

# HARPTA

The Hawaii Real Property Tax Act  
Cute Name – Ugly Law

Mark W. Lee, CPA

November, 2019

## WHAT IS HARPTA?

The **H**awaii **R**eal **P**roperty **T**ax **A**ct or **HARPTA** is a Hawaii state tax law which mandates backup withholding from real estate transactions occurring within the state when the *seller* is not a resident of Hawaii. On the theory that a non-resident selling party might fail to file a state income tax return to report the appropriate amount of capital gains tax, Hawaii withholds 7.25% of the contract price.

Almost 1/3 of real estate (by value) in Hawaii is owned by non-residents. These include US citizens living on the mainland, active military service members who live in Hawaii and retain their home state residency, and non-US persons.

In September of 2018 the rate of withholding was increased from 5.00% to 7.25% causing additional sticker-shock at closing transactions around the islands. HARPTA withholding is \$72,500 on a million dollar sale price. In the vast majority of transactions HARPTA withholding greatly exceeds the amount of actual tax due.

## PLANNING

Planning ahead when you decide to sell your Hawaii real estate can save you precious cash flow by eliminating HARPTA withholding from your proceeds at the closing table. Exemptions are available from HARPTA and may apply to you. But exemptions require timely filing and must be accurately prepared and contain sufficient supporting documentation.

Have you already closed a transaction and had the full 7.25% withheld from your closing proceeds? HARPTA withholding for a typical condo sale averages over \$50,000. Capital gains taxes on the transaction might be less than half that amount. If you won't owe any capital gains on the sale (and if you have no other tax liabilities to the state) you can generally recover the full amount of HARPTA withholding. Refund times vary but most arrive within 60 days.

**IMPORTANT:** Before refunding any HARPTA withholding, the Hawaii Department of Taxation will determine if you are compliant with various Hawaii taxes to which you may be subject.

## TAXES, WHAT TAXES?

If you have rented your property during the period of your ownership you were required to file the following tax returns and will be subject to the following taxes in connection with your business activities in Hawaii.

- **Hawaii state income** tax returns are due each year you rent property in Hawaii. This is true whether you have taxable income or not. There can be significant differences between federal and Hawaii depreciation allowances and it is possible that you owe Hawaii state income tax on the rental even if you did not show a profit on your federal return.
- **Hawaii General Excise Tax** of 4.00 - 4.50 % is due on all long term rentals over 180 days.
- **General Excise** of 4.00 - 4.50 % and **Transient Accommodation Taxes** of 10.25-10.50% are due on all short term rentals of under 180 days.
- You are subject to **Hawaii capital gains tax** of up to 7.25% on the profit (gain) realized on the sale of your real estate.

*Once current on all applicable tax filings and taxes due you will be eligible to file for an early refund of all or a portion of the HARPTA withholding.*

# ACTIVE MILITARY

There is a widely held misconception that active military servicemembers are exempt from HARPTA. They are not. Since most military members retain their home state of residence, they are non-Hawaii residents even though they may own homes here in Hawaii. This subjects them to HARPTA.

However, Hawaii conforms to Federal tax rules which provide significant reduction or elimination of capital gains tax on the sale of your primary residence. As such military member sales seldom incur Hawaii capital gains tax. But servicemembers must file the correct exemption forms in a timely manner in order to avoid HARPTA withholding. Failure to do so will result in having to file a refund application.

## CONCLUSION

**HARPTA REFUND SOLUTIONS** website at [www.harpta.tax](http://www.harpta.tax) contains access to forms and instructions on filing HARPTA exemptions and refunds. The HARPTA withholding, exemption and refund processes can be confusing. Careful attention should be paid to accurately and completely preparing and filing the correct form(s) to obtain exemptions and refunds. Applications for HARPTA exemptions or refunds may require you to prepare an estimate of your capital gains tax liability to the state of Hawaii. The calculations can be complex.

The applications for HARPTA exemptions and refunds must contain accurate and complete documentation. Filings for HARPTA refunds larger than \$15,000 are typically subjected to enhanced review by the Hawaii Department of Taxation.

Exemption forms must be filed within ten days of closing, any claim for refund of withheld HARPTA TAX must be made within 36 months of the due date of your final Hawaii income tax return.

## About the Author



**Mark W. Lee, CPA** has an extensive background in regulatory compliance, litigation support, and emerging issues accounting. He began his career in the Houston office of Deloitte in 1990 and spent the next twenty five years delivering financial, taxation and operational consulting service to public companies, governments and high net worth individuals. In 2015 Mr. Lee moved from Dubai to Wailuku, Hawaii and began providing tax, business, and operational advice to small business and individual clients on Maui and the Neighbor Islands.

[READ THE FAQ](#)



**585A Iao Valley Road Wailuku, HI 96793**

Mark W Lee, CPA

(HI CPA Licenses 900 & 5353)

---