
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The State's primary source of revenue is taxes
2 paid by residents and nonresidents. During these tough economic
3 times it is especially important for the State to protect and
4 improve upon the collection of its various taxes in order to
5 provide widespread financial support to social programs,
6 infrastructure projects, and public education. The State should
7 improve its collection of tax revenues with respect to the
8 withholding requirements of the Hawaii Real Property Tax Act,
9 income tax, transient accommodations tax, and general excise tax
10 imposed on vacation rental owners. The State should also
11 improve its collection policies to encompass the complex
12 transactions that are often undertaken to avoid paying state
13 taxes under the current tax laws.

14 The purpose of this Act is to strengthen the Hawaii Real
15 Property Tax Act. This Act accomplishes its purpose by imposing
16 the withholding requirement on foreign entities that, upon
17 disposing of Hawaii real property, no longer have any connection

1 to the State of Hawaii and by ensuring that nonresident vacation
2 rental owners pay their proper share of general excise,
3 transient accommodation, and income taxes by requiring that,
4 upon disposition of the vacation rental, the foreign owners
5 provide a tax clearance certificate to the Bureau of Conveyances
6 as a condition of recording.

7 The legislature also finds that there are numerous complex
8 transactions occurring in Hawaii that involve the purchase,
9 transfer, or exchange of real property through the sale or
10 exchange of ownership interests in legal entities. Under the
11 State's current tax laws, many of these complex transactions
12 take place without any tax consequences, including the payment
13 of conveyance taxes. Thus, this Act imposes a conveyance tax on
14 sale transactions by an entity that holds real property located
15 in Hawaii and that sells any ownership interest in the entity to
16 another party that acquires an interest in the real property
17 through purchasing an interest in the entity. This Act enables
18 the State to levy, assess, and collect the proper taxes on such
19 transactions.

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

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1 "§247- Definitions. As used in this section:

2 "Fair market value" means, for purposes of this chapter but
3 not for the purpose of calculating the gain or loss from the
4 disposition of realty or interest therein, the price on the date
5 of a transfer or conveyance at which the asset would change
6 hands between an unrelated willing buyer and willing seller,
7 neither being under any compulsion to buy or to sell, and both
8 having reasonable knowledge of all relevant facts; reduced by
9 the outstanding balance of any mortgage or other security
10 interest in the asset that was incurred to acquire the asset or
11 otherwise incurred in direct connection with the asset, such as
12 a real property tax lien or debt incurred to improve or maintain
13 the property.

14 "Real property holding company" means any corporation,
15 partnership, limited liability company, trust, estate, or other
16 entity for which the fair market value of all of its real
17 property interests equals or exceeds fifty per cent of the fair
18 market value of all of its assets.

19 "Realty" means "property" or "real property" as those terms
20 are defined in section 231-1 and, for purposes of this chapter,
21 includes any intangible ownership, capital, or profits interest
22 in a real property holding company.

1 "Terminated partnership" means a partnership for which no
2 part of any business, financial operation, or venture of the
3 partnership continues to be carried on by any of its partners in
4 a partnership or for which fifty per cent or more of the total
5 interest in partnership capital and profits is sold or exchanged
6 within a twelve month period.

7 §247- Partnership not terminated. Two or more merged,
8 consolidated, or divided partnerships are not terminated
9 partnerships, and the resulting partnerships shall be considered
10 a continuation of the prior partnership when:

11 (1) In the case of the merger or consolidation of two or
12 more partnerships, the members of any merging or
13 consolidating partnership own an interest of more than
14 fifty per cent in the capital and profits of the
15 resulting partnership; and

16 (2) In the case of the division of a partnership into two
17 or more partnerships, the members of the resulting
18 partnerships held an interest of more than fifty per
19 cent in the prior partnership."

20 SECTION 3. Section 235-68, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "(a) As used in this section:

1 "Escrow agent" means any person who holds documents and is
2 responsible for receiving and disbursing funds with respect to
3 the transfer of Hawaii real property.

4 "Nonresident person" means every person other than a
5 resident person.

