

STATE OF HAWAII — DEPARTMENT OF TAXATION
CERTIFICATION FOR EXEMPTION FROM THE
WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII
REAL PROPERTY

(To be completed by transferor/seller and given to transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval.)

Section 235-68, Hawaii Revised Statutes (HRS), provides that a transferee/buyer of Hawaii real property must withhold tax if the transferor/seller is a nonresident person. To inform the transferee/buyer that withholding of tax is not required upon the disposition of Hawaii real property by _____ (name of transferor/seller), the undersigned hereby certifies the following:

Transferor/seller's identification number (Last 4 numbers of the SSN or FEIN) _____

Transferor/seller's address (home address for individuals, office address for corporations, partnerships, trusts, or estates)

The withholding of tax is not required upon the disposition of Hawaii real property because (check whichever box is applicable):

- ☐ 1 The transferor/seller is a resident person as defined in section 235-68, HRS. **Resident person** means any: (1) Individual included in the definition of "resident" in section 235-1, HRS; (2) Corporation incorporated or granted a certificate of authority under Chapter 414, 414D, or 415A, HRS; (3) Partnership formed or registered under Chapter 425 or 425E*, HRS; (4) Foreign partnership qualified to transact business pursuant to Chapter 425 or 425E*, HRS; (5) Limited liability company formed under Chapter 428, HRS, or any foreign limited liability company registered under Chapter 428, HRS; 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 section 235-68, HRS, and section 235-68, HRS, shall be applied as if the sole member is the transferor; (6) Limited liability partnership formed under Chapter 425, HRS; (7) Foreign limited liability partnership qualified to transact business under Chapter 425, HRS; (8) Trust included in the definition of "resident trust" in section 235-1, HRS; or (9) Estate included in the definition of "resident estate" in section 235-1, HRS.
*Note: Chapter 425E, HRS, replaced chapter 425D, HRS, effective July 1, 2004.
- ☐ 2 That by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. (See Instructions) (Complete A and B below.)

A. Brief description of the transfer:

B. Brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer:

- ☐ 3 For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000. (See Instructions)

_____ (name of transferor/seller) understands that this certification may be disclosed to the State of Hawaii, Department of Taxation by the transferee/buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

I declare, under the penalties set forth in section 231-36, HRS, that this certification has been examined by me, and to the best of my knowledge and belief, it is true, correct, and complete. In the case of corporations, partnerships, trusts, or estates, I further declare that I have authority to sign this document on behalf of _____ (name of transferor/seller).

Signed: _____

Print Name: _____

Title: _____

Date: _____

Instructions for Form N-289

CERTIFICATION FOR EXEMPTION FROM THE WITHHOLDING OF TAX ON THE DISPOSITION OF HAWAII REAL PROPERTY

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

GENERAL INSTRUCTIONS

Purpose of Form

Use Form N-289 to inform the transferee/buyer that the withholding of tax is not required upon the disposition of Hawaii real property if (1) the transferor/seller is a resident person, (2) by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or (3) for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000.

Who Can Complete Form N-289

The transferor/seller can complete Form N-289.

Where to Send Form N-289

Form N-289 must be completed by the transferor/seller and given to the transferee/buyer. The transferor/seller should NOT file Form N-289 with the Department of Taxation for approval. The transferee/buyer is to retain Form N-289 and NOT forward it to the Department of Taxation if ALL the transferor/sellers have provided a certification of exemption on Form N-289 to the transferee/buyer. If one or more, but not all of the transferor/sellers has provided a certification of exemption on Form N-289 to the transferee/buyer, the transferee/buyer shall attach a copy of the Form N-289 to Forms N-288 and N-288A, which must still be filed with the Department of Taxation.

SPECIFIC INSTRUCTIONS

At the top of Form N-289, enter the transferor/seller's name, identification number (last 4 numbers of the social security number, individual identification number or federal I.D. number), and address. The Internal Revenue Service (IRS) issues Individual Taxpayer Identification Numbers (ITINs) to certain aliens who are required to have a U. S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. The ITIN issued by the IRS must be used as the individual's identification number. If the individual has applied for an ITIN but the IRS has not yet issued the ITIN, write “Applied For.”

Check the applicable box to indicate the reason the withholding of tax is not required upon the disposition of Hawaii real property.

Box number 1. Check box number 1 if the transferor/seller is a resident person as defined in section 235-68, HRS.

Box number 2. Check box number 2 if by reason of a nonrecognition provision of the Internal Revenue Code as operative under chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer. Complete sections A and B requesting a brief description of the transfer and 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.

Box number 3. Check box number 3 if for the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and the amount realized for the property does not exceed \$300,000. The “amount realized” means the sum of the cash paid, or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

NOTE: Although the withholding of tax may not be required upon the disposition of Hawaii real property, the transferor/seller is required under section 235-92, HRS, to file an income tax return to report the sale or other disposition.

Signature

Form N-289 must be signed by an individual, a responsible corporate officer, a member or general partner of a partnership, or a trustee, executor, or other fiduciary of a trust or estate. In addition, Form N-289 may be signed by an authorized agent with a power of attorney.

Where to Get Information

Information is available on the Department's website at **tax.hawaii.gov** or you may contact a customer service representative at:

Phone: 808-587-4242
1-800-222-3229 (Toll-Free)

Fax: 808-587-1488

Mail: Taxpayer Services Branch
P.O. Box 259
Honolulu, HI 96809-0259