
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 the tax imposed by section 247-1 shall
8 not apply to:

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

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

21 (3) Any transfer that consists solely of a change in
22 controlling interest in an entity holding an interest



1 in realty between persons with ownership interests in
2 such entity for a minimum of three years immediately
3 preceding the transfer.

4 The conveyance tax shall be based upon the lesser of the
5 most recent county real property tax assessed value of the
6 realty or, if available, a current qualified appraisal by a
7 licensed real estate appraiser in the State of Hawaii.

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

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

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



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

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

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

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

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

21 (2) In the case of a partnership, association, trust, or
22 other entity, fifty per cent or more of the capital,



1 profits, or beneficial interest in the partnership,
2 association, trust, or other entity.

3 (e) The director shall adopt rules pursuant to chapter 91
4 to implement this section, including rules for determining
5 whether persons are acting in concert for the purpose of
6 effectuating the transfer of a controlling interest.

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

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

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



1 1986, as amended, to the constructive ownership of
2 interests in the partnership; and
3 (3) Any document or instrument conveying real property, or
4 any interest therein, to or from a wholly-owned
5 corporation or limited liability company."

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

8 "**§247-1 Imposition of tax.** There is hereby imposed and
9 shall be levied, collected, and paid, a tax as hereinafter
10 provided, on all transfers or conveyances of realty located in
11 the State or any interest therein[~~, by~~]:

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



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

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

5 "**§247-2 Basis and rate of tax.** The tax imposed by section
6 247-1 shall be based on the actual and full consideration
7 (whether cash or otherwise, including any promise, act,
8 forbearance, property interest, value, gain, advantage, benefit,
9 or profit), paid or to be paid for all transfers or conveyance
10 of realty located in the State or any interest therein, that
11 shall include any liens or encumbrances thereon at the time of
12 sale, lease, sublease, assignment, transfer, or conveyance, and
13 shall be at the following rates:

14 (1) Except as provided in paragraph (2):

15 (A) Ten cents per \$100 for properties with a value of
16 less than \$600,000;

17 (B) Twenty cents per \$100 for properties with a value
18 of at least \$600,000, but less than \$1,000,000;

19 (C) Thirty cents per \$100 for properties with a value
20 of at least \$1,000,000, but less than \$2,000,000;

21 (D) Fifty cents per \$100 for properties with a value
22 of at least \$2,000,000, but less than \$4,000,000;



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



1 (E) Eighty-five cents per \$100 for properties with a
2 value of at least \$4,000,000, but less than
3 \$6,000,000;

4 (F) One dollar and ten cents per \$100 for properties
5 with a value of at least \$6,000,000, but less
6 than \$10,000,000; and

7 (G) One dollar and twenty-five cents per \$100 for
8 properties with a value of \$10,000,000 or
9 greater,

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



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

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

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



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



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)]~~ (15) Any document or instrument that conforms to the
16 transfer on death deed as authorized under chapter
17 527."

18 SECTION 6. Section 247-6, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Any party, with the exception of governmental bodies,
21 agencies, or officers, to a document or instrument subject to
22 this chapter, or the party's authorized representative, shall



1 file, in the manner and place which the director of taxation
2 shall prescribe, a certificate of conveyance setting forth the
3 actual and full consideration of the property transferred, or
4 the value of the property transferred by way of the transfer of
5 a controlling interest as used in section 247-A, including any
6 lien or encumbrance on the property, and any other facts as the
7 director may by rules prescribe. The certificate of conveyance
8 shall be verified by a written declaration thereon that the
9 statements made therein are subject to the penalties in section
10 231-36. The certificate shall be appended to the document or
11 instrument made subject to this chapter and shall be filed with
12 the director simultaneously with the aforementioned document or
13 instrument for the imprinting of the required seal or seals."

14 SECTION 7. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect on January 1, 2014.



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. Requires a certificate of conveyance to specify the value of the property transferred by way of the transfer of a controlling interest when necessary. Effective January 1, 2014. (HB680 HD1)

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