

ACT 23

S.B. NO. 842

A Bill for an Act Relating to Withholding of Tax on the Disposition of Real Property by Nonresident Persons.

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

SECTION 1. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

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

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

“Resident person” means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A;
- (3) Partnership formed or registered under chapter 425 or 425E;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425E;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428; provided that if a single member limited liability company has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of this section and this section shall be applied as if the sole member is the transferor;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) 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] that is located in Hawaii.”

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 Statutory material to be repealed is bracketed and stricken.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

SECTION 3. This Act shall take effect upon its approval and apply to taxable years beginning after December 31, 2004; provided that nothing in this Act shall be construed to create any inference with respect to the proper tax treatment of single member limited liability companies for taxable years prior to the taxable year beginning on January 1, 2005.

(Approved April 22, 2005.)