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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 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 conveyance of an interest in realty located in the State as a  
18 result of the transfer or acquisition, or a series of transfers



1 or acquisitions, including those combined with otherwise exempt  
2 transfers, by any person or entity, acting alone or in concert,  
3 within any twelve-month period, that result in the transfer of a  
4 controlling interest in an entity with an interest in realty  
5 located in the State for valuable consideration which results in  
6 the transfer of control or ownership of the realty located in  
7 the State; provided that this section shall not apply to:

8       (1) Any transfer or acquisition that consists of the  
9           change in identity or form of ownership of an entity  
10          where there is no change in the beneficial ownership,  
11          including transfers to an entity wholly owned,  
12          directly or indirectly, by the same common ownership  
13          as the transferor; or

14       (2) Any transfer from a limited partner to a general  
15          partner of a limited partnership that owns an  
16          affordable rental housing project for which low-income  
17          housing tax credits have been issued under section  
18          235-110.8 or 241-4.7 or section 42 of the Internal  
19          Revenue Code of 1986, as amended.

20       (b) For the purpose of determining whether, pursuant to  
21 the exercise of an option, a controlling interest was  
22 transferred or acquired within a twelve-month period, the date



1 that the option agreement was executed shall be the date upon  
2 which the transfer or acquisition of the controlling interest is  
3 deemed to occur. For all other purposes under this chapter, the  
4 date upon which the option is exercised shall be the date of the  
5 transfer or acquisition of the controlling interest.

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

8 (1) All acquisitions of persons acting in concert shall be  
9 aggregated for the purpose of determining whether a  
10 transfer or acquisition of a controlling interest has  
11 taken place;

12 (2) Persons shall be considered as acting in concert when  
13 they have a relationship with each other such that one  
14 person influences or controls the actions of another  
15 through common ownership;

16 (3) Persons shall be considered to be acting in concert  
17 only when the unity with which the purchasers  
18 negotiate and consummate the transfer of ownership  
19 interests supports a finding that the persons are  
20 acting as a single entity; and

21 (4) If acquisitions are completely independent and each  
22 purchaser purchases without regard to the identity of



1 the other purchasers, then the acquisitions shall be  
2 considered separate acquisitions.

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

4 (1) In the case of a corporation, either fifty per cent or  
5 more of the total combined voting power of all classes  
6 of stock of the corporation entitled to vote, or fifty  
7 per cent or more of the capital, profits, or  
8 beneficial interest in the voting stock of the  
9 corporation; and

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

14 (e) The director shall adopt rules pursuant to chapter 91  
15 to implement this section, including rules for determining:

16 (1) The value of the realty being transferred as the  
17 result of the transfer of a controlling interest; and

18 (2) Whether persons are acting in concert for the purpose  
19 of effectuating the transfer of a controlling  
20 interest.

21 §247-B Taxation at the lowest rate. The tax imposed by  
22 section 247-1 shall apply to the following at the lowest rate



1 provided in section 247-2(1), regardless of the value of the  
2 real property:

3 (1) Any document or instrument conveying real property, or  
4 any interest therein, from an entity that is a party  
5 to a merger or consolidation under chapter 414, 414D,  
6 415A, 421, 421C, 425, 425E, or 428 to the surviving or  
7 new entity;

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

17 (3) Any document or instrument conveying real property, or  
18 any interest therein, to or from a wholly-owned  
19 corporation or limited liability company."

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

1           "**§247-1 Imposition of tax.** There is hereby imposed and  
 2 shall be levied, collected, and paid, a tax as hereinafter  
 3 provided, on all transfers or conveyances of realty located in  
 4 the State or any interest therein~~[, by]~~;

5           (1) By way of deeds, leases, subleases, assignments of  
 6           lease, agreements of sale, assignments of agreement of  
 7           sale, instruments, writings, and any other document,  
 8           whereby any lands, interests in land, tenements, or  
 9           other realty sold shall be granted, assigned,  
 10           transferred, or otherwise conveyed to, or vested in,  
 11           the purchaser or purchasers, lessee or lessees,  
 12           sublessee or sublessees, assignee or assignees, or any  
 13           other person or persons, by the person's or their  
 14           direction[-]; or

15           (2) By way of the transfer of a controlling interest as  
 16           that term is used in section 247-A."

