

ACT 195

S.B. NO. 1726

A Bill for an Act Relating to the Conveyance Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 247, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§247- Limitation period for assessment, levy, collection, or credit. The amount of conveyance taxes imposed by this chapter shall be assessed or levied, and the overpayment, if any, shall be credited within three years after filing of the certificate prescribed by section 247-6. No proceeding in court without assessment for the collection of the taxes shall be begun after the expiration of the three-year period.

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In the case of a false or fraudulent certificate filed with the intent to evade tax, or of a failure to file a certificate, the tax may be assessed or levied at any time.”

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

“**§247-2 Basis and rate of tax.** The tax [herein] imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit) paid or to be paid, which shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the rate of [five] 10 cents per [one hundred dollars] \$100 of such actual and full consideration; provided that in the case of a lease or sublease, [the provisions of] this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax [herein] in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, which shall include [on site] on-site as well as [off site] offsite improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than \$1.”

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

- “**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:
- (1) Any document or instrument which is executed prior to January 1, 1967.
 - (2) Any document or instrument which is given to secure a debt or obligation.
 - (3) Any document or instrument which only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
 - (4) Any document or instrument between husband and wife, or parent and child, in which only a nominal consideration is paid.
 - (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid.
 - (6) Any document or instrument conveying real property which is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes [hereunder] under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale.
 - (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto.
 - (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments.

- (9) Any document or instrument [executed pursuant to eminent domain proceedings by] conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof[.] pursuant to the threat of the exercise or the exercise of the power of eminent domain.
- (10) Any document or instrument which solely conveys or grants an easement or easements.
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition.
- (12) Any document or instrument between marital partners who are parties to a divorce action which is executed pursuant to an order of the court in the divorce action.
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust.
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust."

SECTION 4. Section 247-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No certificate is required to be filed for any document or instrument made exempt by section 247-3, except that in the following situations, a certificate shall be filed in the manner and place which the director shall prescribe, within ninety days after the transaction or prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court or after such period, recordation, or filing as the director shall prescribe:

- (1) In the case of any document or instrument described under section 247-3(3), any party to the document or instrument shall file a certificate declaring that the document or instrument merely confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
- (2) In the case of any document or instrument described under section 247-3(4), any party to the document or instrument shall file a certificate declaring the amount of the nominal consideration paid and marital or parental relationship of the parties.
- (3) In the case of any document or instrument described under section 247-3(5), any party to [such] the document or instrument shall file a certificate declaring the reasons why the consideration is \$100 or less.
- (4) In the case of any document or instrument described in section 247-3(6), any party to [such a] the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an agreement of sale, and where applicable, an assignment or assignments of agreements of sale.
- (5) In the case of any document or instrument described under section 247-3(8), any person made a party to the document or instrument as grantee, assignee, or transferee shall file a certificate declaring the full and actual consideration of the property transferred.
- (6) In the case of any document or instrument described under section 247-3(11), any party to the document or instrument shall file a certificate declaring each owner's:

- (A) Undivided interest in the real property and the value of that interest before partition; and
- (B) Proportionate interest and the value of that interest after partition.
- (7) In the case of any document or instrument described under section 247-3(12), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an order of the court and containing the court case number.
- (8) In the case of any document or instrument described under section 247-3(13), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from a testamentary trust to a trust beneficiary.
- (9) In the case of any document or instrument described under section 247-3(14), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from the grantor to a grantor's revocable living trust or from a grantor's revocable living trust to the grantor."

SECTION 5. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

"§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law[.]; provided that of the taxes collected each fiscal year, twenty-five per cent shall be paid into the rental housing trust fund established by section 201F-2 and twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed to the natural area partnership and forest stewardship programs by the department of land and natural resources after joint consultation with the forest stewardship committee and the natural area reserves system commission."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1993, and shall apply to any document or instrument presented for recordation or filing under chapter 247, Hawaii Revised Statutes, after June 30, 1993.

(Approved June 9, 1993.)

Note

- 1. Edited pursuant to HRS §23G-16.5.