
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the transfer of
2 ownership of a business entity is comparable to the sale of an
3 interest in real property held by the entity. The legislature
4 believes that all transfers of possession or use of real
5 property should be subject to the same conveyance tax
6 obligations.

7 The purpose of this Act is to impose the conveyance tax on
8 transfers of entity ownership when the transfer of entity
9 ownership is essentially equivalent to the sale of an interest
10 in real property.

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

14 "§247-A Transfer or acquisition of a controlling interest;
15 applicability. (a) Notwithstanding any provision to the
16 contrary, the tax imposed by section 247-1 shall apply to the
17 transfer or acquisition, or a series of transfers or



1 acquisitions, including those combined with otherwise exempt
2 transfers, by any person or entity acting alone or in concert,
3 within any twelve-month period, that result in:

4 (1) The transfer of a controlling interest in an entity
5 with an interest in real property located in this
6 State for valuable consideration; and

7 (2) The transfer of control or ownership of the real
8 property located in this State;

9 provided that this section shall not apply to any transfer or
10 acquisition that consists of the mere change in identity or form
11 of ownership of an entity where there is no change in the
12 beneficial ownership, including transfers to an entity wholly
13 owned, directly or indirectly, by the same common ownership as
14 the transferor.

15 (b) For the purpose of determining whether, pursuant to
16 the exercise of an option, a controlling interest was
17 transferred or acquired within a twelve-month period, the date
18 that the option agreement was executed shall be the date on
19 which the transfer or acquisition of the controlling interest
20 shall be deemed to occur. For all other purposes under this
21 chapter, the date upon which the option is exercised shall be



1 the date of the transfer or acquisition of the controlling
2 interest.

3 (c) For the purposes of this section with regard to
4 persons acting in concert:

5 (1) All acquisitions of persons acting in concert shall be
6 aggregated for the purpose of determining whether a
7 transfer or acquisition of a controlling interest has
8 taken place;

9 (2) Persons shall be considered as acting in concert when
10 they have a relationship with each other such that one
11 person influences or controls the actions of another
12 through common ownership;

13 (3) Persons shall be considered to be acting in concert
14 only when the unity with which the purchasers
15 negotiate and consummate the transfer of ownership
16 interests supports a finding that the persons are
17 acting as a single entity; and

18 (4) If acquisitions are completely independent and each
19 purchaser purchases without regard to the identity of
20 the other purchasers, then the acquisitions shall be
21 considered separate acquisitions.



1 (d) As used in this section, "controlling interest" means:

2 (1) In the case of a corporation, either fifty per cent or
3 more of the total combined voting power of all classes
4 of stock of the corporation entitled to vote, or fifty
5 per cent or more of the capital, profits, or
6 beneficial interest in the voting stock of the
7 corporation; and

8 (2) In the case of a partnership, association, trust, or
9 other entity, fifty per cent or more of the capital,
10 profits, or beneficial interest in the partnership,
11 association, trust, or other entity.

12 §247-B Taxation at the lowest rate. The tax imposed by
13 section 247-1 shall apply to the following at the lowest rate
14 provided in section 247-2(1), regardless of the value of the
15 real property:

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

10 (3) Any document or instrument conveying real property to
11 any nonprofit or for-profit organization that has been
12 certified by the Hawaii housing finance and
13 development corporation for low-income housing
14 development; and

15 (4) Any document or instrument conveying real property, or
16 any interest therein, to or from a wholly-owned
17 corporation or limited liability company."

18 SECTION 3. Section 247-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§247-1 Imposition of tax.** There is hereby imposed and
21 shall be levied, collected, and paid, a tax as hereinafter



1 provided, on all transfers or conveyances of realty located in
2 the State or any interest therein, by way of deeds, leases,
3 subleases, assignments of lease, agreements of sale, assignments
4 of agreement of sale, instruments, writings, and any other
5 document, whereby any lands, interests in land, tenements, or
6 other realty sold shall be granted, assigned, transferred, or
7 otherwise conveyed to, or vested in, the purchaser or
8 purchasers, lessee or lessees, sublessee or sublessees, assignee
9 or assignees, or any other person or persons, by the person's or
10 their direction[~~-~~], including a transfer of a controlling
11 interest as that term is defined in section 247-A."

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

14 "**§247-2 Basis and rate of tax.** (a) The tax imposed by
15 section 247-1 shall be based on the actual and full
16 consideration (whether cash or otherwise, including any promise,
17 act, forbearance, property interest, value, gain, advantage,
18 benefit, or profit), paid or to be paid for all transfers or
19 conveyance of realty or any interest therein, or in the case of
20 a transfer or acquisition of a controlling interest pursuant to
21 section 247-A, the fair market value of the real property owned



1 by the entity at the time the controlling interest is
2 transferred or acquired, that shall include any liens or
3 encumbrances thereon at the time of sale, lease, sublease,
4 assignment, transfer, or conveyance, and shall be at the
5 following rates:

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

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

9 (B) Twenty cents per \$100 for properties with a value
10 of at least \$600,000, but less than \$1,000,000;

11 (C) Thirty cents per \$100 for properties with a value
12 of at least \$1,000,000, but less than \$2,000,000;

13 (D) Fifty cents per \$100 for properties with a value
14 of at least \$2,000,000, but less than \$4,000,000;

15 (E) Seventy cents per \$100 for properties with a
16 value of at least \$4,000,000, but less than
17 \$6,000,000;

18 (F) Ninety cents per \$100 for properties with a value
19 of at least \$6,000,000, but less than
20 \$10,000,000; and



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



1 (G) One dollar and twenty-five cents per \$100 for
2 properties with a value of \$10,000,000 or
3 greater,
4 of [~~such~~] the actual and full consideration; provided that in
5 the case of a lease or sublease, this chapter shall apply only
6 to a lease or sublease whose full unexpired term is for a period
7 of five years or more, and in those cases, including (where
8 appropriate) those cases where the lease has been extended or
9 amended, the tax in this chapter shall be based on the cash
10 value of the lease rentals discounted to present day value and
11 capitalized at the rate of six per cent, plus the actual and
12 full consideration paid or to be paid for any and all
13 improvements, if any, that shall include on-site as well as off-
14 site improvements, applicable to the leased premises; and
15 provided further that the tax imposed for each transaction shall
16 be not less than \$1.

