

Message from the State Department of Taxation

As a real estate professional, you provide clients with information about what to expect when they buy or sell a property. They'll appreciate it if you include information on the withholding of Hawaii income tax required by the Hawaii Real Property Tax Act (HARPTA).

Hawaii residents and nonresidents alike must pay Hawaii income tax on capital gains recognized on the sale of real property located in Hawaii unless the gain can be excluded under Hawaii income tax law. Many nonresidents never realized that they were subject to Hawaii taxation and did not file a Hawaii income tax return or pay the tax due when they sold a Hawaii property.

HARPTA legislation requires a purchaser to withhold a percentage of the sales price when acquiring Hawaii real property from a nonresident seller and remit the amount withheld directly to the State.

Currently, a purchaser must withhold 5% of the gross sales price. The tax withheld is remitted to the State with Form N- 288, Hawaii Withholding Tax Return for Dispositions by Nonresident Persons of Hawaii Real Property Interest, on or before the 20th day following the date the property transfers from the seller to the buyer. Forms N-288A, N-288B, and/or N-289 are attached to and filed with Form N-288, as applicable.

Form N-288A, Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests, provides information to the Department so that the tax withheld can be properly credited to the seller.

A Form N-288A must be completed for each nonresident seller, although only one needs to be completed for a nonresident couple that files joint Hawaii income tax returns. Copy A of Form N-288A is attached to Form N-288.

Form N-288B, Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest, is used by a nonresident seller to apply for a waiver or adjustment of the amount to be withheld.

A seller may apply for an adjustment if the seller will not recognize any gain on the sale or if there will be insufficient proceeds to pay the required withholding after paying costs such as selling costs and the amount of any mortgage or lien secured by the property.

The Department must approve Form N-288B. Mail or hand-carry (not fax) Form N-288B, with supporting documents, to the district tax office in the county where the closing of the sale is taking place or the property being sold is located.

Supporting documents establishing the seller's original basis in the property may include the closing statement, computer printout from the county real property tax office showing the purchase price, conveyance tax return, title insurance policy, and/or executed sales or purchase agreement from the seller's purchase of the property. If the property was inherited, the estate tax return and any supporting documents may also be required.

Other supporting documents may include invoices and contracts for improvements affecting basis (lists and photos are not acceptable), depreciation schedules if the property was used as a rental, and the tentative closing statement for the current sale.

Please note that the annual real property tax assessment notice does not substantiate a seller's basis in the property.

Submit Form N-288B to the Department *no later than 10 days prior to the date of transfer*. To avoid processing delays, make sure all required information is completed, the proper documents are attached, and the form has the original (not faxed or photocopied) signature of either the seller or an individual to whom the seller has granted power of attorney (POA). Hawaii Form N-848, Power of Attorney, may be used for this purpose.

A general authorization granted an escrow company to sign documents is NOT acceptable; the POA must name a specific individual and specify that the individual named may sign Form N-288B for the seller. A copy of the POA must be submitted with Form N-288B.

After the Department's review, Copy B of Form N-288B is returned to the seller. If approved by the Department, Form N-288B is given to the purchaser and attached to Form N-288A (which is required even if a complete waiver is granted) and Form N-288.

Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, is used by either a resident or nonresident seller to certify to the purchaser that withholding is not required under one of three exceptions: 1) the seller is a Hawaii resident; 2) the gain on the sale of the property is not recognized (i.e., not taxable) under the federal Internal Revenue Code as adopted by Hawaii; or 3) the property was the principal residence of the seller in the year preceding the sale *and* the amount realized from the sale of that property is not more than \$300,000. Form N-289 does not require Department approval; it is given by the seller to the purchaser and attached to Form N-288.

After the tax is withheld and Form N-288 is filed, the Department notifies the seller that the amount withheld has been received.

The amount withheld is an estimated income tax payment and is claimed on the Hawaii income tax return that the seller must file for the year of sale. Any overpayment of tax is refunded after the return is processed.

If the amount withheld is greater than the tax due on the transaction or if the amount withheld exceeds the amount approved on Form N-288B, the seller may apply for a *tentative* refund.

Tentative refunds are requested on Form N-288C, Application for Tentative Refund of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests. Regardless of whether Form N-288C is filed or not, a seller must file a Hawaii income tax return.

For more information on HARPTA, see Tax Information Release (TIR) No. 90-14, "Withholding of Tax on the Disposition of Real Property by Nonresident Persons," and TIR No. 91-7, "Withholding of Tax on the Disposition of Real Property by Nonresident Persons and Rollover of Gain on the Sale of a Principal Residence by Persons in the Military," which supplements and supercedes in-part TIR No. 90-14.

These publications are available at any district tax office or by calling our request line at 587-7572 (toll-free at 1-800-222-7572). They also are available on our website at www.state.hi.us/tax. Should you have further questions, call us at 587-4242 (toll-free at 1-800-222-3229) or e-mail us at Taxpayer_Services@tax.state.hi.us.