



HARPTA

Hawaii State Bar Association

February 23, 2018

This presentation is for general informational purposes only, and should not be relied upon for tax law. Please refer to the applicable Hawaii Revised Statutes, Tax Information Release, Tax Facts, and Forms and Instructions for official Department of Taxation information.

What is HARPTA?

- ▶ Acronym for the Hawaii Real Property Tax Act
- ▶ Effective January 1, 1991 (Act 213, SLH 1990)
- ▶ Codified in § 235-68, Hawaii Revised Statutes
- ▶ Modeled after the federal Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)
- ▶ Withholding of tax on the sale of Hawaii real property by nonresident sellers.
- ▶ It is an *estimated income tax* payment on behalf of the nonresident sellers

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Who is Subject to HARPTA?

- ▶ A nonresident person that sells real property in Hawaii is subject to HARPTA
- ▶ A "nonresident person" is every person other than a "resident person"
- ▶ "Resident person" is defined in § 235-68(a) and includes Hawaii resident individuals and entities formed or registered under Hawaii law

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What is the General Process?

- ▶ Nonresident person sells Hawaii real property
- ▶ Buyer must withhold 5% of the amount realized for the seller
- ▶ Buyer must file Form N-288 and Form N-288A with payment to DoTax
- ▶ Payment is credited to income tax account of seller
- ▶ Seller files a Hawaii income tax return

How Much is Withheld?

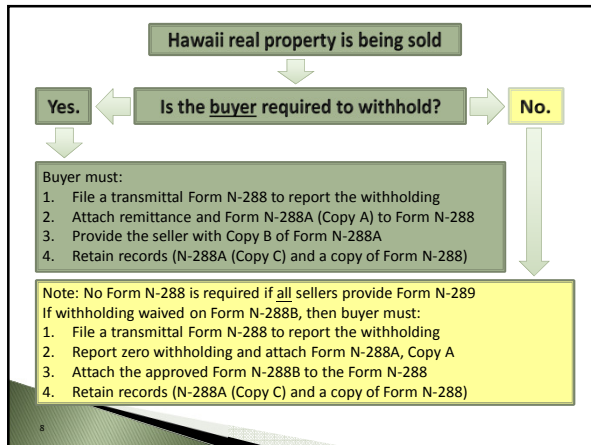
- ▶ 5% of the amount realized on the disposition
 - In most cases, this means 5% of gross sales price
- ▶ If sellers include both nonresidents and residents, the amount realized is allocated
 - In general, allocate based upon percentage of ownership
 - Allocate based on capital contribution
 - Husband and Wife – generally 50% interest each
- ▶ Installment Sales (e.g., Agreement of Sales or Purchase Money Mortgage)
 - Withholding annually or on initial sale
 - See TIR 2017-01, Section III, page 3

Who is Responsible?

Buyer's Responsibilities

- ▶ Withhold tax from the sale of Hawaii real property and remit it to DoTax (Form N-288)
- ▶ Report to DoTax the amount withheld for each seller (Form N-288A, Copy A)
- ▶ Report to the seller the amount withheld on the seller's behalf (Form N-288A, Copy B)
- ▶ No withholding is required if an exemption applies (Form N-289) or if the withholding is waived (Form N-288B) by DoTax

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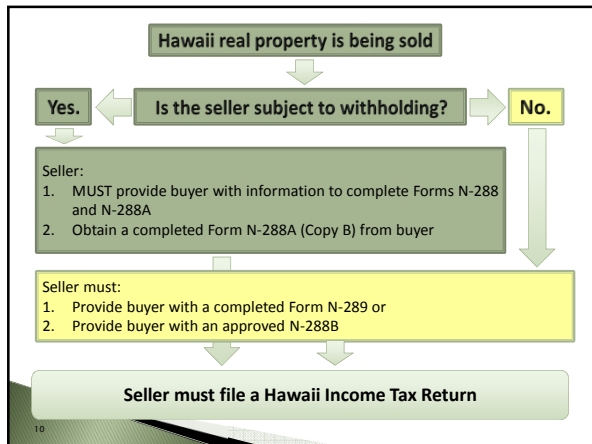


