
A BILL FOR AN ACT

RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.

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

1 SECTION 1. Chapter 247, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§247-A Definitions. As used in this chapter, unless the
5 context otherwise requires:

6 "Controlling interest" means:

7 (1) For a for-profit corporation, either fifty per cent or
8 more of the total combined voting power of all classes
9 of stock of the for-profit corporation entitled to
10 vote, or fifty per cent of the capital, profits, or
11 beneficial interest in the voting stock of the for-
12 profit corporation; and

13 (2) For any other corporation or a partnership,
14 association, trust, or entity, fifty per cent or more
15 of the capital, profits, or beneficial interest in the
16 corporation, partnership, association, trust, or other
17 entity.



1 "Transfers or conveyances" includes the transfer or
2 acquisition within any thirty-six-month period of a controlling
3 interest in any entity with an interest in real property located
4 in this State for valuable consideration.

5 §247-B Transfers or acquisitions of controlling interests
6 in entities; applicability of chapter. (a) The transfer of a
7 controlling interest in an entity shall be considered a taxable
8 transaction of the entity's real property for the purposes of
9 this chapter; provided that:

- 10 (1) The transfer or acquisition of the controlling
11 interest occurs within any thirty-six-month period;
12 (2) The controlling interest was transferred in a single
13 transaction or a series of transactions by a single
14 person or acquired by a single person or a group of
15 persons acting in concert;
16 (3) The entity has an interest in real property located in
17 the State;
18 (4) The transfer is not otherwise exempt under section
19 247-3; and
20 (5) The transfer was made for valuable consideration.



1 (b) For the sole purpose of determining whether a transfer
2 or acquisition pursuant to the exercise of an option occurred
3 within the thirty-six-month taxable transfer period, the date
4 that the option agreement was executed shall be the date on
5 which the transfer or acquisition of the controlling interest is
6 deemed to occur. For all other purposes under this section, the
7 date the option is exercised shall be the date of the transfer
8 or acquisition of the controlling interest.

9 (c) For purposes of this subsection, all acquisitions of
10 persons acting in concert shall be aggregated for purposes of
11 determining whether a transfer or acquisition of a controlling
12 interest has taken place. The department of taxation shall
13 adopt rules pursuant to chapter 91 to determine when persons are
14 acting in concert, which shall consider the following:

15 (1) Persons shall be treated as acting in concert when
16 they have a relationship with each other such that one
17 person influences or controls the actions of another
18 through common ownership; and

19 (2) When persons are not commonly owned or controlled,
20 they shall be treated as acting in concert only when
21 the unity with which the purchasers have negotiated



1 and will consummate the transfer of ownership
2 interests supports a finding that they are acting as a
3 single entity; provided that if the acquisitions are
4 completely independent and each purchaser buys without
5 regard to the identity of the other purchasers, the
6 acquisitions shall be considered separate
7 acquisitions.

8 (d) The department of taxation may, at the director's
9 option, enforce the obligation of the seller under this chapter
10 as follows:

11 (1) In the transfer or acquisition of a controlling
12 interest of a for-profit corporation, the director may
13 enforce the obligation against:

14 (A) The corporation in which a controlling interest
15 is transferred or acquired;

16 (B) The person or persons who acquired the
17 controlling interest in the corporation; or

18 (C) When the corporation is not a publicly traded
19 company, against the person or persons who
20 transferred the controlling interest in the
21 corporation; and



1 (2) In the transfer or acquisition of a controlling
2 interest of any other corporation, partnership,
3 association, trust, or other entity, the director may
4 enforce the obligation against either:

5 (A) The entity in which a controlling interest is
6 transferred or acquired; or

7 (B) The person or persons who transferred or acquired
8 the controlling interest in the entity.

9 (e) All taxes collected pursuant to this section shall be
10 deposited in accordance with section 247-7."

11 SECTION 2. Section 201H-191, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§201H-191 Dwelling unit revolving fund.** (a) There is
14 created a dwelling unit revolving fund. The [~~funds appropriated~~
15 ~~for the purpose of the dwelling unit revolving fund and all~~
16 ~~moneys received or collected by the corporation for the purpose~~
17 ~~of the revolving fund]~~ following shall be deposited in the
18 revolving fund[-]:

19 (1) Funds appropriated for the purpose of the dwelling
20 unit revolving fund;



1 (2) A portion of conveyance taxes pursuant to section 247-
2 7(3); and

3 (3) All moneys received or collected by the corporation
4 for the purpose of the revolving fund.

5 (b) The proceeds in the revolving fund shall be used to
6 reimburse the general fund to pay the interest on general
7 obligation bonds issued for the purposes of the revolving fund,
8 for the necessary expenses in administering housing development
9 programs and regional state infrastructure programs, and for
10 carrying out the purposes of housing development programs and
11 regional state infrastructure programs, including but not
12 limited to the expansion of community facilities and regional
13 state infrastructure constructed in conjunction with housing and
14 mixed-use transit-oriented development projects, permanent
15 primary or secondary financing, and supplementing building
16 costs, federal guarantees required for operational losses, and
17 all things required by any federal agency in the construction
18 and receipt of federal funds or low-income housing tax credits
19 for housing projects.

