HOUSE OF REPRESENTATIVES TWENTY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII

H.B. NO. 1408

A BILL FOR AN ACT

RELATING TO A CONTROLLING INTEREST TRANSFER TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. The Hawaii Revised Statutes is amended by
2	adding a new chapter to be appropriately designated and to read
3	as follows:
4	"CHAPTER
5	CONTROLLING INTEREST TRANSFER TAX
6	§ -1 Definitions. As used in this chapter:
7	"Controlling interest" means more than fifty per cent
8	interest in or assets of a limited liability company organized
9	under chapter 428 or any other state.
10	"Department" means the department of taxation.
11	"Director" means the director of taxation.
12	"Entity" means a natural person or any other legal business
13	organization used in the State pursuant to law, including a
14	corporation, partnership, and sole proprietor.
15	"True and actual value" means the fair market value as of
16	the time of the transfer of a controlling interest, not
17	including the amount of any mortgage, lien, or other
18	encumbrance.
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1 -2 Administration by director; rules. S (a) This 2 chapter shall be administered by the director. All forms 3 necessary to enforce this chapter shall be prescribed, printed, 4 and furnished by the director. The director may adopt and shall 5 enforce rules pursuant to chapter 91 to administer and enforce 6 this chapter. 7 (b) In addition to any other rules necessary to administer 8 and enforce this chapter, the director shall adopt rules: 9 (1)Establishing a system to notify the department of 10 changes in the controlling interest of any entity 11 subject to this chapter; Establishing requirements as to the responsibility for 12 (2) 13 filing returns if there is no single person who 14 conveys the controlling interest in any entity subject 15 to this chapter; and 16 (3) Providing for the filing of any liens necessary to 17 enforce the payment of taxes, and any penalties or 18 interest required by this chapter. 19 -3 Tax on transfer of controlling interest; possessing S 20 real property; rate of tax applied to the value of the real 21 property. (a) There is imposed a tax on the sale or transfer 22 for consideration of a controlling interest in any limited HB HMS 2011-1517

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liability company which possesses, directly or indirectly, an
 interest in real property in this State when the present true
 and actual value of the interest in real property equals or
 exceeds \$2,000, and when:

5 (1) The transfer of a controlling interest is made by a
6 seller or transferor or by a group of sellers or
7 transferors acting in concert; provided that sellers
8 or transferors who are related to each other by blood
9 or marriage are presumed, unless shown to the
10 contrary, to be acting in concert; and

11 (2) The controlling interest transfers real property to a
12 transferee or to a group of transferees acting in
13 concert; provided that:

14 (A) Where transferees are related and one influences
15 or controls the actions of another (such as
16 parent and subsidiary corporations, parents and
17 children, and husbands and wives), the
18 transferees shall be presumed to be acting in
19 concert; and

20 (B) Where transferees have negotiated and will
21 consummate their purchase of the controlling
22 interest (such as transfers that are closely



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1		related in time, transferees that are few in
2		number, or purchase contracts that contain mutual
3		terms, and agreements among transferees binding
4		them to a course of action with respect to the
5		transfers), the transferees shall be presumed to
6		be acting in concert.
7	The tax impose	d on the present true and actual value of the
8	interest in re	al property transferred shall be at the following
9	rates:	
10	(1) Exce	pt as provided in paragraph (2):
11	(A)	Ten cents per \$100 for properties with a value of
12		less than \$600,000;
13	(B)	Twenty cents per \$100 for properties with a value
14		of at least \$600,000, but less than \$1,000,000;
15	(C)	Thirty cents per \$100 for properties with a value
16		of at least \$1,000,000, but less than \$2,000,000;
17	(D)	Fifty cents per \$100 for properties with a value
18		of at least \$2,000,000, but less than \$4,000,000;
19	(E)	Seventy cents per \$100 for properties with a
20		value of at least \$4,000,000, but less than
21		\$6,000,000;

