
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.

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

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

17 (1) All acquisitions of persons acting in concert shall be
18 aggregated for the purpose of determining whether a
19 transfer or acquisition of a controlling interest has
20 taken place;

21 (2) Persons shall be considered as acting in concert when
22 they have a relationship with each other such that one



1 person influences or controls the actions of another
2 through common ownership;

3 (3) Persons shall be considered to be acting in concert
4 only when the unity with which the purchasers
5 negotiate and consummate the transfer of ownership
6 interests supports a finding that the persons are
7 acting as a single entity; and

8 (4) If acquisitions are completely independent and each
9 purchaser purchases without regard to the identity of
10 the other purchasers, then the acquisitions shall be
11 considered separate acquisitions.

12 (d) As used in this section, "controlling interest" means:

13 (1) In the case of a corporation, either fifty per cent or
14 more of the total combined voting power of all classes
15 of stock of the corporation entitled to vote, or fifty
16 per cent or more of the capital, profits, or
17 beneficial interest in the voting stock of the
18 corporation; and

19 (2) In the case of a partnership, association, trust, or
20 other entity, fifty per cent or more of the capital,
21 profits, or beneficial interest in the partnership,
22 trust, or other entity.



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

5 §247-B Taxation at the lowest rate. The tax imposed by
6 section 247-1 shall apply to the following at the lowest rate
7 provided in section 247-2(1), regardless of the value of the
8 real property:

9 (1) Any document or instrument conveying real property, or
10 any interest therein, from an entity that is a party
11 to a merger or consolidation under chapter 414, 414D,
12 415A, 421, 421C, 425, 425E, or 428 to the surviving or
13 new entity;

14 (2) Any document or instrument conveying real property, or
15 any interest therein, from a dissolving limited
16 partnership to its corporate general partner that
17 owns, directly or indirectly, at least a ninety per
18 cent interest in the partnership, determined by
19 applying section 318 (with respect to constructive
20 ownership of stock) of the federal Internal Revenue
21 Code of 1986, as amended, to the constructive
22 ownership of interests in the partnership;



- 1 (3) 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; and
- 6 (4) Any document or instrument conveying real property, or
- 7 any interest therein, to or from a wholly-owned
- 8 corporation or limited liability company."

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

11 "§247-1 Imposition of tax. There is hereby imposed and
12 shall be levied, collected, and paid, a tax as hereinafter
13 provided, on all transfers or conveyances of realty located in
14 the State or any interest therein, by way of deeds, leases,
15 subleases, assignments of lease, agreements of sale, assignments
16 of agreement of sale, instruments, writings, and any other
17 document, whereby any lands, interests in land, tenements, or
18 other realty sold shall be granted, assigned, transferred, or
19 otherwise conveyed to, or vested in, the purchaser or
20 purchasers, lessee or lessees, sublessee or sublessees, assignee
21 or assignees, or any other person or persons, by the person's or

1 their direction[-], including a transfer of a controlling
2 interest as that term is defined in section 247-A."

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

5 "§247-3 Exemptions. The tax imposed by section 247-1
6 shall not apply to:

- 7 (1) Any document or instrument that is executed prior to
8 January 1, 1967;
- 9 (2) Any document or instrument that is given to secure a
10 debt or obligation;
- 11 (3) Any document or instrument that only confirms or
12 corrects a deed, lease, sublease, assignment,
13 transfer, or conveyance previously recorded or filed;
- 14 (4) Any document or instrument between husband and wife,
15 reciprocal beneficiaries, or parent and child, in
16 which only a nominal consideration is paid;
- 17 (5) Any document or instrument in which there is a
18 consideration of \$100 or less paid or to be paid;
- 19 (6) Any document or instrument conveying real property
20 that is executed pursuant to an agreement of sale, and
21 where applicable, any assignment of the agreement of
22 sale, or assignments thereof; provided that the taxes



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



- 1 (10) Any document or instrument that solely conveys or
2 grants an easement or easements;
- 3 (11) Any document or instrument whereby owners partition
4 their property, whether by mutual agreement or
5 judicial action; provided that the value of each
6 owner's interest in the property after partition is
7 equal in value to that owner's interest before
8 partition;
- 9 (12) Any document or instrument between marital partners or
10 reciprocal beneficiaries who are parties to a divorce
11 action or termination of reciprocal beneficiary
12 relationship that is executed pursuant to an order of
13 the court in the divorce action or termination of
14 reciprocal beneficiary relationship;
- 15 (13) Any document or instrument conveying real property
16 from a testamentary trust to a beneficiary under the
17 trust; and
- 18 (14) Any document or instrument conveying real property
19 from a grantor to the grantor's revocable living
20 trust, or from a grantor's revocable living trust to
21 the grantor as beneficiary of the trust[7



1 ~~(15) Any document or instrument conveying real property, or~~
2 ~~any interest therein, from an entity that is a party~~
3 ~~to a merger or consolidation under chapter 414, 414D,~~
4 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
5 ~~new entity;~~

6 ~~(16) Any document or instrument conveying real property, or~~
7 ~~any interest therein, from a dissolving limited~~
8 ~~partnership to its corporate general partner that~~
9 ~~owns, directly or indirectly, at least a ninety per~~
10 ~~cent interest in the partnership, determined by~~
11 ~~applying section 318 (with respect to constructive~~
12 ~~ownership of stock) of the federal Internal Revenue~~
13 ~~Code of 1986, as amended, to the constructive~~
14 ~~ownership of interests in the partnership; and~~

15 ~~(17) Any document or instrument conveying real property to~~
16 ~~any nonprofit or for profit organization that has been~~
17 ~~certified by the Hawaii housing finance and~~
18 ~~development corporation for low income housing~~
19 ~~development]."~~

20 SECTION 5. In codifying the new sections added by section
21 2 of this Act, the revisor of statutes shall substitute



H.B. NO. 1180

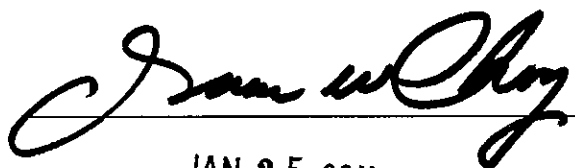
1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 6. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:



JAN 25 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. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate.

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