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Seller's Responsibilities

- ▶ If the seller is not subject to withholding, then the seller must:
 - Provide Form N-289 to the buyer; or
 - Submit Form N-288B to DoTax
 - (If the seller does not submit the applicable form on time, then the buyer must withhold tax)
- ▶ If the seller is is subject to withholding, then seller must:
 - Provide the buyer with information to complete Forms N-288 and N-288A so that the withholding can be properly credited
 - Obtain a completed Form N-288A (Copy B) from the buyer
 - File a Hawaii income tax return

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When is the HARPTA Payment Due?

- ▶ The buyer must complete and file Form N-288 and remit the total amount withheld to DoTax by the 20th day following the date of transfer
 - If two or more persons are joint buyers, each of them is obligated to withhold. However, the obligation of each will be met if one of the buyers withholds and transmits the required amount to DoTax

FORM N-288 **STATE OF HAWAII - DEPARTMENT OF REVENUE**
HAWAII WITHHOLDING TAX RETURN FOR DISPOSITIONS BY NONRESIDENT PERSONS OF HAWAII REAL PROPERTY INTERESTS **2018**
INSTRUCTIONS

(PART I. References to "transferor" and "transfer" are also references to "to a child or other" and "to a child or other partner," respectively.)
 (Copy A of Form(s) N-288A and your check or money order **MUST** be attached.)

To Be Completed by the Transferor/Buyer Required to Withhold

1. Name of transferee(s) _____
 Address (number and street) _____
 City, State, and ZIP/Postal Code (include postal code and country) _____
 2. Description and location of property acquired (include fee map key number) _____
 3. Date of transfer _____
 4. Number of forms to be submitted _____
 5. Amount retained on the transfer _____
 6. Amount withheld _____

Transferor/Buyer **Transferor/Buyer**

Signature _____
Date _____

Preparer's **Preparer's**

Signature _____
Date _____

Use Only **Use Only**

General Instructions

Purpose of Form

A 1% withholding obligation is generally imposed on the transferee when a interest in real property is transferred to a nonresident person. This withholding serves to collect Hawaii income tax on the sale of real property interest. The transferee must complete Form N-288 and file it with the Department of Revenue, along with the amount withheld and the amount retained on the transfer.

Who Must File

A transferee of a Hawaii real property interest who is a nonresident person is required to withhold and remit to the Department of Revenue the amount of Hawaii income tax on the sale of the real property interest. The transferee must file Form N-288 and file it with the Department of Revenue, along with the amount withheld and the amount retained on the transfer.

When to File

A transferee must file Form N-288 and file it with the Department of Revenue by the 20th day following the date of transfer. The transferee must file Form N-288 and file it with the Department of Revenue by the 20th day following the date of transfer.

Amount to Withhold

The amount to withhold is 1% of the net sales price of the real property interest. The amount to withhold is 1% of the net sales price of the real property interest.

Amount Retained

The amount retained on the transfer is the net sales price of the real property interest. The amount retained on the transfer is the net sales price of the real property interest.

Amount to Remit

The amount to remit is the amount withheld. The amount to remit is the amount withheld.

Amount to Retain

The amount to retain is the amount retained on the transfer. The amount to retain is the amount retained on the transfer.

Amount to Withhold

The amount to withhold is 1% of the net sales price of the real property interest. The amount to withhold is 1% of the net sales price of the real property interest.

Amount Retained

The amount retained on the transfer is the net sales price of the real property interest. The amount retained on the transfer is the net sales price of the real property interest.

Amount to Remit

The amount to remit is the amount withheld. The amount to remit is the amount withheld.

Amount to Retain

The amount to retain is the amount retained on the transfer. The amount to retain is the amount retained on the transfer.

