

---

---

## A BILL FOR AN ACT

RELATING TO TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 247, Hawaii Revised Statutes, is  
2 amended by adding five new sections to be appropriately  
3 designated and to read as follows:

4           "§247-A Definitions. For the purposes of this chapter,  
5 unless otherwise expressly stated:

6           "Consideration" means the price actually paid or required  
7 to be paid for the real property or interest therein, including:

8           (1) Payment for an option or contract to purchase real  
9 property, whether or not expressed in the deed and  
10 whether paid or required to be paid by money,  
11 property, or any other thing of value;

12           (2) Cancellation or discharge of an indebtedness or  
13 obligation; or

14           (3) The amount of any mortgage, purchase money mortgage,  
15 lien or other encumbrance, whether or not the  
16 underlying indebtedness is assumed or taken subject to  
17 the encumbrance;



1 provided that, in the case of a controlling interest in any  
2 entity that owns real property, consideration shall mean the  
3 fair market value of the real property or interest therein,  
4 apportioned based upon the percentage of the ownership interest  
5 transferred or acquired in the entity.

6 "Conveyance" means the transfer or transfers of any  
7 interest in real property by any method, including but not  
8 limited to sale, exchange, assignment, surrender, mortgage  
9 foreclosure, transfer in lieu of foreclosure, option, trust  
10 indenture, taking by eminent domain, conveyance upon liquidation  
11 or by a receiver, or transfer or acquisition of a controlling  
12 interest in an entity with an interest in real property.

13 Conveyance of an interest in real property shall include the  
14 creation of a leasehold or sublease.

15 "Grantee" means the person who obtains real property or  
16 interest therein as the result of a conveyance.

17 "Grantor" means the person making the conveyance of real  
18 property or interest therein. Where the conveyance consists of  
19 a transfer or an acquisition of a controlling interest in an  
20 entity that has an interest in real property, "grantor" means  
21 the entity that has an interest in real property or a



1 shareholder or partner transferring stock or partnership  
2 interest, respectively.

3 "Interest in the real property" includes title in fee, a  
4 leasehold interest, a beneficial interest, an encumbrance,  
5 development rights, space rights, air rights, or any other  
6 interest with the right to the use or occupancy of real property  
7 or the right to receive rents, profits, or other income derived  
8 from real property.

9 "Real property" means every estate or right, legal or  
10 equitable, present or future, vested or contingent, in lands,  
11 tenements, or hereditaments, including buildings, structures,  
12 and other improvements thereon, that are located in whole or in  
13 part within the State.

14 §247-B Controlling interest; defined; application. (a)

15 For the purposes of this chapter, "controlling interest" means:

16 (1) In the case of a corporation,

17 (A) Fifty per cent or more of the total combined  
18 voting power of all classes of stock of the  
19 corporation; or

20 (B) Fifty per cent or more of the capital, profits,  
21 or beneficial interest in the voting stock of the  
22 corporation; and



1       (2) In the case of a partnership, association, trust, or  
2       other entity, fifty per cent or more of the capital,  
3       profits, or beneficial interest in the partnership,  
4       association, trust, or other entity.

5       (b) In the case of a corporation that has an interest in  
6       real property, the transfer or acquisition of a controlling  
7       interest in the corporation occurs when a person, or group of  
8       persons acting in concert, transfers or acquires a total of  
9       fifty per cent or more of the voting stock in the corporation.

10       In the case of a partnership, association, trust, or other  
11       entity having an interest in real property, the transfer or  
12       acquisition occurs when a person, or group of persons acting in  
13       concert, transfers or acquires a total of fifty per cent or more  
14       of the capital, profits, or beneficial interest in the entity.

15       For the purposes of this subsection:

16       (1) Persons are acting in concert when they have a  
17       relationship such that one person influences or  
18       controls the actions of another. For example, if a  
19       parent corporation and a wholly-owned subsidiary  
20       corporation each sell or purchase a twenty-five per  
21       cent interest in an entity, the two corporations shall



1           be considered to have acted in concert to transfer or  
2           acquire a controlling interest in the entity; and

