

ACT 213

H.B. NO. 2947

A Bill for an Act Relating to Income Tax Withholding.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Withholding of tax on the disposition of real property by nonresident persons. (a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” means “property” or “real property” as the term is defined in section 231-1.

“Resident person” means any individual included in the definition of “resident” in section 235-1; any corporation incorporated under chapter 415, 415A, 415B, or 416; any partnership formed under chapter 425; any trust included in the definition of “resident trust” in section 235-1; or any estate included in the definition of “resident estate” in section 235-1.

“Transferee” means any person acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property which is located in Hawaii.

(b) Unless otherwise provided in this section, every transferee shall deduct and withhold a tax equal to nine per cent of the amount realized on the disposition of Hawaii real property. Every person required to withhold a tax under this section is made liable for the tax and is relieved of liability for or upon the claim or demand of any other person for the amount of any payments to the department made in accordance with this section.

(c) Every transferee required by this section to withhold tax under subsection (b) shall make a return of the amount withheld to the department of taxation not more than twenty days following the transfer date.

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

- (1) The transferor is a resident person; or
- (2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under this chapter or the provisions of any United States treaty, the transferor is not required to recognize any gain or loss with respect to the transfer;
- (3) A brief description of the transfer; and
- (4) 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.

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

(e) Any transferor who wilfully supplies false or fraudulent information on an affidavit pursuant to subsection (d) shall be in violation of section 231-34 and shall be fined not more than \$1,000 or imprisoned not more than one year, or both.”

SECTION 2. Section 235-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person required under sections 235-61 to 235-64 or section 235- to collect, account for, and pay over any tax imposed by this chapter who wilfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a misdemeanor.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 1991.

(Approved June 25, 1990.)

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Note

1. Edited pursuant to HRS §23G-16.5.