
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the transfer of
2 ownership of a business entity is comparable to the sale of an
3 interest in real property held by the entity. The legislature
4 believes that all transfers of possession or use of real
5 property should be subject to the same conveyance tax
6 obligations.

7 The purpose of this Act is to apply the conveyance tax to
8 transfers of entity ownership when the transfer of entity
9 ownership is essentially equivalent to the sale of an interest
10 in real property.

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

14 "**§247-A Transfer of a controlling interest; applicability.**

15 (a) Notwithstanding any provision to the contrary, the tax
16 imposed by section 247-1 shall apply to the transfer or
17 acquisition, or a series of transfers or acquisitions, including
18 those combined with otherwise exempt transfers, by any person or



1 entity, either acting alone or in concert, within any twelve-
2 month period, that result in the transfer of a controlling
3 interest in an entity with an interest in real property located
4 in this State for valuable consideration and which also results
5 in the transfer of control or ownership of the real property
6 located in this State; provided that this section shall not
7 apply to any transfer or acquisition that consists of the mere
8 change in identity or form of ownership of an entity where there
9 is no change in the beneficial ownership, including transfers to
10 an entity wholly owned, directly or indirectly, by the same
11 common ownership as the transferor.

12 (b) For the purpose of determining whether, pursuant to
13 the exercise of an option, a controlling interest was
14 transferred or acquired within a twelve-month period, the date
15 that the option agreement was executed shall be the date on
16 which the transfer or acquisition of the controlling interest is
17 deemed to occur. For all other purposes under this chapter, the
18 date upon which the option is exercised shall be the date of the
19 transfer or acquisition of the controlling interest.

20 (c) For the purposes of this section with regard to
21 persons acting in concert:



- 1 (1) All acquisitions of persons acting in concert shall be
2 aggregated for the purpose of determining whether a
3 transfer or acquisition of a controlling interest has
4 taken place;
- 5 (2) Persons shall be considered as acting in concert when
6 they have a relationship with each other such that one
7 person influences or controls the actions of another
8 through common ownership;
- 9 (3) Persons shall be considered to be acting in concert
10 only when the unity with which the purchasers
11 negotiate and consummate the transfer of ownership
12 interests supports a finding that the persons are
13 acting as a single entity; and
- 14 (4) If acquisitions are completely independent and each
15 purchaser purchases without regard to the identity of
16 the other purchasers, then the acquisitions shall be
17 considered separate acquisitions.
- 18 (d) As used in this section, "controlling interest" means:
19 (1) In the case of a corporation, either fifty per cent or
20 more of the total combined voting power of all classes
21 of stock of the corporation entitled to vote, or fifty
22 per cent or more of the capital, profits, or



1 beneficial interest in the voting stock of the
2 corporation; and

3 (2) In the case of a partnership, association, trust, or
4 other entity, fifty per cent or more of the capital,
5 profits, or beneficial interest in the partnership,
6 association, trust, or other entity.

7 (e) The director shall adopt rules pursuant to chapter 91
8 to implement this section, including rules for determining
9 whether persons are acting in concert for the purpose of
10 transferring or acquiring a controlling interest.

11 **§247-B Taxation at the lowest rate.** The tax imposed by
12 section 247-1 shall apply to the following at the lowest rate
13 provided in section 247-2(1), regardless of the value of the
14 real property:

15 (1) Any document or instrument conveying real property, or
16 any interest therein, from an entity that is a party
17 to a merger or consolidation under chapter 414, 414D,
18 415A, 421, 421C, 425, 425E, or 428 to the surviving or
19 new entity;

20 (2) Any document or instrument conveying real property, or
21 any interest therein, from a dissolving limited
22 partnership to its corporate general partner that



1 owns, directly or indirectly, at least a ninety per
2 cent interest in the partnership, determined by
3 applying section 318 (with respect to constructive
4 ownership of stock) of the Internal Revenue Code of
5 1986, as amended, to the constructive ownership of
6 interests in the partnership;

7 (3) Any document or instrument conveying real property to
8 any nonprofit or for-profit organization that has been
9 certified by the Hawaii housing finance and
10 development corporation for low-income housing
11 development; and

12 (4) Any document or instrument conveying real property, or
13 any interest therein, to or from a wholly-owned
14 corporation or limited liability company."

15 SECTION 3. Section 247-1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§247-1 Imposition of tax.** There is hereby imposed and
18 shall be levied, collected, and paid, a tax as hereinafter
19 provided, on all transfers or conveyances of realty located in
20 the State or any interest therein, by way of deeds, leases,
21 subleases, assignments of lease, agreements of sale, assignments
22 of agreement of sale, instruments, writings, and any other



1 document, whereby any lands, interests in land, tenements, or
2 other realty sold shall be granted, assigned, transferred, or
3 otherwise conveyed to, or vested in, the purchaser or
4 purchasers, lessee or lessees, sublessee or sublessees, assignee
5 or assignees, or any other person or persons, by the person's or
6 their direction[-], including a transfer of a controlling
7 interest as that term is defined in section 247-A."

8 SECTION 4. Section 247-3, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§247-3 Exemptions.** The tax imposed by section 247-1
11 shall not apply to:

- 12 (1) Any document or instrument that is executed prior to
13 January 1, 1967;
- 14 (2) Any document or instrument that is given to secure a
15 debt or obligation;
- 16 (3) Any document or instrument that only confirms or
17 corrects a deed, lease, sublease, assignment,
18 transfer, or conveyance previously recorded or filed;
- 19 (4) Any document or instrument between husband and wife,
20 reciprocal beneficiaries, or parent and child, in
21 which only a nominal consideration is paid;



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



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



- 1 (13) Any document or instrument conveying real property
2 from a testamentary trust to a beneficiary under the
3 trust; and
- 4 (14) Any document or instrument conveying real property
5 from a grantor to the grantor's revocable living
6 trust, or from a grantor's revocable living trust to
7 the grantor as beneficiary of the trust[+]
- 8 ~~(15) Any document or instrument conveying real property, or~~
9 ~~any interest therein, from an entity that is a party~~
10 ~~to a merger or consolidation under chapter 414, 414D,~~
11 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
12 ~~new entity;~~
- 13 ~~(16) Any document or instrument conveying real property, or~~
14 ~~any interest therein, from a dissolving limited~~
15 ~~partnership to its corporate general partner that~~
16 ~~owns, directly or indirectly, at least a ninety per~~
17 ~~cent interest in the partnership, determined by~~
18 ~~applying section 318 (with respect to constructive~~
19 ~~ownership of stock) of the federal Internal Revenue~~
20 ~~Code of 1986, as amended, to the constructive~~
21 ~~ownership of interests in the partnership; and~~



1 ~~(17) Any document or instrument conveying real property to~~
2 ~~any nonprofit or for profit organization that has been~~
3 ~~certified by the Hawaii housing finance and~~
4 ~~development corporation for low income housing~~
5 ~~development]."~~

6 SECTION 5. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 2011.



Report Title:

Conveyance Tax; Controlling Interest Transfer

Description:

Imposes conveyance tax on the transfer of a controlling interest of an entity with an interest in real property. Stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate. (HB1180 HD1)

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