3       (2) Where the individuals or entities are not commonly  
4           controlled or owned, persons shall be treated as  
5           acting in concert when the unity with which the  
6           sellers or purchasers have negotiated and will  
7           consummate the transfer of ownership interests  
8           indicates they are acting as a single entity. If the  
9           transfers or acquisitions are completely independent,  
10          with each grantor selling or grantee buying without  
11          regard to the identity of the other grantors or  
12          grantees, then the transfers or acquisitions shall be  
13          treated as separate transfers or acquisitions. The  
14          grantors or grantees may be required to provide a  
15          sworn statement that their transfers or acquisitions  
16          are independent of each other. Factors that indicate  
17          whether persons are acting in concert shall include  
18          the following:

19        (A) The transfers or acquisitions are closely related  
20            in time;

21        (B) There are few grantors or grantees;

22        (C) The contracts of sale contain mutual terms; and



1           (D) The grantors or grantees have entered into an  
2           agreement, in addition to the sales contract,  
3           binding themselves to a course of action with  
4           respect to the transfer or acquisition.

5           (c) Notwithstanding the definition of "controlling  
6           interest" and the exercise thereof in subsections (a) and (b),  
7           the tax imposed by this chapter shall apply to:

8           (1) The original conveyance of shares of stock in a  
9           cooperative housing corporation as defined in section  
10           421I-1, or limited-equity housing cooperative as  
11           defined in section 421H-1, in connection with the  
12           grant or transfer of a right of occupancy by the  
13           cooperative housing corporation or limited-equity  
14           housing cooperative; and

15           (2) The subsequent conveyance of the stock in a  
16           cooperative housing corporation or limited-equity  
17           housing cooperative in connection with the grant or  
18           transfer of a right of occupancy by the owner thereof.

19           (d) For purposes of determining whether or not a  
20           controlling interest is transferred or acquired, only transfers  
21           or acquisitions of interests occurring on or after July 1, 2014,  
22           shall be added together.



1       A transfer or acquisition made on or after July 1, 2014,  
2 does not have to be included, for purposes of determining  
3 whether or not a controlling interest is transferred or  
4 acquired; provided that the transfer or acquisition is made  
5 pursuant to a binding written contract that was entered into  
6 before July 1, 2014.

7       (e) In the case of a transfer or acquisition of an  
8 interest in an entity that has an interest in real property, on  
9 or after July 1, 2014, that is followed by a subsequent transfer  
10 or acquisition of an additional interest or interests in the  
11 same entity, the transfers or acquisitions shall be added  
12 together to determine if a transfer or acquisition of a  
13 controlling interest has occurred.

14       (f) In the case of a transfer or acquisition of a  
15 controlling interest in an entity, on or after July 1, 2014,  
16 where the conveyance tax is paid on that transfer or acquisition  
17 and there is a subsequent transfer or acquisition of an  
18 additional interest in the same entity, it shall be considered  
19 that a second transfer or acquisition of a controlling interest  
20 has occurred, which shall be subject to the conveyance tax.

21       (g) No transfer or acquisition of an interest in an entity  
22 that has an interest in real property shall be added to another



1 transfer or acquisition of an interest in the same entity if the  
2 transfers or acquisitions occur more than three years apart,  
3 unless the transfers or acquisitions were so timed as part of a  
4 plan to avoid the conveyance tax.

5 (h) For the purposes of applying the tax imposed under  
6 this chapter to the transfer or acquisition of a controlling  
7 interest in an entity, the tax shall be imposed when there is a  
8 transfer or an acquisition of a controlling interest in the same  
9 conveyance.

10 §247-C Taxation at the lowest rate. Notwithstanding any  
11 exemption under section 247-3, the tax imposed by section 247-1  
12 shall apply to the following conveyances at the lowest rate  
13 provided in section 247-2(1), regardless of the amount of  
14 consideration:

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

20 (2) Any document or instrument conveying real property, or  
21 any interest therein, from a dissolving limited  
22 partnership to its corporate general partner that





1 owns, directly or indirectly, at least a ninety per  
2 cent interest in the limited partnership, as  
3 determined by applying section 318 (with respect to  
4 constructive ownership of stock) of the Internal  
5 Revenue Code of 1986, as amended, to the constructive  
6 ownership of interests in the partnership; and

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

10 **§247-D Disclosure of certificates unlawful; penalty.** (a)

11 A certificate of conveyance required to be filed under section  
12 247-6, and the report of any investigation of the certificate or  
13 of the subject matter of the certificate, shall be confidential.