6 "Property" or "real property" has the meaning as [~~the same~~
7 ~~term is~~] defined in section 231-1[~~+~~] and includes any intangible
8 ownership, capital, or profits interest in a real property
9 holding company.

10 "Real property holding company" has the same meaning as
11 defined in section 247- .

12 "Resident person" means any:

13 (1) Individual included in the definition of resident in
14 section 235-1;

15 (2) Corporation incorporated or granted a certificate of
16 authority under chapter 414, 414D, or 415A;

17 (3) Partnership formed or registered under chapter 425 or
18 425E;

19 (4) Foreign partnership qualified to transact business
20 pursuant to chapter 425 or 425E;

21 (5) Limited liability company formed under chapter 428 or
22 any foreign limited liability company registered under

1 chapter 428; provided that if a single member limited
2 liability company has not elected to be taxed as a
3 corporation, the single member limited liability
4 company shall be disregarded for purposes of this
5 section and this section shall be applied as if the
6 sole member is the transferor;

7 (6) Limited liability partnership formed under chapter
8 425;

9 (7) Foreign limited liability partnership qualified to
10 transact business under chapter 425;

11 (8) Trust included in the definition of resident trust in
12 section 235-1; or

13 (9) Estate included in the definition of resident estate
14 in section 235-1[-]

15 but does not include any transferor that is a corporation,
16 partnership, limited liability company, trust, estate, or other
17 entity if, immediately after such transferor's disposition of
18 Hawaii real property, the transferor has no permanent place of
19 business in Hawaii.

20 "Terminated partnership" has the same meaning as defined by
21 section 247- .

1 "Transferee" means any person, the State and the counties
2 and their respective subdivisions, agencies, authorities, and
3 boards, acquiring real property which is located in Hawaii.

4 "Transferee's agent" means the escrow agent or any person
5 licensed under chapter 467 who provides closing and settlement
6 services on behalf of the transferee with respect to the
7 transfer or conveyance of Hawaii real property.

8 "Transferor" means any person disposing real property that
9 is located in Hawaii.

10 (b) Unless otherwise provided in this section, every
11 transferee or the transferee's agent shall deduct and withhold a
12 tax equal to five per cent of the amount realized on the
13 disposition of Hawaii real property. Every person required to
14 withhold a tax under this section is made jointly and severally
15 liable for the tax and is relieved of liability for or upon the
16 claim or demand of any other person for the amount of any
17 payments to the department made in accordance with this section.
18 With respect to transfers of any intangible ownership, capital,
19 or profits interest in a real property holding company, the five
20 per cent withholding tax shall be applied to the portion of the
21 amount realized on the transfer of the intangible interest in a
22 company that is attributable to the real estate owned by the

1 real property holding company that is located in Hawaii. The
2 amount realized that is attributable to Hawaii real estate shall
3 be computed in the same manner as provided by section 247-2(b).

4 (c) Every transferee or the transferee's agent required by
5 this section to withhold tax under subsection (b) shall make a
6 return of the amount withheld to the department of taxation not
7 more than twenty days following the transfer date~~[7]~~ and shall
8 remit the amount to the department by means of electronic funds
9 transfer as specified by the department.

10 (d) No person shall be required to deduct and withhold any
11 amount under subsection (b) ~~[7]~~ if ~~[the]~~ any one of the following
12 apply:

13 (1) The disposition of Hawaii real property is a transfer
14 of an interest in a real property holding company that
15 constitutes a bona fide pledge of such interest as
16 collateral on a loan;

17 (2) The disposition of Hawaii real property is a transfer
18 of an ownership, capital or profits interest in a real
19 property holding company that is regularly traded on
20 an established securities market;

21 (3) The disposition of Hawaii real property is a transfer
22 of an ownership, capital or profits interest in a real

1 property holding company that is taxed as a
2 partnership and, for tax purposes, the partnership is
3 not a terminated partnership immediately after the
4 transfer; or

5 (4) The transferor furnishes to the transferee an
6 affidavit by the transferor stating the transferor's
7 taxpayer identification number and:

8 ~~[(1)]~~ (A) The transferor is a resident person; or

9 ~~[(2)]~~ (B) That by reason of a nonrecognition provision of
10 the Internal Revenue Code as operative under this
11 chapter or the provisions of any United States treaty,
12 the transferor is not required to recognize any gain
13 or loss with respect to the transfer;

14 ~~[(3)]~~ (C) A brief description of the transfer; and

15 ~~[(4)]~~ (D) A brief summary of the law and facts supporting
16 the claim that recognition of gain or loss is not
17 required with respect to the transfer.