17 (b) As used in this section, "fair market value" means,
18 for purposes of transfers or acquisitions of a controlling
19 interest pursuant to section 247-A, the value of real property,
20 as stated on the most recent real property assessment issued by
21 the county in which the real property is located."



1 SECTION 5. Section 247-3, Hawaii Revised Statutes, is
2 amended to read as follows:

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

- 5 (1) Any document or instrument that is executed prior to
6 January 1, 1967;
- 7 (2) Any document or instrument that is given to secure a
8 debt or obligation;
- 9 (3) Any document or instrument that only confirms or
10 corrects a deed, lease, sublease, assignment,
11 transfer, or conveyance previously recorded or filed;
- 12 (4) Any document or instrument between husband and wife,
13 reciprocal beneficiaries, or parent and child, in
14 which only a nominal consideration is paid;
- 15 (5) Any document or instrument in which there is a
16 consideration of \$100 or less paid or to be paid;
- 17 (6) Any document or instrument conveying real property
18 that is executed pursuant to an agreement of sale, and
19 where applicable, any assignment of the agreement of
20 sale, or assignments thereof; provided that the taxes
21 under this chapter have been fully paid upon the



- 1 agreement of sale, and where applicable, upon such
2 assignment or assignments of agreements of sale;
- 3 (7) Any deed, lease, sublease, assignment of lease,
4 agreement of sale, assignment of agreement of sale,
5 instrument or writing in which the United States or
6 any agency or instrumentality thereof or the State or
7 any agency, instrumentality, or governmental or
8 political subdivision thereof are the only parties
9 thereto;
- 10 (8) Any document or instrument executed pursuant to a tax
11 sale conducted by the United States or any agency or
12 instrumentality thereof or the State or any agency,
13 instrumentality, or governmental or political
14 subdivision thereof for delinquent taxes or
15 assessments;
- 16 (9) Any document or instrument conveying real property to
17 the United States or any agency or instrumentality
18 thereof or the State or any agency, instrumentality,
19 or governmental or political subdivision thereof
20 pursuant to the threat of the exercise or the exercise
21 of the power of eminent domain;



- 1 (10) Any document or instrument that solely conveys or
2 grants an easement or easements;
- 3 (11) Any document or instrument whereby owners partition
4 their property, whether by mutual agreement or
5 judicial action; provided that the value of each
6 owner's interest in the property after partition is
7 equal in value to that owner's interest before
8 partition;
- 9 (12) Any document or instrument between marital partners or
10 reciprocal beneficiaries who are parties to a divorce
11 action or termination of reciprocal beneficiary
12 relationship that is executed pursuant to an order of
13 the court in the divorce action or termination of
14 reciprocal beneficiary relationship;
- 15 (13) Any document or instrument conveying real property
16 from a testamentary trust to a beneficiary under the
17 trust;
- 18 (14) Any document or instrument conveying real property
19 from a grantor to the grantor's revocable living
20 trust, or from a grantor's revocable living trust to
21 the grantor as beneficiary of the trust; and



1 ~~[(15) Any document or instrument conveying real property, or~~
2 ~~any interest therein, from an entity that is a party~~
3 ~~to a merger or consolidation under chapter 414, 414D,~~
4 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
5 ~~new entity;~~

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

15 ~~(17)]~~ (15) Any document or instrument that conforms to the
16 transfer on death deed as authorized under chapter
17 527."

18 SECTION 6. Section 247-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§247-4 Payment and liability of the tax.** (a) The tax
21 imposed by this chapter shall be paid by the grantor, lessor,



1 sublessor, assignor, transferor, seller, conveyer, or any other
2 person conveying realty, or any interest therein, by a document
3 [~~or~~], instrument, or transfer of a controlling interest subject
4 to section 247-1; except, however, in the case where the United
5 States or any agency or instrumentality thereof or the State or
6 any agency, instrumentality, or governmental or political
7 subdivision thereof is the grantor, lessor, sublessor, assignor,
8 transferor, seller, or conveyer, the tax shall be paid by the
9 grantee, lessee, sublessee, assignee, transferee, purchaser, or
10 conveyee, as the case may be.

11 (b) In the case of a transfer or acquisition of a
12 controlling interest under section 247-A, if the person or
13 persons who transfer the controlling interest fail to pay the
14 tax imposed by this chapter, the person or persons who acquire
15 the controlling interest and the entity to which the controlling
16 interest is transferred or acquired shall be jointly and
17 severally liable for the tax.

18 [~~(b)~~] (c) The tax imposed by this chapter shall be paid at
19 such place or places as the director of taxation may direct and
20 shall be due and payable no later than ninety days after the
21 taxable transaction, and in any event prior to the imprinting of



1 the seal or seals as provided by section 247-5. Penalties and
2 interest shall be added to and become a part of the tax, when
3 and as provided by section 231-39."

4 SECTION 7. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

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

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



Report Title:

Conveyance Tax; Controlling Interest Transfer

Description:

Imposes conveyance tax on the transfer of a controlling interest of an entity with an interest in real property. Stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate. Imposes liability on the transferee in the event that the transferor of the controlling interest does not pay the tax due. Effective 7/1/3000. (HD1)

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

