

JAN 28 2009

---

---

# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The largest source of state revenues is from  
2 the payment of various taxes by residents and nonresidents.  
3 During these tough economic times it is especially important for  
4 the State to protect and improve upon the collection of its  
5 various taxes in order to provide widespread financial support  
6 to social programs, infrastructure projects, and public  
7 education. One area that the State can improve upon is  
8 collecting tax revenues in areas where there are complex  
9 transactions developed and implemented to avoid paying state  
10 taxes under the State's current tax laws.

11           The legislature finds that there are numerous complex  
12 transactions occurring in Hawaii that involve the purchase,  
13 transfer, or exchange of real property located in Hawaii through  
14 the sale or exchange of ownership interests in legal entities.  
15 Under the State's current tax laws, many of these complex  
16 transactions involving the transfer of real property located in  
17 Hawaii are taking place without any tax consequences. Many of



1 these transactions are even escaping the payment of conveyance  
2 taxes.

3 The purpose of this Act is to impose a new tax on sale  
4 transactions by an entity that holds real property located in  
5 Hawaii and then sells any interest in their ownership to another  
6 entity that thereby acquires title, or a partial interest, in  
7 the real property. This Act will enable the State to levy,  
8 assess, and collect a tax on those transactions that meet the  
9 threshold value levels provided for in this Act.

10 The new tax to be implemented is a real property asset  
11 acquisition tax that is primarily modeled after the rates and  
12 threshold of taxes payable under the conveyance tax in chapter  
13 247, Hawaii Revised Statutes and is in addition to, not in lieu  
14 of the conveyance tax. Specifically, the real property asset  
15 acquisition tax is imposed based upon the value of the real  
16 property transferred with the tax imposed being similar to the  
17 rates and thresholds applicable to the conveyance tax in chapter  
18 247, Hawaii Revised Statutes. The conveyance tax rates and  
19 thresholds applicable to real property transfers are as follows:

20 (1) Fifteen cents per \$100 for properties with a value of  
21 less than \$600,000;



- 1           (2) Twenty-five cents per \$100 for properties with a value
- 2                   of at least \$600,000, but less than \$1,000,000; and
- 3           (3) Thirty-five cents per \$100 for properties with a value
- 4                   of \$1,000,000 or greater.

5           SECTION 2. Chapter 247, Hawaii Revised Statutes, is  
6 amended by adding a new part to be appropriately designated and  
7 to read as follows:

8                   **"PART . REAL PROPERTY ASSET ACQUISITION TAX**

9           **§247-A Short title.** This part may be cited as the "Real  
10 Property Asset Acquisition Tax Law."

11           **§247-B Definitions.** For purposes of this part, the  
12 following terms shall have the following meaning:

13           "Applicable transfer" means all transfers of real property  
14 located in Hawaii or any interest therein that is effected by a  
15 sale transaction.

16           "Entity" means a taxpayer subject to the tax laws of Hawaii  
17 and is an individual, corporation, limited liability company,  
18 single member limited liability company, partnership, limited  
19 liability partnership, or S corporation, excluding any trust or  
20 nonprofit taxpayer.

21           "Fair market value" means the greater of the following:



- 1           (1) The cost, contract, sales price, or other
- 2                   consideration transferred, purchased, or exchange for
- 3                   the stock;
- 4           (2) The value carried on the seller's audited financial
- 5                   statements at the date of the stock transaction; or
- 6           (3) The value obtained by a certified appraiser taking
- 7                   into consideration the highest and best use of the
- 8                   real property.

9           "Sale transaction" means a purchase, transfer, or exchange  
10 of any interest in the ownership of a legal entity; provided  
11 that the entity selling or transferring the ownership interest  
12 holds real property located in Hawaii that has a fair market  
13 value exceeding \$                   on the date of the purchase,  
14 transfer, or exchange of the ownership interest of the  
15 transferor.

16           **§247-C Imposition of tax.** There is hereby imposed and  
17 shall be levied, collected, and paid, a real property asset  
18 acquisition tax as hereinafter provided, on all applicable  
19 transfers; provided that the tax imposed under this part is in  
20 addition to any conveyance tax that may be assessed under part I  
21 of this chapter.



1           **§247-D Basis and rate of tax.** The tax imposed by section  
 2 247-C shall be based on the actual and full consideration  
 3 (whether cash or otherwise, including any promise, act,  
 4 forbearance, property interest, value, gain, advantage, benefit,  
 5 or profit), paid or to be paid for all applicable transfers of  
 6 real property located in Hawaii or any interest therein, that  
 7 shall include any liens or encumbrances thereon at the time of  
 8 sale, lease, sublease, assignment, transfer, or conveyance, and  
 9 shall be at the following rates:

- 10           (1)           cents per \$                   for properties with a  
 11           value of less than \$                   ;
- 12           (2)           cents per \$                   for properties with a  
 13           value of at least \$                   , but less than  
 14           \$                   ; and
- 15           (3)           cents per \$                   for properties with a  
 16           value of \$                   or greater.