18 This ~~[subsection]~~ paragraph shall not apply if the
19 transferee has actual knowledge that the affidavit referred
20 to in this ~~[subsection]~~ paragraph is false~~[+]~~.

21 (e) An application for a withholding certificate may be
22 submitted by the transferor to the department setting forth:

1 (1) The name, address, and taxpayer identification number,
2 if any, of the parties to the transaction and the
3 location and general description of the real property
4 to be transferred; and

5 (2) A calculation and written justification showing that
6 the transferor will not realize any gain with respect
7 to the transfer; or

8 (3) A calculation and written justification showing that
9 there will be insufficient proceeds to pay the
10 withholding required under subsection (b) after
11 payment of all costs, including selling expenses and
12 the amount of any mortgage or lien secured by the
13 property.

14 Upon receipt of the application, the department shall
15 determine whether the transferor has realized or will realize
16 any gain with respect to the transfer, or whether there will be
17 insufficient proceeds to pay the withholding. If the department
18 is satisfied that no gain will be realized or that there will be
19 insufficient proceeds to pay the withholding, it shall issue a
20 withholding certificate stating the amount to be withheld, if
21 any.

1 The submission of an application for a withholding
2 certificate to the department does not relieve the transferee or
3 the transferee's agent of its obligation to withhold or to make
4 a return of the tax under subsections (b) and (c).

5 (f) No person shall be required to deduct and withhold any
6 amount under subsection (b) if one or more individual
7 transferors furnishes to the transferee an affidavit by the
8 transferor stating the transferor's taxpayer identification
9 number, that for the year preceding the date of the transfer the
10 property has been used by the transferor as a principal
11 residence, and that the amount realized for the property does
12 not exceed \$300,000.

13 (g) The department may enter into written agreements with
14 persons who engage in more than one real property transaction in
15 a calendar year or other persons to whom meeting the withholding
16 requirements of this section are not practicable. The written
17 agreements may allow the use of a withholding method other than
18 that prescribed by this section or may waive the withholding
19 requirement under this section.

20 (h) Every nonresident person that is a transferor under
21 this section shall submit to the bureau of conveyances a
22 certified tax clearance certificate issued by the department

1 stating that the transferor has paid all general excise,
2 transient accommodations, and income taxes. Submission of the
3 tax clearance certificate shall be made a condition to the
4 recording of any transfer of title of real property located in
5 Hawaii by a nonresident person that is a transferor under this
6 section.

7 (i) The director of taxation shall prepare forms as may be
8 necessary to satisfy the requirements of this section. The
9 director may also require the nonresident person who is a
10 transferor to furnish information to ascertain the person's
11 compliance with the requirements of this section and may adopt
12 rules necessary to effectuate the purposes of this section
13 pursuant to chapter 91.

14 (j) For purposes of this section, a transferor has no
15 permanent place of business in Hawaii if it is not organized
16 under the laws of Hawaii, it does not maintain and staff a
17 permanent office in Hawaii, and it does not have any business
18 activities in Hawaii. The mere holding of Hawaii real estate
19 for investment purposes does not constitute a business
20 activity."

