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# 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  
4 for 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. Taxpayers subject to the tax laws of Hawaii should  
8 share equitably in providing those financial support obligations  
9 in a fair, just, and objective manner. One area that the State  
10 can improve upon is collecting tax revenues in areas where  
11 complex transactions are developed and implemented to avoid  
12 paying state taxes under the State's current tax laws.

13           The legislature finds that there are numerous complex  
14 transactions occurring in Hawaii that involve the purchase,  
15 transfer, or exchange of real property located in Hawaii through  
16 the sale or exchange of ownership interests in legal entities.  
17 Under the State's current tax laws, many of these complex

1 transactions involving the transfer of real property located in  
2 Hawaii are taking place without any tax consequences. Many of  
3 those complex transactions are even escaping the payment of  
4 conveyance taxes.

5 The purpose of this Act is to create a new tax that is  
6 separate from the conveyance tax and that is imposed on an  
7 individual or entity engaged in a sale transaction of any  
8 ownership interest or partial ownership interest of an entity  
9 that holds real property located in Hawaii. It is the intent of  
10 this Act that the newly created tax would capture taxes on  
11 transactions designed to avoid liability under the conveyance  
12 tax. This Act is not intended to serve as a penalty for those  
13 individuals and entities that transfer ownership in entities  
14 that hold real property located in Hawaii. Rather, this Act is  
15 intended to capture a fair and just amount of tax revenues from  
16 one of the State's principle natural resources. Tax revenues  
17 from this resource have been escaping economic realization to  
18 the State for many years. For instance, when stock ownership of  
19 an entity that holds real property in Hawaii is sold, there are  
20 no tax revenues remitted to the State that pertain specifically  
21 to the transfer of the real property from the selling entity to  
22 the buying entity or individual. In the event of real property

1 in Hawaii continuing to change hands between different entities  
2 through complex stock ownership sale transactions, the  
3 imposition of a real property asset acquisition tax would enable  
4 the State to capture this previously untapped source of tax  
5 revenues. By establishing a real property asset acquisition  
6 tax, this Act will enable the State to levy, assess, and collect  
7 a tax on those sale transactions that meet the threshold value  
8 levels provided for in this Act.

9 The real property asset acquisition tax is modeled after,  
10 but is in addition to, the rates and threshold of taxes payable  
11 under the conveyance tax in chapter 247, Hawaii Revised  
12 Statutes. Specifically, the real property asset acquisition tax  
13 assessed is based upon the value of the real property  
14 transferred and will likely generate a comparable level of tax  
15 revenues as the conveyance tax.

16 The real property asset acquisition tax rates and  
17 thresholds will not be identical to those applicable to the  
18 conveyance tax. However, the conveyance tax rates and  
19 thresholds will be used as a guide. Accordingly, this Act  
20 provides for the assessment of real property asset acquisition  
21 taxes at rates and thresholds similar to the following  
22 conveyance tax rates and threshold:

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\*SB1230 SD2.DOC\*

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

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

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

11 **§247-A Short title.** This part may be cited as the "Real  
 12 Property Asset Acquisition Tax Law."

13 **§247-B Definitions.** For purposes of this part, the  
 14 following terms shall have the following meaning:

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

18 "Entity" means a taxpayer subject to the tax laws of Hawaii  
 19 that is a corporation, limited liability company, single member  
 20 limited liability company, partnership, limited liability  
 21 partnership, or S corporation, excluding any trust or nonprofit  
 22 taxpayer.

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

2 (1) The cost, contract, sales price, or other  
3 consideration transferred, purchased, or exchanged for  
4 the stock;

5 (2) The value carried on the seller's audited financial  
6 statements at the date of the stock transaction; or

7 (3) The value obtained by a certified appraiser taking  
8 into consideration the highest and best use of the  
9 real property.

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

17 **§247-C Imposition of tax.** There is hereby imposed and  
18 shall be levied, collected, and paid, a real property asset  
19 acquisition tax as hereinafter provided, on all applicable  
20 transfers; provided that the tax imposed under this part is in  
21 addition to any conveyance tax that may be assessed under part I  
22 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 where the full unexpired term is for a period of five  
21 years or more, and in those cases, including (where appropriate)  
22 those cases where the lease has been extended or amended, the

1 tax in this part shall be based on the cash value of the lease  
2 rentals discounted to present day value and capitalized at the  
3 rate of six per cent, plus the actual and full consideration  
4 paid or to be paid for any and all improvements, if any, that  
5 shall include on-site as well as off-site improvements,  
6 applicable to the leased premises; and provided further that the  
7 tax imposed for 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 land  
10 conservation fund established by section 173A-5;  
11 (2) per cent shall be paid to the credit of the  
12 rental housing trust fund established pursuant to  
13 section 201H-202; and  
14 (3) per cent shall be paid to the credit of the  
15 natural area reserve fund established pursuant to  
16 section 195-9.

17 **§247-I Refunds.** The director of taxation may order the  
18 refund in whole or in part of any tax that has been erroneously  
19 or unjustly paid under this part. The order shall be made in  
20 accordance with section 231-23. As to all tax payments for  
21 which a refund or credit is not authorized by this section  
22 (including, without prejudice to the generality of the

1 foregoing, cases of unconstitutionality), the remedies provided  
2 by appeal or by section 40-35 are exclusive.

3       **§247-J Enforcement and administration.** (a) The director  
4 of taxation, with the support of the department of commerce and  
5 consumer affairs, shall administer and enforce the taxes imposed  
6 by this part. The director of taxation or director of commerce  
7 and consumer affairs may prescribe rules not inconsistent with  
8 the provisions in this part for their detailed and efficient  
9 administration. At any time after the making of an applicable  
10 transfer subject to the tax imposed by this part, the director  
11 of taxation may investigate and ascertain whether the tax, in  
12 the proper amount, was paid. For this purpose, the director of  
13 taxation or director of commerce and consumer affairs may invoke  
14 all statutory powers vested in them, including but not limited  
15 to section 231-7.

16       (b) The director of taxation shall prepare forms as may be  
17 necessary to satisfy the requirements of this part. The  
18 director may also require the nonresident person that is a  
19 transferee under this section to furnish information to  
20 ascertain that person's compliance with the requirements of this  
21 part and may adopt rules necessary to effectuate the purposes of  
22 this part pursuant to chapter 91."

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

3 **"CHAPTER 247**

4 **CONVEYANCE [~~TAX~~] TAXES"**

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

9 **"PART I. CONVEYANCE TAX"**

10 SECTION 5. In codifying the new sections added by section  
11 2 of this Act, the revisor of statutes shall substitute  
12 appropriate section numbers for the letters used in designating  
13 the new sections in this Act.

14 SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

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

**Report Title:**

Real Property Asset Acquisition Tax; Stock Ownership Transfer

**Description:**

Authorizes a tax on individuals and entities that transfer a stock ownership interest in a legal entity that owns real property located in Hawaii. (SD2)