

JAN 23 2009

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1 SECTION 1. The purpose of this Act is to establish a tax
2 on the value of improvements, surrendered by a lessee to a
3 lessor, without compensation to the lessee, at the expiration of
4 a long-term lease of non-residential real property.

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

8 "CHAPTER

9 TAX ON SURRENDERED LEASEHOLD IMPROVEMENTS

10 § -1 Purpose. The purpose of this chapter is to
11 establish a tax on the value of improvements on non-residential
12 real property that are constructed or installed by a lessee and
13 surrendered to a lessor, without compensation to the lessee, at
14 the expiration of a long-term lease.

15 § -2 Definitions. For the purpose of this chapter:

16 "Improvement" means any physical improvement to a parcel of
17 real property, including but not limited to a building, other
18 structure, driveway, walkway, infrastructure, and landscaping.



1 "Lessee" means any person to whom land is leased or
2 subleased under a long-term lease and the lessee's heirs,
3 successors, legal representatives, and assigns.

4 "Lessor" means any person who leases or subleases land to
5 another under a long-term lease and the lessor's heirs,
6 successors, legal representatives, and assigns.

7 "Long-term lease" means a conveyance of land or an interest
8 in land by a fee simple owner, as lessor, or by a lessee or
9 sublessee, as sublessor, to any person in consideration of a
10 return of rent or other compensation or remuneration for a term,
11 measured from the initial date of the conveyance, of twenty
12 years or more, including any periods for which the lease may be
13 extended or renewed at the option of the lessee.

14 "Non-residential real property parcel" means a parcel of
15 real property that is not used for apartment or residential
16 purposes, provided that:

17 (1) "Apartment or residential purposes" shall not include
18 hotel, resort, transient accommodation, or time share
19 use; and

20 (2) If the parcel is a mixed use parcel, only that portion
21 of the parcel not used for apartment or residential



1 purposes, as determined by the relevant county, shall
2 be subject to the tax of this chapter.

3 § -3 Tax on improvements surrendered to a lessor without
4 compensation to the lessee. (a) There is established a tax on
5 the value of improvements on a non-residential real property
6 parcel that are surrendered by the lessee to the lessor at the
7 expiration of a long-term lease if:

8 (1) The lessee, without financial or capital assistance
9 from the lessor, constructed or installed the
10 improvements during the period the lessee held the
11 long-term lease to the non-residential real property
12 parcel; and

13 (2) The lessee did not receive compensation equaling the
14 value of the surrendered improvements at the time of
15 surrender.

16 (b) Except as provided under subsection (c), the tax shall
17 be levied at a rate of per cent of the value of the
18 improvements surrendered to the lessor. The value of the
19 improvements shall be the same as established by the county for
20 real property tax purposes for the taxable year in which the
21 lease expires.



1 (c) If the lessor has paid compensation to the lessee for
2 surrendered improvements, but in an amount less than the value
3 of the improvements, then the tax shall be levied on the
4 difference between the total value of the improvements and the
5 compensation paid.

6 § -4 Administration. (a) Each county shall administer
7 the tax imposed by this chapter. The county shall establish the
8 deadline for the payment of the tax, which shall not be later
9 than ninety days after expiration of the relevant long-term
10 lease.

11 (b) To establish the value of improvements on a
12 non-residential parcel, a county may use the gross value of the
13 improvements as assessed by mass appraisal for real property tax
14 purposes and without reduction for exemptions or appeals. The
15 county shall not be required to prepare an individual appraisal
16 for each non-residential parcel with improvements taxable under
17 this chapter.

18 § -5 Enforcement. Each county shall enforce the
19 collection of the tax imposed by this chapter. The county may
20 attach a lien on the land, surrendered improvements, or both, of
21 the real property that was the subject of the long-term

1 non-residential lease. The county may bring an action in the
2 circuit court to collect any delinquent tax.

3 § -6 Appeal. Each county shall establish a process for
4 the administrative appeal by a lessor of the tax imposed by this
5 chapter. The administrative appeal process shall not need to be
6 in conformance with chapter 91. *

7 Each county, upon exhaustion of the administrative appeal
8 process, shall provide for judicial appeal by either the county
9 or lessor to the circuit court.

10 § -7 Ordinance or rule. Each county shall establish the
11 administration, enforcement, and appeal provisions by ordinance
12 or rule.

13 § -8 Revenue distribution. Revenues collected from the
14 tax imposed by this chapter shall be distributed as follows:

- 15 (1) The county that collected the revenues shall retain an
16 amount equaling the cost of collection; and
- 17 (2) Of the remainder, the county shall retain fifty per
18 cent and transmit to the State the other fifty per
19 cent, which shall be deposited into the state general
20 fund."

21 SECTION 3. The tax established under chapter , Hawaii
22 Revised Statutes, shall be imposed on a lessor who receives



1 surrendered improvements upon the expiration of a long-term
2 non-residential lease from the effective date of this Act, even
3 if the term of the subject long-term lease commenced before that
4 date.

5 SECTION 4. This Act shall take effect on January 1, 2010.
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Report Title:

Taxation; Leasehold Improvements

Description:

Imposes a tax upon the value of improvements surrendered to a lessor by a lessee, without compensation to the lessee, upon the expiration of a long-term non-residential lease.