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

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1 "**§247-2 Basis and rate of tax.** (a) The tax imposed by
2 section 247-1 shall be based on the actual and full
3 consideration [~~+~~], whether cash or otherwise [~~+~~] and including any
4 promise, act, forbearance, property interest, value, gain,
5 advantage, benefit, or profit [~~+~~] paid or to be paid for all
6 transfers or conveyance of realty 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) Except 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 and

16 (C) Thirty cents per \$100 for properties with a value
17 of \$1,000,000 or greater; and

18 (2) For the sale of a condominium or single family
19 residence for which the purchaser is ineligible for a
20 county homeowner's exemption on property tax:

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

19 (b) With respect to the transfer of any intangible
20 ownership, capital, or profits interest in a real property
21 holding company, the tax at the rates enumerated in subsection
22 (a) above, shall be applied to the amount of any consideration,

1 whether cash or otherwise, including any promise, act,
2 forbearance, property interest, value, gain, advantage, benefit,
3 or profit, paid or to be paid on such transfer that is
4 attributable to the realty located in Hawaii that is owned by
5 the real property holding company, the amount to be determined
6 by applying the percentage of the fair market value of all
7 assets of the real property holding company that is comprised of
8 all realty located in Hawaii owned by the real property holding
9 company to the total consideration paid."

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

12 "**§247-3 Exemptions.** The tax imposed by section 247-1
13 shall not apply to:

- 14 (1) Any document or instrument that is executed prior to
15 January 1, 1967;
- 16 (2) Any document or instrument that is given to secure a
17 debt or obligation;
- 18 (3) Any document or instrument that only confirms or
19 corrects a deed, lease, sublease, assignment,
20 transfer, or conveyance previously recorded or filed;

- 1 (4) Any document or instrument between husband and wife,
2 reciprocal beneficiaries, or parent and child, in
3 which only a nominal consideration is paid;
- 4 (5) Any document or instrument in which there is a
5 consideration of \$100 or less paid or to be paid;
- 6 (6) Any document or instrument conveying real property
7 that is executed pursuant to an agreement of sale, and
8 where applicable, any assignment of the agreement of
9 sale, or assignments thereof; provided that the taxes
10 under this chapter have been fully paid upon the
11 agreement of sale, and where applicable, upon such
12 assignment or assignments of agreements of sale;
- 13 (7) Any deed, lease, sublease, assignment of lease,
14 agreement of sale, assignment of agreement of sale,
15 instrument or writing in which the United States or
16 any agency or instrumentality thereof or the State or
17 any agency, instrumentality, or governmental or
18 political subdivision thereof are the only parties
19 thereto;
- 20 (8) Any document or instrument executed pursuant to a tax
21 sale conducted by the United States or any agency or
22 instrumentality thereof or the State or any agency,

- 1 instrumentality, or governmental or political
2 subdivision thereof for delinquent taxes or
3 assessments;
- 4 (9) Any document or instrument conveying real property to
5 the United States or any agency or instrumentality
6 thereof or the State or any agency, instrumentality,
7 or governmental or political subdivision thereof
8 pursuant to the threat of the exercise or the exercise
9 of the power of eminent domain;
- 10 (10) Any document or instrument that solely conveys or
11 grants an easement or easements;
- 12 (11) Any document or instrument whereby owners partition
13 their property, whether by mutual agreement or
14 judicial action; provided that the value of each
15 owner's interest in the property after partition is
16 equal in value to that owner's interest before
17 partition;
- 18 (12) Any document or instrument between marital partners or
19 reciprocal beneficiaries who are parties to a divorce
20 action or termination of reciprocal beneficiary
21 relationship that is executed pursuant to an order of

- 1 the court in the divorce action or termination of
2 reciprocal beneficiary relationship;
- 3 (13) Any document or instrument conveying real property
4 from a testamentary trust to a beneficiary under the
5 trust;
- 6 (14) Any document or instrument conveying real property
7 from a grantor to the grantor's revocable living
8 trust, or from a grantor's revocable living trust to
9 the grantor as beneficiary of the trust;
- 10 (15) Any document or instrument conveying real property, or
11 any interest therein, from an entity that is a party
12 to a merger or consolidation under chapter 414, 414D,
13 415A, 421, 421C, 425, 425E, or 428 to the surviving or
14 new entity;
- 15 (16) Any document or instrument conveying real property, or
16 any interest therein, from a dissolving limited
17 partnership to its corporate general partner that
18 owns, directly or indirectly, at least a ninety per
19 cent interest in the partnership, determined by
20 applying section 318 (with respect to constructive
21 ownership of stock) of the federal Internal Revenue

