not more than \$500,000 for corporations), imprisonment of not more than three years or probation.<sup>18</sup>

#### **VI. Refund of Amounts Withheld That Exceeds the Transferor's/Seller's Tax Liability**

There are two ways that a transferor/seller may apply for a refund of amounts withheld that exceed the transferor's/seller's tax liability. First, a transferor/seller may apply for a refund when the transferor/seller files a Hawaii income tax return for the year.

Second, a transferor/seller may file Form N-288C (Application for Tentative Refund of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests) to adjust the amount of tax withheld and receive an early refund of the amount that exceeds the transferor's/seller's tax liability for the transaction. The transferor/seller must present sufficient information on Form N-288C regarding the basis, sales price, and gain on the property as determined by Hawaii income tax law. After reviewing Form N-288C, the Department will refund the amount withheld and paid over to the Department, which exceeds the tax on the gain. The transferor/seller must still file a Hawaii income tax return after the end of the tax year, report the entire income for the year (from other sources as well as the transaction), and pay any additional tax due on the income or request a refund.

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<sup>17</sup> Section 231-34, HRS.

<sup>18</sup> Section 231-36, HRS.

The chart below summarizes the forms currently used. Please refer to the forms and their instructions for more information.

Form:	Completed by:	Given to:	Purpose of the Form:
<b>Forms Used to Claim an Exemption or Reduced HARPTA Withholding</b>			
Form N-289	Transferor/Seller	Transferee/Buyer	To inform transferee/buyer that withholding is not required because: (1) transferor/seller is a resident, or (2) an IRC nonrecognition provision is applicable (e.g., IRC section 1031 exchange), or (3) the property has been used by the transferor/seller as a principal residence for the year preceding the date of the transfer and the amount realized for the property does not exceed \$300,000.
Form N-288B	Transferor/Seller	Department of Taxation	To apply for a withholding waiver or adjustment because: (1) no gain will be realized, or (2) there will be insufficient proceeds to pay the withholding. If approved by the Department, the transferor/seller must give a copy of the approved form to the transferee/buyer.
<b>Forms Used to Pay HARPTA Withheld to the Department of Taxation</b>			
Form N-288	Transferee/Buyer	Department of Taxation	Use Form N-288 to report the total amount withheld from all transferors/sellers and one Form N-288A to report withholding information for each transferor/seller. Attach Form N-289 and/or Form N-288B, if applicable. See the instructions for Form N-289 and N-288B.
Form N-288A	Transferee/Buyer	Department of Taxation (Copy A); Transferor/Seller (Copy B)	
<b>Forms Used to Obtain a Refund of HARPTA Withheld</b>			
Form N-288C	Transferor/Seller	Department of Taxation	Use Form N-288C to apply for a tentative refund of the withholding.**
Form N-15, N-30, or N-40	Nonresident Transferor/Seller	Department of Taxation	Use Form N-15, N-30, or N-40 to obtain a refund of the withholding.**
**The transferor/seller is required to file a Hawaii income tax return on Form N-15, N-20, N-30, N-35, or N-40, whichever is applicable, after the end of the tax year to report the sale or other disposition of Hawaii real property regardless of whether withholding is required.			

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For more information on the withholding of tax on the disposition of Hawaii real property, see Tax Facts 2010-01, Understanding HARPTA.

Current forms and other tax information may be downloaded from the Department's website at: [tax.hawaii.gov](http://tax.hawaii.gov). You may also request a tax form by calling the Department's customer service representatives at 808-587-4242, or toll-free from the neighbor islands and continental U.S. at 1-800-222-3229.

FREDERICK D. PABLO  
Director of Taxation

HRS Section Explained: 235-68  
TIR Nos. 90-14 and 91-7 are superseded

NOTE: This Tax Information Release is a publication that provides general information on tax subjects of current interest to taxpayers and is not a substitute for legal or other professional advice. The information provided in this publication does not cover every situation and is not intended to replace the law or change its meaning. Furthermore, the information in this publication is subject to change without notice due to changes in the law or rules, judicial decisions, or changes in official Department positions.