14 It shall be unlawful for any person or any officer or  
15 employee of the State to:

16 (1) Intentionally make known any certificate or  
17 certificate information filed pursuant to this  
18 chapter, or any report of any investigation of the  
19 certificate or of the subject matter of the  
20 certificate; or



1       (2) Wilfully permit any certificate, certificate  
2       information, or report so made, or any copy thereof,  
3       to be seen or examined by any person;  
4       provided that, for tax purposes, the grantor or grantee, their  
5       authorized agent, or persons with a material interest in the  
6       certificate, certificate information, or report may examine the  
7       certificate, certificate information, or report.

8       (b) For the purposes of this section, unless otherwise  
9       provided by law, persons with a material interest in a  
10      certificate, certificate information, or report shall include:

- 11      (1) Trustees;
- 12      (2) Partners;
- 13      (3) In the case of a corporate certificate, persons named  
14      in a board resolution or a one per cent shareholder;
- 15      (4) The person authorized to act for a corporation in  
16      dissolution;
- 17      (5) The shareholder of an S corporation;
- 18      (6) In case of an estate's or decedent's certificate, the  
19      personal representative, trustee, heir, or beneficiary  
20      of the estate or trust;
- 21      (7) The committee, trustee, or guardian of any person  
22      specified in paragraphs (1) to (6) who is incompetent;



- 1       (8) The trustee in bankruptcy or receiver and the  
2           attorney-in-fact of any person specified in paragraphs  
3           (1) to (7);
- 4       (9) Persons duly authorized by the State in connection  
5           with their official duties;
- 6       (10) Any officer or employee of any county in the State for  
7           official county business purposes, including real  
8           property tax assessment;
- 9       (11) Any duly accredited tax official of the United States  
10           or of any state or territory;
- 11       (12) The Multistate Tax Commission or its authorized  
12           representative;
- 13       (13) Members of a limited liability company; and
- 14       (14) A person contractually obligated to pay the taxes  
15           assessed against another when the latter person is  
16           under audit by the department of taxation.
- 17       Any violation of this subsection shall be a misdemeanor.
- 18       (c) Nothing in this section shall prohibit the registrar  
19           of conveyances or the assistant registrar of the land court from  
20           imprinting a seal, under section 247-5, indicating the amount of  
21           tax paid.



1        (d) No recorded instrument effecting a conveyance shall be  
2 considered a certificate for the purposes of this section.

3        §247-E Conformity to Constitution, etc. In computing the  
4 amounts of any tax imposed under this chapter, there shall be  
5 excepted or deducted from the amounts of consideration so much  
6 thereof as, under the Constitution and laws of the United  
7 States, the State is prohibited from taxing, but only so long as  
8 and only to the extent that the State is so prohibited."

9        SECTION 2. 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 or any~~  
14 ~~interest therein, by way of deeds, leases, subleases,~~  
15 ~~assignments of lease, agreements of sale, assignments of~~  
16 ~~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.]~~ on each conveyance of any interest in real  
2 property."

3 SECTION 3. 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~~] upon the [~~actual and full~~]  
7 consideration [~~(whether cash or otherwise, including any~~  
8 ~~promise, act, forbearance, property interest, value, gain,~~  
9 ~~advantage, benefit, or profit)]~~, paid or to be paid for all  
10 [~~transfers or conveyance~~] conveyances of [~~realty~~] real property,  
11 or any interest therein, that shall include any liens or  
12 encumbrances thereon at the time of sale, lease, sublease,  
13 assignment, transfer, or conveyance[~~7~~] and shall be at the  
14 following rates:

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

16 (A) Ten cents per \$100 for [~~properties with a value~~  
17 ~~of~~] conveyances where the consideration is less  
18 than \$600,000;

19 (B) Twenty cents per \$100 for [~~properties with a~~  
20 ~~value of~~] conveyances where the consideration is  
21 at least \$600,000, but less than \$1,000,000;