- 1 Code of 1986, as amended, to the constructive
2 ownership of interests in the partnership; ~~and]~~
- 3 (17) Any document or instrument conveying real property to
4 any nonprofit or for-profit organization that has been
5 certified by the Hawaii housing finance and
6 development corporation for low-income housing
7 development~~[-]~~;
- 8 (18) Any document or instrument that memorializes a bona
9 fide pledge of any ownership, capital, or profits
10 interest in a real property holding company as
11 collateral on a loan;
- 12 (19) Any document or instrument that transfers any
13 ownership, capital, or profits interest in a real
14 property holding company that is regularly traded on
15 an established securities market; and
- 16 (20) Any document or instrument that transfers an interest
17 in a partnership (or limited liability company that is
18 taxed as a partnership) that is a real property
19 holding company if the partnership is not a terminated
20 partnership immediately after the transfer."

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

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

10 (1) In the case of any document or instrument described
11 under section 247-3(3), any party to the document or
12 instrument shall file a certificate declaring that the
13 document or instrument merely confirms or corrects a
14 deed, lease, sublease, assignment, transfer, or
15 conveyance previously recorded or filed[-];

16 (2) In the case of any document or instrument described
17 under section 247-3(4), any party to the document or
18 instrument shall file a certificate declaring the
19 amount of the nominal consideration paid and marital
20 or parental relationship of the parties[-];

21 (3) In the case of any document or instrument described
22 under section 247-3(5), any party to the document or

1 instrument shall file a certificate declaring the
2 reasons why the consideration is \$100 or less[-];i

3 (4) In the case of any document or instrument described in
4 section 247-3(6), any party to the document or
5 instrument shall file a certificate declaring that the
6 document or instrument is made pursuant to an
7 agreement of sale, and where applicable, an assignment
8 or assignments of agreements of sale[-];i

9 (5) In the case of any document or instrument described
10 under section 247-3(8), any person made a party to the
11 document or instrument as grantee, assignee, or
12 transferee shall file a certificate declaring the full
13 and actual consideration of the property
14 transferred[-];i

15 (6) In the case of any document or instrument described
16 under section 247-3(11), any party to the document or
17 instrument shall file a certificate declaring each
18 owner's:

19 (A) Undivided interest in the real property and the
20 value of that interest before partition; and

21 (B) Proportionate interest and the value of that
22 interest after partition[-];i

1 (7) In the case of any document or instrument described
2 under section 247-3(12), any party to the document or
3 instrument shall file a certificate declaring that the
4 document or instrument is made pursuant to an order of
5 the court and containing the court case number[-];

6 (8) In the case of any document or instrument described
7 under section 247-3(13), any party to the document or
8 instrument shall file a certificate declaring that the
9 document or instrument conveys real property from a
10 testamentary trust to a trust beneficiary[-];

11 (9) In the case of any document or instrument described
12 under section 247-3(14), any party to the document or
13 instrument shall file a certificate declaring that the
14 document or instrument conveys real property from the
15 grantor to a grantor's revocable living trust or from
16 a grantor's revocable living trust to the grantor[-];
17 and

18 (10) In the case of any document or instrument described
19 under section 247-3(20), any party to the document or
20 instrument shall file a certificate declaring that the
21 document conveys an interest in a real property
22 holding company that is taxed as a partnership and

1 that, immediately after the conveyance, the
2 partnership is not a terminated partnership."

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

5 SECTION 8. This Act shall take effect on January 1, 2010.

Report Title:

Conveyance Tax; Real Property Holding Companies

Description:

Authorizes a conveyance tax on the transfer of interests in real property holding companies; applies the withholding tax on dispositions of real property to transfers of interests in real property holding companies; requires that nonresident transferors obtain a tax clearance certificate prior to recording of a transfer of real property. (SD1)