

1. Whether a lease that has a 3 year term with two one year options is subject to conveyance tax.

A lease is subject to conveyance tax if the full unexpired term is 5 years or more. A lease with a three year term, with two one year options is not subject to conveyance tax.

2. Whether the Department of Taxation has any publications on its position regarding actual and full consideration when multiple properties are transferred on one deed.

The Department of Taxation publications on conveyance tax do not address this issue.

3. How should the actual and full consideration be allocated when multiple properties are transferred on one deed? Based on relative land area? County assessed value?

Fair market value based on appraisals would be the best way to value each property. If no such appraisal exist, the Department of Taxation will accept an allocation based on county assessed value of the properties. The amount allocated to each property would be the county assessed value of the property divided by the total county assessed value of all properties multiplied by the actual and full consideration of the transfer.

4. What is the policy rationale behind asking for specific trust information, such as beneficiaries, when applying to the Department of Taxation for a conveyance tax exemption?

The Department of Taxation does not ask for such information if the exemption for transfers from a testamentary trust to a beneficiary (§ 247-3(13), HRS) or transfers between a grantor and the grantor's revocable living trust (§ 247-3(14), HRS). These exemptions are not reviewed by the Department of Taxation.

The Department of Taxation may require trust information (as substantiation) when an exemption is requested and the transferor or transferee is a trust, and the transfer is not for a business purpose. See Form P-64B, Part III.

5. For HARPTA purposes, why is a Hawaii LLC with a nonresident single-member treated like a nonresident person?

The LLC is disregarded if it has not elected to be taxed as a corporation based on paragraph (5) of the definition of "resident person." That provision states, "[l]imited 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. For HARPTA purposes, is a federally chartered financial institution a resident person?

Yes, if the entity qualifies as a “resident person” under section 235-68(a), HRS. If the entity is a corporation it would need to have been, “incorporated or granted a certificate of authority under chapter 414, 414D, or 415A”. Chapter 414 is the Hawaii Business Corporation Act, Chapter 414D is the Hawaii Nonprofit Corporations Act, and Chapter 415A is the Professional Corporation Act.

7. For HARPTA purposes, what is the rationale behind the policy regarding 1031 exchanges and boot?

The Department’s position is based on language of the law itself. The HARPTA exemption for nonrecognition based on the Internal Revenue Code specified that the exemption applies when only when no gain is recognized at all. Section 235-68(d)(2), HRS, states, “[t]hat 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”.

8. Does the Department of Taxation have a position on whether HARPTA applies when the transferor is a commissioner, receiver or the like?

HARPTA applies to the actual owner of the property. Thus, if the actual owner is a resident, but a commissioner or receiver is a nonresident withholding would not be required.