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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 twenty-four-month period, that result in the transfer  
4 of a controlling interest in an entity that holds an interest in  
5 realty that is located in the State and the transfer includes  
6 valuable consideration that alters the controlling interest or  
7 ownership of the realty; provided that this section shall not  
8 apply to:

9 (1) Any transfer from a limited partner to a general  
10 partner of a limited partnership that owns an  
11 affordable rental housing project for which low-income  
12 housing tax credits have been issued under section  
13 235-110.8 or 241-4.7 or section 42 of the Internal  
14 Revenue Code of 1986, as amended; or

15 (2) Any transfer that consists solely of a change in  
16 controlling interest in an entity holding an interest  
17 in realty between persons with ownership interests in  
18 such entity for a minimum of three years immediately  
19 preceding the transfer.

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 have occurred. For all other purposes under this  
4 chapter, the date upon which the option is exercised shall be  
5 the date of the transfer or acquisition of the controlling  
6 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 occurred;

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 parties negotiate  
19 and consummate the transfer of ownership interests  
20 supports a finding that the persons are acting as a  
21 single entity; and



- 1       (4) If acquisitions are completely independent and each  
2       party acts without regard to the identity of the other  
3       parties, the acquisitions shall be considered separate  
4       acquisitions.
- 5       (d) As used in this section, "controlling interest" means:
- 6       (1) In the case of a corporation:
- 7           (A) Fifty per cent or more of the total combined  
8           voting power of all classes of stock of the  
9           corporation entitled to vote; or
- 10          (B) Fifty per cent or more of the capital, profits,  
11          or beneficial interest in the voting stock of the  
12          corporation; and
- 13       (2) In the case of a partnership, association, trust, or  
14       other entity, fifty per cent or more of the capital,  
15       profits, or beneficial interest in the partnership,  
16       association, trust, or other entity.
- 17       (e) If the actual or full consideration paid or to be  
18       paid, as described in section 247-2, cannot be determined from  
19       the value of the transfer of controlling interest, the  
20       conveyance tax shall be based upon the fair market value of the  
21       realty on the date of the transfer or acquisition.



1       (f) 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 effectuating the transfer of 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, as determined by  
19 applying section 318 (with respect to constructive  
20 ownership of stock) of the Internal Revenue Code of  
21 1986, as amended, to the constructive ownership of  
22 interests in the partnership; and



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

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

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

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

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



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

3 "§247-2 **Basis and rate of tax.** The tax imposed by section  
4 247-1 shall be based on the actual and full consideration  
5 (whether cash or otherwise, including any promise, act,  
6 forbearance, property interest, value, gain, advantage, benefit,  
7 or profit), paid or to be paid for all transfers or conveyance  
8 of realty located in the State or any interest therein, that  
9 shall include any liens or encumbrances thereon at the time of  
10 sale, lease, sublease, assignment, transfer, or conveyance, and  
11 shall be at the following rates:

- 12 (1) Except as provided in paragraph (2):
  - 13 (A) Ten cents per \$100 for properties with a value of
  - 14 less than \$600,000;
  - 15 (B) Twenty cents per \$100 for properties with a value
  - 16 of at least \$600,000, but less than \$1,000,000;
  - 17 (C) Thirty cents per \$100 for properties with a value
  - 18 of at least \$1,000,000, but less than \$2,000,000;
  - 19 (D) Fifty cents per \$100 for properties with a value
  - 20 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~~] the actual and full consideration[~~+~~] paid for or  
11 allocable to the realty located in the State; provided that in  
12 the case of a lease or sublease, this chapter shall apply only  
13 to a lease or sublease whose full unexpired term is for a period  
14 of five years or more, and in those cases, including (where  
15 appropriate) those cases where the lease has been extended or  
16 amended, the tax in this chapter shall be based on the cash  
17 value of the lease rentals discounted to present day value and  
18 capitalized at the rate of six per cent, plus the actual and  
19 full consideration paid or to be paid for any and all  
20 improvements, if any, that shall include on-site as well as off-  
21 site improvements, applicable to the leased premises; and

1 provided further that the tax imposed for each transaction shall  
2 be not less than \$1."

3 SECTION 5. 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;
- 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. In codifying the new sections added by section  
19    2 of this Act, the revisor of statutes shall substitute  
20    appropriate section numbers for the letters used in designating  
21    the new sections in this Act.



1           SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           SECTION 8. This Act shall take effect on July 1, 2050.



**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. Effective 07/01/2050. (SD2)

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not legislation or evidence of legislative intent.*

