



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809-0259

November 29, 1989

TAX INFORMATION RELEASE No. 89-12

Re: The Administration and Application of the Conveyance Tax

PART I. ADMINISTRATION

After a review by the Department of Taxation (Taxation) and the Department of Land and Natural Resources (Land), Bureau of Conveyances, which included consideration of recommendations made by members of the private sector, of the filing requirements necessary to obtain an exemption from the conveyance tax set forth in Tax Information Release 89-11, effective immediately, the administrative procedure is changed as follows.

Conveyance Tax Exemptions. With the exception of the exemption granted by section 247-3(5), Hawaii Revised Statutes, for a transaction where the consideration is \$100 or less, all conveyance tax exemptions will initially be reviewed and thereafter approved or disapproved by Land. An exemption for a transaction of \$100 or less shall continue to be submitted to Taxation for approval. Additionally, any affidavit for an exemption from the conveyance tax (the green Form P-64B) which adds or deletes language that qualifies or otherwise amends the affidavit (the green Form P-64B) in any other exemption category shall be referred by Land to Taxation for its review and subsequent approval or disapproval.

For all exemptions requiring review and approval by Taxation, taxpayers shall submit the affidavit (the green Form P-64B), the conveyance document, and clarifying information or documentation as necessary to the Technical Review Office of the Department of Taxation, Room 220, Keelikolani Building, 830 Punchbowl Street, Honolulu, Hawaii, 98613, until further notice. Beginning December 15, 1989, Taxation shall conduct its review of documents within 48 hours (2 working days) after the documents are received. During the period December 20, 1989, through January 2, 1990, Taxation shall conduct its review within seventy-two hours (three working days) of receipt. Taxpayers may avoid possible delays in recording their documents by submitting their documents to Taxation for preapproval 1 or 2 weeks before the date they intend to file their documents with Land.

After Taxation has completed its review, documents shall be picked up by the taxpayer for filing at the Bureau of Conveyances or for further action by the taxpayer. In limited circumstances, taxpayers may arrange for Taxation to forward approved documents to the Bureau of Conveyances for recordation.

PART II. APPLICATION

Agreements of Sale. A further review by the Department of Taxation (Department) of the agreement of sale discussion in TIR 89-11 and the standard language of agreements of sale indicate that these documents are not artfully drafted for purposes of the conveyance tax. As presently drafted in Hawaii, agreements of sale set forth in one document a sales agreement and a seller's financing arrangement without distinguishing the two aspects of the transaction and commonly include the interest on the purchase price as part of the enumeration of the price to be paid for the real property interest conveyed. The Department takes administrative notice of the substance of agreements of sale as two transactions with separate consideration underlying each transaction. The Department also recognizes that the current drafting style of agreements of sale (as well as the fact that legal and real estate professionals and parties to the agreements treat agreements of sale as 1 transaction instead of 2) makes it difficult for the Department to conclude that an agreement of sale does not represent a single transaction. The Department believes, however, that this stance, while correct, unduly penalizes the public. In light of this analysis, the Department will withdraw its position on including interest as a part of the consideration paid or to be paid under the conveyance tax law. Notwithstanding the foregoing, the Department advises that agreements of sales be drafted in a manner that clearly sets forth the two transactions and their separate considerations so that these documents are in line with the above discussion and this situation does not arise again in the future.

Taxpayers who, in accordance with TIR 89-11, paid the conveyance tax on interest paid or to be paid to their sellers may apply for a refund of the tax they paid on the interest amount. Taxpayers shall submit to the Technical Review Office of the Department: (1) a letter which states the date the initial conveyance tax certificate (the yellow Form P-64A) was filed and requests a refund of the excess tax paid, and (2) an amended conveyance tax certificate (the yellow Form P-64A), which does not include in the calculation of the amount of consideration underlying the agreement of sale any interest paid or to be paid under a seller's financing agreement.


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Director of Taxation