FORM N-288A

- ▶ Prepared in triplicate by the buyer
- ▶ Contains the information used to report the amount withheld by the buyer on behalf of each seller
- ▶ Buyer attaches Copy A to Form N-288 and submits it with payment to the DoTax
 - DoTax will send a letter to each seller to confirm receipt
- ▶ Buyer provides Copy B to seller; seller attaches Copy B to its Hawaii income tax return
- ▶ Copy C is retained by buyer
- ▶ One Form N-288A per nonresident seller
 - Husband & Wife do not need separate Forms N288A if they file a joint return

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FORM N-288A (Rev. 2017) STATE OF HAWAII—DEPARTMENT OF TAXATION THIS SPACE FOR DATE RECEIVED STAMP
 STATEMENT OF WITHHOLDING ON DISPOSITIONS BY NONRESIDENT PERSONS OF HAWAII REAL PROPERTY INTERESTS
 Copy A 2018
 For State of Hawaii, Department of Taxation. See Instructions on back of this copy.

1. Description and location of property transferred (include tax map key number) 2. Transferor/Seller is: An individual or revocable living trust A partnership A corporation An S corporation

3. Amount realized (Your share of sales or contract price) 4. Transferor/Seller's FEN 5. Transferor/Seller's I.D. no. (SSN or FEN) (Enter only one I.D. no.) 6. Spouse's SSN (Your share or tax withheld method, check box) 7. If the transferor/seller is reporting the gain under the installment method, check box 8. Hawaii income tax withheld (Your share or tax withheld)

9. Transferor/Seller's name 10. Spouse's Name
 Street address
 City, state, and postal/ZIP code
 Transferor/Seller's street address
 City, province or state, postal/ZIP code, and country

THIS FORM IS TO BE USED FOR TRANSFERS OR PAYMENTS MADE IN 2018 ONLY.
 ATTACH COPY A OF FORMS N-288A AND YOUR CHECK OR MONEY ORDER TO FORM N-288 (Payable to "Hawaii State Tax Collector")
 HAWAII FORMS FORM N-288A

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Form N-289

- ▶ Must be completed by the seller and given to the buyer to claim an exemption from HARPTA withholding
- ▶ Is an affidavit from the seller that withholding is not required for a specific reason
- ▶ Does not need to be approved by DoTax

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FORM N-289 (continued)

- ▶ Form N-289 relieves buyer of the responsibility to withhold HARPTA amount, unless the buyer has knowledge that seller's affidavit is false. (See Section V of Tax Information Release No. 2017-01)

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Form N-289 Exemptions

- ▶ Seller is a "resident person"
- ▶ The gain on the sale of the property is not recognized (i.e., not taxable) under the Internal Revenue Code (e.g., section 1031) as operative under chapter 235, HRS. This applies only if seller is not required to recognize any gain.
- ▶ Property was the principal residence of the seller in the year preceding the sale AND the amount realized was not more than \$300,000. This applies only to individuals. § 235-68(f), HRS.

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FORM N-289 STATE OF HAWAII - DEPARTMENT OF TREASURY
CERTIFICATION FOR EXEMPTION FROM THE WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII REAL PROPERTY

(This certification of exemption and affidavit is to be completed by the transferee (seller) of the property and is to be submitted to the transferee (buyer) of the property.)

Section 235-68 of the Hawaii Revised Statutes (HRS) provides that a transferee (buyer) of real property is not required to withhold tax on the sale of real property if the transferee (seller) certifies that the sale is exempt from the withholding of tax under chapter 235, HRS. This certification of exemption and affidavit is to be submitted to the transferee (buyer) of the property.

The transferee (buyer) must file this certification of exemption and affidavit with the transferee (seller) of the property.

SECTION 235-68(f), HRS. - CERTIFICATION FOR EXEMPTION FROM THE WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII REAL PROPERTY

I, the undersigned, certify that the sale of the property described in the attached deed is exempt from the withholding of tax under chapter 235, HRS, because:

II:

1. The property was the principal residence of the seller in the year preceding the sale AND the amount realized was not more than \$300,000. This applies only to individuals. § 235-68(f), HRS.

