

JAN 20 2010

A BILL FOR AN ACT

RELATING TO A CONTROLLING INTEREST TRANSFER TAX.

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

1 SECTION 1. The legislature finds that there are numerous
2 complex transactions occurring in Hawaii that involve the
3 purchase, transfer, or exchange of real property located in
4 Hawaii through the sale or exchange of ownership interests in
5 legal entities. Under the State's current tax laws, many of
6 these complex transactions involving the transfer of real
7 property located in Hawaii are taking place without any tax
8 considerations, including the payment of conveyance taxes.

9 The purpose of this Act is to create a new tax separate
10 from the conveyance tax that is imposed on an entity with a
11 controlling interest of the entity that transfers ownership of
12 real property owned by the entity through the sale of the
13 entity. It is the intent of this Act that the newly created tax
14 would capture taxes on transactions designed to avoid liability
15 under the conveyance tax.

16 SECTION 2. The Hawaii Revised Statutes is amended by
17 adding a new chapter to be appropriately designated and to read
18 as follows:

SB LRB 10-0121-1.doc



1 "CHAPTER

2 CONTROLLING INTEREST TRANSFER TAX

3 § -1 Definitions. As used in this chapter:

4 "Controlling interest" means:

5 (1) In the case of a corporation, more than fifty per cent
6 of the total combined voting power of all classes of
7 stock of the corporation, and;

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

12 "Director" means the director of taxation.

13 "Entity" means a natural person or any other legal business
14 organization utilized in the State pursuant to law, including a
15 corporation, partnership, sole proprietor, etc.

16 "True and actual value" means the fair market value as of
17 the time of the transfer of a controlling interest, not
18 including the amount of any mortgage, lien, or other
19 encumbrance.

20 § -2 Administration by director; rules. (a) This
21 chapter shall be administered by the director. All forms
22 necessary to enforce this chapter shall be prescribed, printed,



1 and furnished by the director. The director may adopt and shall
2 enforce rules pursuant to chapter 91 to administer and enforce
3 this chapter.

4 (b) In addition to any other rules necessary to administer
5 and enforce this chapter, the director shall adopt rules:

6 (1) Establishing a system to notify the department of
7 changes in the controlling interest of any entity
8 subject to this chapter;

9 (2) Establishing requirements as to the responsibility for
10 filing returns if there is no single person who
11 conveys the controlling interest in any entity subject
12 to this chapter; and

13 (3) Providing for the filing of any liens necessary to
14 enforce the payment of taxes, and any penalties or
15 interest required by this chapter.

16 § -3 Tax on transfer of controlling interest in entity
17 possessing real property; rate of tax applied to the value of
18 the real property. (a) There is imposed, a tax at the rate of
19 one and eleven one-hundredths of one per cent on the sale or
20 transfer of a controlling interest in any entity, when:

21 (1) The transfer of a controlling interest is made by a
22 seller or transferor or by a group of sellers or



1 transferors acting in concert; provided that sellers
2 or transferors who are related to each other by blood
3 or marriage are presumed, unless shown to the
4 contrary, to be acting in concert;

5 (2) The transfer is made for consideration;

6 (3) The entity in which a controlling interest is being
7 transferred owns an interest in real property in this
8 State;

9 (4) The present true and actual value of the interest in
10 real property equals or exceeds \$2,000; and

11 (5) The controlling interest in an entity transfers real
12 property to a transferee or to a group of transferees
13 acting in concert; provided that:

14 (A) Where transferees are related and one influences
15 or controls the actions of another (such as
16 parent and subsidiary corporations, parents and
17 children, husbands and wives, etc.), the
18 transferees shall be presumed to be acting in
19 concert; and

20 (B) Where transferees have negotiated and will
21 consummate their purchase of ownership interests
22 in unity (such as transfers that are closely



1 related in time, transferees that are few in
2 number, or purchase contracts that contain mutual
3 terms, and agreements among transferees binding
4 them to a course of action with respect to the
5 transfers, etc.), the transferees shall be
6 presumed to be acting in concert;
7 payable by the entity or entities selling or transferring the
8 controlling interest, or as designated by the director pursuant
9 to rule. If the entity owns less than a one hundred per cent
10 interest in the real estate, the tax shall be based on the
11 actual percentage of ownership, with no further discounts on
12 account of minority ownership.

13 (b) A taxable sale or transfer of a controlling interest
14 may occur in one transaction or in a series of transactions.
15 Transactions that occur within six months of each other are
16 presumed, unless shown to the contrary, to be a series of
17 transactions.

18 (c) The tax imposed by subsection (a) shall not apply to:

19 (1) Any sale or transfer of a controlling interest in any
20 entity to the extent that the entity possesses,
21 directly or indirectly, an interest in real property
22 located in an area of any county designated as an



1 enterprise zone in accordance with section 209E-4, but
2 shall apply to the extent the entity possesses,
3 directly or indirectly, an interest in real property
4 in this State located outside the area designated as
5 an enterprise zone, and;

- 6 (2) Any sale or transfer of a controlling interest in any
7 entity to effectuate a change of identity or form of
8 ownership or organization where there is no change in
9 beneficial ownership.

10 § -4 **Filing return and payment of tax.** On or before the
11 last day of the month following the month in which the sale or
12 transfer of a controlling interest in an entity that is subject
13 to the tax imposed by section -3, a return shall be filed
14 with the director by the entity or entities conveying the
15 controlling interest, as designated by, and in a form as the
16 director may prescribe pursuant to rules adopted under chapter
17 91.

18 § -5 **Penalties.** Any person in violation of this chapter
19 shall be subject to penalties provided under title 14 and shall
20 be guilty of a misdemeanor.

21 § -6 **Records maintenance.** Any entity with respect to
22 which there is a sale or transfer of a controlling interest in

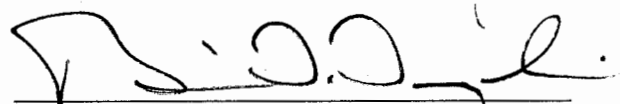


1 the entity, which sale or transfer is subject to the tax imposed
2 by section -3, shall maintain a record of the seller or
3 transferor, and report every transfer of a controlling interest
4 in its stock or in its capital, profits, or beneficial
5 interests, and other information as the director may require.
6 The report shall be filed at least annually or more frequently
7 as may be required at a location pursuant to rules adopted by
8 the director."

9 SECTION 3. This Act shall take effect on July 1, 2010 and
10 shall apply to taxable years beginning after December 31, 2009.

11

INTRODUCED BY:


by request



Report Title:

Taxation; Controlling Interest Transfer Tax

Description:

Establishes the controlling interest transfer tax of 1.11% to be administered by the director of taxation on any transfer of interest of more than 50% in an entity holding real property in the State.

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