17           SECTION 4. Section 247-2, Hawaii Revised Statutes, is  
 18 amended to read as follows:

19           "**§247-2 Basis and rate of tax.** The tax imposed by section  
 20 247-1 shall be based on the actual and full consideration  
 21 (whether cash or otherwise, including any promise, act,  
 22 forbearance, property interest, value, gain, advantage, benefit,

1 or profit), paid or to be paid for all transfers or conveyance  
2 of realty located in the State or any interest therein, that  
3 shall include any liens or encumbrances thereon at the time of  
4 sale, lease, sublease, assignment, transfer, or conveyance, and  
5 shall be at the following rates:

- 6 (1) Except as provided in paragraph (2):
  - 7 (A) Ten cents per \$100 for properties with a value of
  - 8 less than \$600,000;
  - 9 (B) Twenty cents per \$100 for properties with a value
  - 10 of at least \$600,000, but less than \$1,000,000;
  - 11 (C) Thirty cents per \$100 for properties with a value
  - 12 of at least \$1,000,000, but less than \$2,000,000;
  - 13 (D) Fifty cents per \$100 for properties with a value
  - 14 of at least \$2,000,000, but less than \$4,000,000;
  - 15 (E) Seventy cents per \$100 for properties with a
  - 16 value of at least \$4,000,000, but less than
  - 17 \$6,000,000;
  - 18 (F) Ninety cents per \$100 for properties with a value
  - 19 of at least \$6,000,000, but less than
  - 20 \$10,000,000; and
  - 21 (G) One dollar per \$100 for properties with a value
  - 22 of \$10,000,000 or greater; and



- 1           (2) For the sale of a condominium or single family
- 2           residence for which the purchaser is ineligible for a
- 3           county homeowner's exemption on property tax:
- 4           (A) Fifteen cents per \$100 for properties with a
- 5           value of less than \$600,000;
- 6           (B) Twenty-five cents per \$100 for properties with a
- 7           value of at least \$600,000, but less than
- 8           \$1,000,000;
- 9           (C) Forty cents per \$100 for properties with a value
- 10          of at least \$1,000,000, but less than \$2,000,000;
- 11          (D) Sixty cents per \$100 for properties with a value
- 12          of at least \$2,000,000, but less than \$4,000,000;
- 13          (E) Eighty-five cents per \$100 for properties with a
- 14          value of at least \$4,000,000, but less than
- 15          \$6,000,000;
- 16          (F) One dollar and ten cents per \$100 for properties
- 17          with a value of at least \$6,000,000, but less
- 18          than \$10,000,000; and
- 19          (G) One dollar and twenty-five cents per \$100 for
- 20          properties with a value of \$10,000,000 or
- 21          greater,



1 of such actual and full consideration[+] paid for or allocable  
 2 to the realty located in the State; provided that in the case of  
 3 a lease or sublease, this chapter shall apply only to a lease or  
 4 sublease whose full unexpired term is for a period of five years  
 5 or more, and in those cases, including (where appropriate) those  
 6 cases where the lease has been extended or amended, the tax in  
 7 this chapter shall be based on the cash value of the lease  
 8 rentals discounted to present day value and capitalized at the  
 9 rate of six per cent, plus the actual and full consideration  
 10 paid or to be paid for any and all improvements, if any, that  
 11 shall include on-site as well as off-site improvements,  
 12 applicable to the leased premises; and provided further that the  
 13 tax imposed for each transaction shall be not less than \$1."

14 SECTION 5. Section 247-3, Hawaii Revised Statutes, is  
 15 amended to read as follows:

16 "**§247-3 Exemptions.** The tax imposed by section 247-1  
 17 shall not apply to:

- 18 (1) Any document or instrument that is executed prior to
- 19 January 1, 1967;
- 20 (2) Any document or instrument that is given to secure a
- 21 debt or obligation;



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



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



1 action or termination of reciprocal beneficiary  
2 relationship that is executed pursuant to an order of  
3 the court in the divorce action or termination of  
4 reciprocal beneficiary relationship;

5 (13) Any document or instrument conveying real property  
6 from a testamentary trust to a beneficiary under the  
7 trust;

8 (14) Any document or instrument conveying real property  
9 from a grantor to the grantor's revocable living  
10 trust, or from a grantor's revocable living trust to  
11 the grantor as beneficiary of the trust; and

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

17 ~~(16) Any document or instrument conveying real property, or~~  
18 ~~any interest therein, from a dissolving limited~~  
19 ~~partnership to its corporate general partner that~~  
20 ~~owns, directly or indirectly, at least a ninety per~~  
21 ~~cent interest in the partnership, determined by~~  
22 ~~applying section 318 (with respect to constructive~~



1           ~~ownership of stock) of the federal Internal Revenue~~  
2           ~~Code of 1986, as amended, to the constructive~~  
3           ~~ownership of interests in the partnership; and~~  
4        [(-17-)] (15) Any document or instrument that conforms to the  
5           transfer on death deed as authorized under chapter  
6           527."

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

11          SECTION 7. Statutory material to be repealed is bracketed  
12        and stricken. New statutory material is underscored.

13          SECTION 8. This Act shall take effect on January 1, 2013.

14

INTRODUCED BY: *Jan Wilhoj*

JAN 15 2012

**Report Title:**

Conveyance Tax; Controlling Interest Transfer

**Description:**

Imposes conveyance tax on the transfer or conveyance of a controlling interest of an entity with an interest in realty in Hawaii; exempts certain transfers. Imposes conveyance tax on certain transfers of real property at the lowest rate. Effective 01/01/13.

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