2. The gain on the sale of the property is not recognized (i.e., not taxable) under the Internal Revenue Code (e.g., section 1031) as operative under chapter 235, HRS. This applies only if seller is not required to recognize any gain.

3. Seller is a "resident person".

I, the undersigned, hereby certify that the information provided herein is true and correct to the best of my knowledge and belief.

Signature: _____ Title: _____

Date: _____

FORM N-289

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FORM N-288B

- ▶ Completed by the seller and submitted to DoTax to apply for a waiver or adjustment of the amount withheld
- ▶ One Form N-288B per nonresident seller
 - Exception: Husband and wife do not need separate forms they file a joint return for year of sale
- ▶ Subject to DoTax approval
 - File Copy A and Copy B with required documents no later than 10 working days prior to the date of transfer
 - If approved, seller must give it to the buyer
- ▶ Do not file Form N-288B if transfer has already taken place
- ▶ Do not file Form N-288B if there is a gain, unless IRC section 121 applies

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Form N-288B (continued)

- ▶ Use Form N-288B to apply for a waiver or adjustment if:
 - Seller will not realize any gain
 - No withholding will be required
 - Passive loss carryforward, NOL carryforward, etc., may NOT be used to offset gain realized on the Form N-288B
 - Exclusion for sale of principal residence. § 121, IRC.
 - There are insufficient proceeds to pay required 5% withholding after payment of all costs
 - Costs include selling expenses and the amount of any mortgage or lien secured by the property
 - Withholding = Lesser of net proceeds of the sale or 5% of gross sales price

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STATE OF HAWAII - DEPARTMENT OF REVENUE
FORM N-288B
 Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interest

File Copy A and Copy B with the Department of Taxation 10 days prior to the date of transfer of the property. This form is not valid if it is not filed with the Department of Taxation. This form is not valid if it is not filed with the Department of Taxation. This form is not valid if it is not filed with the Department of Taxation.

1. Name of Seller(s) (Last, First, Middle Initial)
 2. Address (Street, City, State, ZIP Code)
 3. Date of Birth (MM/DD/YYYY)
 4. Social Security Number (SSN)
 5. Date of Transfer (MM/DD/YYYY)
 6. Description of Property (Address, City, State, ZIP Code)
 7. Gross Sales Price (\$)
 8. Selling Expenses (\$)
 9. Mortgage or Lien Secured by Property (\$)
 10. Net Proceeds (\$)
 11. Withholding Amount (\$)
 12. Reason for Waiver/Adjustment (Check one)
 13. Signature of Seller (Print Name)
 14. Signature of Seller (Handwritten)

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Form N-288C - Tentative Refunds

- ▶ Use Form N-288C to apply for a refund of the amount withheld that is more than the tax on the difference between the adjusted basis of the property and the sales price
- ▶ This form may be filed by seller after the seller receives written confirmation from DoTax that the amount withheld has been received and credited to seller's account
- ▶ Form N-288C should only be filed if the current year's income tax return is not yet available
- ▶ Even if N-288C is filed, a Hawaii income tax return still must be filed

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Why is it a Tentative Refund?

- ▶ A seller/transferor may have losses from renting the property that they may use to adjust their capital gain. These losses may not be claimed on Form N-288C because they are not adjustments to the basis of the property.
- ▶ Prior year returns and the final return must be filed to establish these losses before they may be used to reduce the realized capital gain.

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Form N-288C (Tentative Refund) for Hawaii. The form includes fields for taxpayer information, property details, and tax calculations. It is a complex document with multiple sections and checkboxes.

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FOR MORE INFORMATION

- ▶ Visit our website at tax.hawaii.gov
- ▶ Tax forms and instructions
- ▶ Section 235-68, Hawaii Revised Statutes
- ▶ Tax Information Release No. 2017-01
 - “Withholding of State Income Taxes on the Disposition of Real Property”
- ▶ Tax Facts 2010-01, Understanding HARPTA