17 depending upon the fair market value of the real property on the  
 18 date of the stock transaction; provided that in the case of a  
 19 lease or sublease, this part shall apply only to a lease or  
 20 sublease whose full unexpired term is for a period of five years  
 21 or more, and in those cases, including (where appropriate) those  
 22 cases where the lease has been extended or amended, the tax in



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

8 **§247-E Exemptions.** The tax imposed by this part shall not  
9 apply to:

- 10 (1) Any applicable transfer that is executed before  
11 January 1, 2010;
- 12 (2) Any existing mortgages on single family homes,  
13 apartments, or condominiums;
- 14 (3) Any applicable transfer executed pursuant to a tax  
15 sale conducted by the United States or any agency or  
16 instrumentality thereof or the State or any agency,  
17 instrumentality, or governmental or political  
18 subdivision thereof for delinquent taxes or  
19 assessments;
- 20 (4) Any applicable transfer conveying real property to the  
21 United States or any agency or instrumentality thereof  
22 or the State or any agency, instrumentality, or



1 governmental or political subdivision thereof pursuant  
2 to the threat of the exercise or the exercise of the  
3 power of eminent domain;

4 (5) Any applicable transfer that results in conveying real  
5 property from a testamentary trust to a beneficiary  
6 under the trust;

7 (6) Any applicable transfer that results in conveying real  
8 property from a grantor to the grantor's revocable  
9 living trust, or from a grantor's revocable living  
10 trust to the grantor as beneficiary of the trust;

11 (7) Any applicable transfer that results in conveying real  
12 property, or any interest therein, from a dissolving  
13 limited partnership to its corporate general partner  
14 that owns, directly or indirectly, at least a ninety  
15 per cent interest in the dissolving limited  
16 partnership, determined by applying section 318 (with  
17 respect to constructive ownership of stock) of the  
18 Internal Revenue Code, to the constructive ownership  
19 of interests in the partnership; and

20 (8) Any applicable transfer that results in conveying real  
21 property to any nonprofit or for-profit organization  
22 that has been certified by the Hawaii housing finance



1           and development corporation for low-income housing  
2           development.

3           **§247-F Payment and liability of the tax; penalties.** (a)

4   The tax imposed by this part shall be paid by the grantor,  
5   lessor, sublessor, assignor, transferor, seller, conveyor, or  
6   any other person conveying realty, or any interest therein;  
7   except, however, in the case where the United States or any  
8   agency or instrumentality thereof or the State or any agency,  
9   instrumentality, or governmental or political subdivision  
10  thereof is the grantor, lessor, sublessor, assignor, transferor,  
11  seller, or conveyor, in which case the tax shall be paid by the  
12  grantee, lessee, sublessee, assignee, transferee, purchaser, or  
13  conveyee, as the case may be.

14       (b) The tax imposed by this part shall be paid at the  
15  place or places as the director of taxation may direct and shall  
16  be due and payable no later than ninety days after the taxable  
17  transaction.

18       (c) Penalties and interest shall be added to and become a  
19  part of the taxes, when and as provided by section 231-39.

20           **§247-G Appeals.** Any person aggrieved by any assessment of  
21  the tax imposed by this part may appeal from the assessment in  
22  the manner and within the time and in all other respects as





1 provided in the case of income tax appeals by section 235-114.

2 The hearing and disposition of the appeal, including the

3 distribution of costs shall be as provided in chapter 232.

4       **§247-H Disposition of taxes.** All taxes collected under  
5 this part shall be paid into the state treasury to the credit of  
6 the general fund of the State, to be used and expended for the  
7 purposes for which the general fund was created and exists by  
8 law; provided that of the taxes collected each fiscal year:

9       (1)           per cent shall be paid to the credit of the  
10                   rental housing trust fund established by section  
11                   201H-202;

12       (2)           per cent shall be paid to the credit of the land  
13                   conservation fund established pursuant to section  
14                   173A-5;

15       (3)           per cent shall be paid to the credit of the  
16                   dwelling unit revolving fund established by pursuant  
17                   to section 201H-191; and

18       (4)       The remaining balance shall be paid to the credit of  
19                   the general fund.

20       **§247-I Refunds.** The director of taxation may order the  
21 refund in whole or in part of any tax that has been erroneously  
22 or unjustly paid under this part. The order shall be made in



1 accordance with section 231-23. As to all tax payments for  
2 which a refund or credit is not authorized by this section  
3 (including, without prejudice to the generality of the  
4 foregoing, cases of unconstitutionality), the remedies provided  
5 by appeal or by section 40-35 are exclusive.

6       **§247-J Enforcement and administration.** (a) The director  
7 of taxation, with the support of the department of commerce and  
8 consumer affairs, shall administer and enforce the taxes imposed  
9 by this part. The director of taxation or director of commerce  
10 and consumer affairs may prescribe rules and regulations not  
11 inconsistent with the provisions herein for their detailed and  
12 efficient administration. At any time after the making of an  
13 applicable transfer subject to the tax imposed by this part, the  
14 director of taxation may investigate and ascertain whether the  
15 tax, in the proper amount, was paid. For this purpose, the  
16 director of taxation or director of commerce and consumer  
17 affairs may invoke all statutory powers vested in them,  
18 including but not limited to section 231-7.

19       (b) The director of taxation shall prepare forms as may be  
20 necessary to satisfy the requirements of this paragraph. The  
21 director may also require the nonresident person that is a  
22 transferee under this section to furnish information to



1 ascertain that person's compliance with the requirements of this  
2 paragraph and may adopt rules necessary to effectuate the  
3 purposes of this part pursuant to chapter 91."

4 SECTION 3. Chapter 247, Hawaii Revised Statutes, is  
5 amended by amending its title to read as follows:

6 "CHAPTER 247

7 CONVEYANCE [~~TAX~~] TAXES"

8 SECTION 4. Chapter 247, Hawaii Revised Statutes, is  
9 amended by designating sections 247-1 through 247-13, Hawaii  
10 Revised Statutes, and inserting a title to read as follows:

11 "PART I. CONVEYANCE TAX"

12 SECTION 5. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on January 1, 2010.

19

INTRODUCED BY:

*Bruce S. Folt*  
*Greg L. Har*  
*John Alan J*



**Report Title:**

Real Property Asset Acquisition Tax; Stock Ownership Transfer

**Description:**

Authorizes a tax on the transfer in ownership of a legal entity when the selling entity owns real property in Hawaii that is acquired by another individual or entity through the purchasing of an interest in the selling entity.