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1		(F)	Ninety cents per \$100 for properties with a value
2			of at least \$6,000,000, but less than
3			\$10,000,000; and
4		(G)	One dollar per \$100 for properties with a value
5			of \$10,000,000 or greater;
6		and	
7	(2)	For	the sale of a condominium or single family
8		resi	dence for which the purchaser is ineligible for a
9		coun	ty homeowner's exemption on property tax:
10		(A)	Fifteen cents per \$100 for properties with a
11			value of less than \$600,000;
12		(B)	Twenty-five cents per \$100 for properties with a
13			value of at least \$600,000, but less than
14	•		\$1,000,000;
15		(C)	Forty cents per \$100 for properties with a value
16			of at least \$1,000,000, but less than \$2,000,000;
17		(D)	Sixty cents per \$100 for properties with a value
18			of at least \$2,000,000, but less than \$4,000,000;
19		(E)	Eighty-five cents per \$100 for properties with a
20			value of at least \$4,000,000, but less than
21			\$6,000,000;
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1	(F) One dollar and ten cents per \$100 for properties		
2	with a value of at least \$6,000,000, but less		
3	than \$10,000,000; and		
4	(G) One dollar and twenty-five cents per \$100 for		
5	properties with a value of \$10,000,000 or		
6	greater.		
7	The tax shall be payable by the limited liability company		
8	selling or transferring the controlling interest, or as		
9	designated by the director pursuant to rule. If the entity owns		
10	less than a one hundred per cent interest in the real estate,		
11	the tax shall be based on the actual percentage of ownership,		
12	with no further discounts on account of minority ownership.		
13	(b) A taxable sale or transfer of a controlling interest		
14	may occur in one transaction or in a series of transactions.		
15	Transactions that occur within six months of each other are		
16	presumed, unless shown to the contrary, to be a series of		
17	transactions.		
18	(c) In addition to the exemptions under section 247-3, the		
19	tax imposed by subsection (a) shall not apply to:		
20	(1) Any sale or transfer of a controlling interest to the		
21	extent that the limited liability company possesses,		
22	directly or indirectly, an interest in real property		
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1 located in an area of any county designated as an 2 enterprise zone in accordance with section 209E-4, but 3 shall apply to the extent the limited liability 4 company possesses, directly or indirectly, an interest 5 in real property in this State located outside the area designated as an enterprise zone; and 6 Any sale or transfer of real property, however 7 (2)8 effected, if it consists of a mere change in identity 9 or form of ownership of a limited liability company 10 where there is no change in the beneficial ownership, 11 including transfers to a corporation or partnership 12 that is wholly owned by the transferor. 13 -4 Filing return and payment of tax. On or before the S 14 last day of the month following the month in which the sale or 15 transfer of a controlling interest in a limited liability 16 company that is subject to the tax imposed by section -3 17 occurs, a return shall be filed with the director by the entity or entities conveying the controlling interest, as designated by 18 19 and in a form as the director may prescribe pursuant to rules 20 adopted under chapter 91.



S -5 Penalties. Any person in violation of this chapter
 shall be subject to penalties provided under title 14 and shall
 be guilty of a misdemeanor.
 S -6 Records maintenance. Any limited liability company

5 with respect to which there is a sale or transfer of a 6 controlling interest in the entity, which sale or transfer is 7 subject to the tax imposed by section -3, shall maintain a 8 record of the seller or transferor, and report every transfer of 9 a controlling interest in its profits, assets, or beneficial 10 interests, and other information as the director may require. 11 The report shall be filed at least annually or more frequently 12 as may be required at a location pursuant to rules adopted by 13 the director."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. This Act shall take effect upon its approvaland shall apply to taxable years beginning after December 31,

Calmol INTRODUCED BY: JAN 2 6 201



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Report Title:

Taxation; Controlling Interest Transfer Tax

Description:

Establishes a controlling interest transfer tax imposed at the rate set under the conveyance tax, to be administered by the Director of Taxation on any transfer of interest of more than 50 percent in an entity holding real property in the state.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