20 [~~(b)~~] (c) Subject to the requirements of subsection [~~(a)~~],
21 (b), proceeds in the revolving fund may be used to establish and



1 operate regional state infrastructure subaccounts pursuant to
2 section 201H-191.5."

3 SECTION 3. Section 247-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§247-2 **Basis and rate of tax.** (a) The tax imposed by
6 section 247-1 shall be based on the actual and full
7 consideration (whether cash or otherwise, including any promise,
8 act, forbearance, property interest, value, gain, advantage,
9 benefit, or profit), paid or to be paid for all transfers or
10 conveyance of realty or any interest therein, or in the case of
11 a transfer or acquisition of a controlling interest pursuant to
12 section 247-B, the fair market value of the real property owned
13 by the entity at the time the controlling interest is
14 transferred or acquired, that shall include any liens or
15 encumbrances thereon at the time of sale, lease, sublease,
16 assignment, transfer, or conveyance, and shall be at the
17 following rates:

18 (1) Except as provided in paragraph (2):

19 (A) Ten cents per \$100 for properties with a value of
20 less than \$600,000;



- 1 (B) Twenty cents per \$100 for properties with a value
- 2 of at least \$600,000, but less than \$1,000,000;
- 3 (C) Thirty cents per \$100 for properties with a value
- 4 of at least \$1,000,000, but less than \$2,000,000;
- 5 (D) Fifty cents per \$100 for properties with a value
- 6 of at least \$2,000,000, but less than \$4,000,000;
- 7 (E) Seventy cents per \$100 for properties with a
- 8 value of at least \$4,000,000, but less than
- 9 \$6,000,000;
- 10 (F) Ninety cents per \$100 for properties with a value
- 11 of at least \$6,000,000, but less than
- 12 \$10,000,000; and
- 13 (G) One dollar per \$100 for properties with a value
- 14 of \$10,000,000 or greater; and
- 15 (2) For the sale of a condominium or single family
- 16 residence for which the purchaser is ineligible for a
- 17 county homeowner's exemption on property tax:
- 18 (A) Fifteen cents per \$100 for properties with a
- 19 value of less than \$600,000;



- 1 (B) Twenty-five cents per \$100 for properties with a
2 value of at least \$600,000, but less than
3 \$1,000,000;
- 4 (C) Forty cents per \$100 for properties with a value
5 of at least \$1,000,000, but less than \$2,000,000;
- 6 (D) Sixty cents per \$100 for properties with a value
7 of at least \$2,000,000, but less than \$4,000,000;
- 8 (E) Eighty-five cents per \$100 for properties with a
9 value of at least \$4,000,000, but less than
10 \$6,000,000;
- 11 (F) One dollar and ten cents per \$100 for properties
12 with a value of at least \$6,000,000, but less
13 than \$10,000,000; and
- 14 (G) One dollar and twenty-five cents per \$100 for
15 properties with a value of \$10,000,000 or
16 greater,
- 17 of [~~such~~] the actual and full consideration; provided that in
18 the case of a lease or sublease, this chapter shall apply only
19 to a lease or sublease whose full unexpired term is for a period
20 of five years or more, and in those cases, including (where
21 appropriate) those cases where the lease has been extended or



1 amended, the tax in this chapter shall be based on the cash
2 value of the lease rentals discounted to present day value and
3 capitalized at the rate of six per cent, plus the actual and
4 full consideration paid or to be paid for any and all
5 improvements, if any, that shall include on-site as well as
6 off-site improvements, applicable to the leased premises; and
7 provided further that the tax imposed for each transaction shall
8 be not less than \$1.

9 (b) For purposes of this section, "fair market value"
10 means, for purposes of transfers or acquisitions of a
11 controlling interest pursuant to section 247-B, the value of
12 real property, as stated on the most recent real property
13 assessment issued by the county in which the real property is
14 located."

15 SECTION 4. Section 247-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§247-3 Exemptions.** The tax imposed by section 247-1
18 shall not apply to:

19 (1) Any document or instrument that is executed prior to
20 January 1, 1967;



- 1 (2) Any document or instrument that is given to secure a
2 debt or obligation;
- 3 (3) Any document or instrument that only confirms or
4 corrects a deed, lease, sublease, assignment,
5 transfer, or conveyance previously recorded or filed;
- 6 (4) Any document or instrument between husband and wife,
7 reciprocal beneficiaries, or parent and child, in
8 which only a nominal consideration is paid;
- 9 (5) Any document or instrument in which there is a
10 consideration of \$100 or less paid or to be paid;
- 11 (6) Any document or instrument conveying real property
12 that is executed pursuant to an agreement of sale, and
13 where applicable, any assignment of the agreement of
14 sale, or assignments thereof; provided that the taxes
15 under this chapter have been fully paid upon the
16 agreement of sale, and where applicable, upon [~~such~~]
17 the assignment or assignments of agreements of sale;
- 18 (7) Any deed, lease, sublease, assignment of lease,
19 agreement of sale, assignment of agreement of sale,
20 instrument or writing in which the United States or
21 any agency or instrumentality thereof or the State or



