
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature recognizes that there is a
2 problem, as identified in the report of the 2005-2007 Tax Review
3 Commission, with the collection of unpaid transient
4 accommodations and general excise taxes on rental income from
5 real property owned by nonresidents who fail to file tax returns
6 on such income and move beyond the jurisdiction of the State
7 after the property is sold and transferred.

8 The purpose of this Act is to ensure that the State has
9 collected all taxes owed by a transferor of real property by,
10 with some exceptions, requiring persons who sell and transfer
11 real property located in Hawaii to obtain a tax clearance.

12 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§235- Withholding of tax on the disposition of real
16 property. (a) Before recording any transfer of title of real
17 property the transferee shall submit to the bureau of
18 conveyances a tax clearance issued by the department of taxation



1 stating that the transferor has filed all tax returns and paid
2 all taxes, penalties, and interest owed to the State.

3 (b) The transferee shall not be required to submit a tax
4 clearance under subsection (a) if the transferor furnishes to
5 the transferee an affidavit affirming that:

6 (1) The transferor is a resident person; provided that a
7 transferor who claims residency based on a business in
8 Hawaii is not a resident, if the business:

9 (A) Is not organized under the laws of the State;

10 (B) Does not maintain and staff a permanent office in
11 the state; and

12 (C) Does not have any business activities in the
13 State; provided that the mere holding of real
14 property in the state for investment purposes
15 does not constitute a business activity; or

16 (2) By reason of a nonrecognition provision of the
17 Internal Revenue Code as operative under this Chapter
18 or the provisions of any United States treaty, the
19 transferor is not required to recognize any gain or
20 loss with respect to the transfer,



1 and including a brief description of the transfer, and a brief
2 summary of the law and facts supporting the claim that a tax
3 clearance is not required with respect to the transfer.

4 This subsection shall not apply if the transferee has
5 actual knowledge that the affidavit referred to in this
6 subsection is false.

7 (c) The director of taxation shall prepare forms as
8 necessary to satisfy the requirements of this section and may
9 require a transferor to furnish information needed to ascertain
10 the person's compliance with the requirements of this section.
11 The director may adopt rules to effectuate this section pursuant
12 to chapter 91.

13 (d) "Property" or "real property", "resident person",
14 "transferee", and "transferor" shall have the same meaning as in
15 section 235-68."

16 SECTION 3. Section 231-9.9, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§231-9.9 Filing and payment of taxes by electronic funds
19 transfer. (a) The director of taxation is authorized to
20 require every person whose tax liability for any one taxable
21 year exceeds \$100,000 and who files a tax return for any tax,
22 including consolidated filers, to remit taxes by one of the



1 means of electronic funds transfer approved by the department;
2 provided that for withholding taxes under section 235-62,
3 electronic funds transfers shall apply to annual tax liabilities
4 that exceed \$40,000. Notwithstanding the tax liability
5 thresholds in this subsection, the director of taxation is
6 authorized to require any person who is required to
7 electronically file a federal return or electronically remit any
8 federal taxes to the federal government, to electronically file
9 a state return and electronically remit any state taxes under
10 title 14 to the department. The director is authorized to grant
11 an exemption to the electronic filing and payment requirements
12 for good cause.

13 • (b) The director of taxation may require every escrow
14 depository who is required to file a return of the amount of tax
15 withheld under subsection 235-68(c) to remit taxes by one of the
16 means of electronic funds transfer approved by the department.
17 The director may grant an exemption to the electronic filing and
18 payment requirements for good cause.

19 ~~[(b)]~~ (c) Any person who files a tax return for any tax
20 and is not required by subsection (a) to remit taxes by means of
21 electronic funds transfer may elect to remit taxes by one of the



1 means of electronic funds transfer approved by the department
2 with the approval of the director of taxation.

3 ~~[-(e)]~~ (d) If a person who is required under subsection (a)
4 or (b) to file a return electronically or remit taxes by one of
5 the means of electronic funds transfer approved by the
6 department fails to file electronically or to remit the taxes
7 using an approved method on or before the date prescribed
8 therefor, unless it is shown that the failure is due to
9 reasonable cause and not to neglect, there shall be added to the
10 tax required to be so remitted a penalty of two per cent of the
11 amount of the tax. The penalty under this subsection is in
12 addition to any penalty set forth in section 231-39.

13 ~~[-(d)]~~ (e) No later than twenty days prior to the convening
14 of each regular session, the department shall submit a report to
15 the legislature containing:

- 16 (1) The number of taxpayers who were assessed the two per
17 cent penalty pursuant to subsection ~~[-(e)-]~~ (d);
18 (2) The amounts of each assessment; and
19 (3) The total amount of assessments collected for the
20 previous year."

21 SECTION 4. Section 235-68, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending subsections (c) and (d) to read:

2 "(c) Every transferee required by this section to withhold
3 tax under subsection (b) shall make a return of the amount
4 withheld to the department of taxation not more than twenty days
5 following the transfer date. Every escrow depository authorized
6 to file a completed return on behalf of a transferee shall file
7 the return not more than two working days following the
8 authorization date and deliver a receipt from the department of
9 taxation therefor to the transferee. An escrow depository who
10 files a return past the two-day deadline shall be subject to a
11 late fee of \$100 per day that shall be remitted to the general
12 fund.

13 (d) No person shall be required to deduct and withhold any
14 amount under subsection (b), if the transferor furnishes to the
15 transferee an affidavit by the transferor stating the
16 transferor's taxpayer identification number and:

17 (1) The transferor is a resident person; ~~[or]~~ provided
18 that a transferor who claims residency based on a
19 business in Hawaii is not a resident, if the business:
20 (A) Is not organized under the laws of the State;
21 (B) Does not maintain and staff a permanent office in
22 the state; and



1 (C) Does not have any business activities in the
2 state; provided that the mere holding of real
3 property in the state for investment purposes
4 does not constitute a business activity;

5 or

6 (2) That by reason of a nonrecognition provision of the
7 Internal Revenue Code as operative under this chapter
8 or the provisions of any United States treaty, the
9 transferor is not required to recognize any gain or
10 loss with respect to the transfer;

11 (3) A brief description of the transfer; and

12 (4) A brief summary of the law and facts supporting the
13 claim that recognition of gain or loss is not required
14 with respect to the transfer.

15 This subsection shall not apply if the transferee has actual
16 knowledge that the affidavit referred to in this subsection is
17 false."

18 2. By amending the definition of "transferee" to read:

19 ""Transferee" means any person, the State and the counties
20 and their respective subdivisions, agencies, authorities, and
21 boards, acquiring real property [~~which~~] that is located in
22 Hawaii."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2020, and
7 shall apply to taxable years beginning after December 31, 2009.



Report Title:

Disposition of Real Property; Tax Clearance

Description:

Requires transferors of real property located in Hawaii to furnish a tax clearance to the Bureau of Conveyances before recording the transfer. Authorizes the Director of Taxation to require escrow depositories required to file a return of the tax withheld on a real property transfer to remit taxes by electronic funds transfer. Requires an escrow depository filing a return on behalf of a transferee to file not more than two working days following the authorization date and deliver a receipt to the transferee, subject to a \$100-per-day late fee. Effective July 1, 2020. (HB1922 HD1)

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

