

JAN 17 2013

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 which holds an interest in
5 realty that is located in the State and the transfer includes
6 valuable consideration which alters the controlling interest or
7 ownership of the realty; provided that this section shall not
8 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; or

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.

21 (b) For the purpose of determining whether, pursuant to
22 the exercise of an option, a controlling interest was



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

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

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

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

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



1 (4) If acquisitions are completely independent and each
2 purchaser purchases without regard to the identity of
3 the other purchasers, then the acquisitions shall be
4 considered separate acquisitions.

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

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

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

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

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

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



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

5 (1) Any document or instrument conveying real property, or
6 any interest therein, from an entity that is a party
7 to a merger or consolidation under chapter 414, 414D,
8 415A, 421, 421C, 425, 425E, or 428 to the surviving or
9 new entity;

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

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



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

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

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

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

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

21 **"§247-2 Basis and rate of tax.** The tax imposed by section
22 247-1 shall be based on the actual and full consideration

1 (whether cash or otherwise, including any promise, act,
2 forbearance, property interest, value, gain, advantage, benefit,
3 or profit), paid or to be paid for all transfers or conveyance
4 of realty located in the State or any interest therein, that
5 shall include any liens or encumbrances thereon at the time of
6 sale, lease, sublease, assignment, transfer, or conveyance, and
7 shall be at the following rates:

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



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



1 (G) One dollar and twenty-five cents per \$100 for
 2 properties with a value of \$10,000,000 or
 3 greater,
 4 of such actual and full consideration[+] paid for or allocable
 5 to the realty located in the State; provided that in the case of
 6 a lease or sublease, this chapter shall apply only to a lease or
 7 sublease whose full unexpired term is for a period of five years
 8 or more, and in those cases, including (where appropriate) those
 9 cases where the lease has been extended or amended, the tax in
 10 this chapter shall be based on the cash value of the lease
 11 rentals discounted to present day value and capitalized at the
 12 rate of six per cent, plus the actual and full consideration
 13 paid or to be paid for any and all improvements, if any, that
 14 shall include on-site as well as off-site improvements,
 15 applicable to the leased premises; and provided further that the
 16 tax imposed for each transaction shall be not less than \$1."

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

19 "**§247-3 Exemptions.** The tax imposed by section 247-1
 20 shall not apply to:

- 21 (1) Any document or instrument that is executed prior to
- 22 January 1, 1967;

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



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



1 (12) Any document or instrument between marital partners or
2 reciprocal beneficiaries who are parties to a divorce
3 action or termination of reciprocal beneficiary
4 relationship that is executed pursuant to an order of
5 the court in the divorce action or termination of
6 reciprocal beneficiary relationship;

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

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

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

19 ~~(16) Any document or instrument conveying real property, or~~
20 ~~any interest therein, from a dissolving limited~~
21 ~~partnership to its corporate general partner that~~
22 ~~owns, directly or indirectly, at least a ninety per~~



1 ~~cent interest in the partnership, determined by~~
2 ~~applying section 318 (with respect to constructive~~
3 ~~ownership of stock) of the federal Internal Revenue~~
4 ~~Code of 1986, as amended, to the constructive~~
5 ~~ownership of interests in the partnership; and~~
6 ~~{(17)}~~ (15) Any document or instrument that conforms to the
7 transfer on death deed as authorized under chapter
8 527."

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

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect on January 1, 2014.

16

INTRODUCED BY: *Suzanne Olson Carlson*

Russell Rudman

[Signature]

S.B. NO. 97

Report Title:

Conveyance Tax; Transfers of Controlling Interest in Real Property Holding Entities

Description:

Deems transfers of controlling interest in entities holding interests in real property within the State subject to the conveyance tax. Takes effect 1/1/2014.

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