1 any agency, instrumentality, or governmental or
2 political subdivision thereof are the only parties
3 thereto;

4 (8) Any document or instrument executed pursuant to a tax
5 sale conducted by the United States or any agency or
6 instrumentality thereof or the State or any agency,
7 instrumentality, or governmental or political
8 subdivision thereof for delinquent taxes or
9 assessments;

10 (9) Any document or instrument conveying real property to
11 the United States or any agency or instrumentality
12 thereof or the State or any agency, instrumentality,
13 or governmental or political subdivision thereof
14 pursuant to the threat of the exercise or the exercise
15 of the power of eminent domain;

16 (10) Any document or instrument that solely conveys or
17 grants an easement or easements;

18 (11) Any document or instrument whereby owners partition
19 their property, whether by mutual agreement or
20 judicial action; provided that the value of each
21 owner's interest in the property after partition is



1 equal in value to that owner's interest before
2 partition;

3 (12) Any document or instrument between marital partners or
4 reciprocal beneficiaries who are parties to a divorce
5 action or termination of reciprocal beneficiary
6 relationship that is executed pursuant to an order of
7 the court in the divorce action or termination of
8 reciprocal beneficiary relationship;

9 (13) Any document or instrument conveying real property
10 from a testamentary trust to a beneficiary under the
11 trust;

12 (14) Any document or instrument conveying real property
13 from a grantor to the grantor's revocable living
14 trust, or from a grantor's revocable living trust to
15 the grantor as beneficiary of the trust;

16 ~~[(15) Any document or instrument conveying real property, or~~
17 ~~any interest therein, from an entity that is a party~~
18 ~~to a merger or consolidation under chapter 414, 414D,~~
19 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
20 ~~new entity;~~



1 ~~(16)]~~ (15) Any document or instrument conveying real
2 property, or any interest therein, from a dissolving
3 limited partnership to its corporate general partner
4 that owns, directly or indirectly, at least a ninety
5 per cent interest in the partnership, determined by
6 applying section 318 (with respect to constructive
7 ownership of stock) of the federal Internal Revenue
8 Code of 1986, as amended, to the constructive
9 ownership of interests in the partnership; and

10 ~~[(17)]~~ (16) Any document or instrument that conforms to the
11 transfer on death deed as authorized under chapter
12 527."

13 SECTION 5. Section 247-4, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) ~~[The]~~ Except as provided in section 247-B, the tax
16 imposed by this chapter shall be paid by the grantor, lessor,
17 sublessor, assignor, transferor, seller, conveyor, or any other
18 person conveying realty, or any interest therein, by a document
19 or instrument subject to section 247-1; except, however, in the
20 case where the United States or any agency or instrumentality
21 thereof or the State or any agency, instrumentality, or

1 governmental or political subdivision thereof is the grantor,
2 lessor, sublessor, assignor, transferor, seller, or conveyer,
3 the tax shall be paid by the grantee, lessee, sublessee,
4 assignee, transferee, purchaser, or conveyee, as the case may
5 be."

6 SECTION 6. Section 247-7, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§247-7 Disposition of taxes.** All taxes collected under
9 this chapter shall be paid into the state treasury to the credit
10 of the general fund of the State, to be used and expended for
11 the purposes for which the general fund was created and exists
12 by law; provided that of the taxes collected each fiscal year:

13 (1) Ten per cent [~~or \$5,100,000, whichever is less,~~] shall
14 be paid into the land conservation fund established
15 pursuant to section 173A-5; [and]

16 (2) Fifty per cent [~~or \$38,000,000, whichever is less,~~]
17 shall be paid into the rental housing revolving fund
18 established by section 201H-202[-]; and

19 (3) Ten per cent shall be paid into the dwelling unit
20 revolving fund established pursuant to section 201H-



1 191 for the purposes of funding infrastructure
2 programs in transit-oriented development areas."

3 SECTION 7. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 8. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 9. This Act shall take effect on January 1, 3000.



Report Title:

DOTAX; Conveyance Tax; Controlling Interest Transfers; Dwelling Unit Revolving Fund; Land Conservation Fund; Rental Housing Revolving Fund; Infrastructure Programs

Description:

Establishes that the transfer or acquisition of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax. Eliminates the dollar cap amounts of conveyance tax collections paid into the Land Conservation Fund and Rental Housing Revolving Fund. Deposits ten per cent of conveyance tax collections into the Dwelling Unit Revolving Fund for purposes of funding infrastructure programs for transit-oriented development. Effective 1/1/3000. (HD1)

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