

ACT 279

S.B. NO. 1230

A Bill for an Act Relating to Income Tax Withholding.

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

SECTION 1. Section 235-68, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§235-68]]~~ 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 or granted a certificate of authority under chapter 415, 415A, or 415B[, or 416]; any partnership formed or registered under chapter 425[;] or 425D; any foreign partnership qualified to transact business pursuant to chapter 425 or 425D; or 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, the State and the counties and their respective subdivisions, agencies, authorities, and boards, 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] five 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 willfully supplies false or fraudulent information on an affidavit pursuant to subsection (d) or (g) or on an application for a withholding certificate pursuant to subsection (f) 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.

(f) An application for a withholding certificate may be submitted by the transferor to the department setting forth:

- (1) The name, address, and taxpayer identification number, if any, of the parties to the transaction and the location and general description of the real property to be transferred; and
- (2) A calculation and written justification showing that the transferor will not realize any gain with respect to the transfer; or
- (3) A calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under subsection (b) after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property.

Upon receipt of the application, the department shall determine whether the transferor has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. If the department is satisfied that no gain will be realized or that there will be insufficient proceeds to pay the withholding, it shall issue a withholding certificate stating the amount to be withheld, if any.

The submission of an application for a withholding certificate to the department does not relieve the transferee of its obligation to withhold or to make a return of the tax under subsections (b) and (c).

(g) No person shall be required to deduct and withhold any amount under subsection (b) if one or more individual transferors furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number, that for the year preceding the date of the transfer the property has been used by the transferor as a principal residence, and that the amount realized for the property does not exceed \$300,000.

(h) The department may enter into written agreements with persons who engage in more than one real property transaction in a calendar year or other persons to whom meeting the withholding requirements of this section are not practicable. The written agreements may allow the use of a withholding method other

than that prescribed by this section or may waive the withholding requirement under this section.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on August 1, 1991.

(Approved June 17, 1991.)