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



- 1 (B) Twenty-five cents per \$100 for [~~properties with a~~  
2 ~~value of~~] conveyances where the consideration is  
3 at least \$600,000, but less than \$1,000,000;
- 4 (C) Forty cents per \$100 for [~~properties with a value~~  
5 ~~of~~] conveyances where the consideration is at  
6 least \$1,000,000, but less than \$2,000,000;
- 7 (D) Sixty cents per \$100 for [~~properties with a value~~  
8 ~~of~~] conveyances where the consideration is at  
9 least \$2,000,000, but less than \$4,000,000;
- 10 (E) Eighty-five cents per \$100 for [~~properties with a~~  
11 ~~value of~~] conveyances where the consideration is  
12 at least \$4,000,000, but less than \$6,000,000;
- 13 (F) One dollar and ten cents per \$100 for [~~properties~~  
14 ~~with a value of~~] conveyances where the  
15 consideration is at least \$6,000,000, but less  
16 than \$10,000,000; and
- 17 (G) One dollar and twenty-five cents per \$100 for  
18 [~~properties with a value of~~] conveyances where  
19 the consideration is \$10,000,000 or greater,  
20 of [~~such actual and full~~] the consideration; provided that in  
21 the case of a lease or sublease, this chapter shall apply only  
22 to a lease or sublease whose full unexpired term is for a period



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

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

13 "§247-3 Exemptions. The tax imposed by section 247-1  
14 shall not apply to[+] the following conveyances:

- 15 (1) Any [~~document or instrument~~] conveyance that is  
16 executed prior to January 1, 1967;
- 17 (2) Any [~~document or instrument~~] conveyance that is given  
18 to secure a debt or obligation;
- 19 (3) Any [~~document or instrument~~] conveyance that only  
20 confirms or corrects a deed, lease, sublease,  
21 assignment, transfer, or conveyance previously  
22 recorded or filed;





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



1 or any agency or instrumentality thereof or the State  
2 or any agency, instrumentality, or governmental or  
3 political subdivision thereof for delinquent taxes or  
4 assessments;

5 (9) Any [~~document or instrument conveying real property~~]  
6 conveyance to the United States or any agency or  
7 instrumentality thereof or the State or any agency,  
8 instrumentality, or governmental or political  
9 subdivision thereof pursuant to the threat of the  
10 exercise or the exercise of the power of eminent  
11 domain;

12 (10) Any [~~document or instrument~~] conveyance that solely  
13 conveys or grants an easement or easements;

14 (11) Any [~~document or instrument~~] conveyance whereby owners  
15 partition their real property, whether by mutual  
16 agreement or judicial action; provided that the value  
17 of each owner's interest in the real property after  
18 partition is equal in value to that owner's interest  
19 before partition;

20 (12) Any [~~document or instrument~~] conveyance between  
21 marital partners or reciprocal beneficiaries who are  
22 parties to a divorce action or termination of



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

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

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

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]~~ conveyance that  
5 conforms to the transfer on death deed as authorized  
6 under chapter 527[-];

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

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

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

20 "**§247-4 Payment and liability of the tax.** (a) The tax  
21 imposed by this chapter shall be paid by the grantor~~{, lesser,~~  
22 ~~sublessor, assignor, transferor, seller, conveyer, or any other~~



1 ~~person conveying realty, or any interest therein, by a document~~  
2 ~~or instrument subject to section 247-1; except, however,];~~  
3 provided that in the case where the United States or any agency  
4 or instrumentality thereof or the State or any agency,  
5 instrumentality, or governmental or political subdivision  
6 thereof is the grantor~~[, lessor, sublessor, assignor,~~  
7 ~~transferor, seller, or conveyer]~~, the tax shall be paid by the  
8 grantee~~[, lessee, sublessee, assignee, transferee, purchaser, or~~  
9 ~~conveyee, as the case may be]~~.

10 (b) The tax imposed by this chapter shall be paid at  
11 ~~[such]~~ a place or places as the director of taxation may direct  
12 and shall be due and payable no later than ninety days after the  
13 taxable ~~[transaction,]~~ conveyance and in any event prior to the  
14 imprinting of the seal or seals as provided by section 247-5.  
15 Penalties and interest shall be added to and become a part of  
16 the tax, when and as provided by section 231-39.

17 (c) If the grantor has failed to pay the tax imposed by  
18 this chapter at the time required by subsection (b) or if the  
19 grantor is exempt from the tax, the grantee shall pay the tax.  
20 If the grantee is required to pay the tax because the grantor  
21 has failed to pay, the grantor and the grantee shall be jointly  
22 and severally liable for the tax.



1        (d) For the purposes of this chapter, all conveyances  
2 shall be presumed taxable. Where the consideration includes  
3 property other than money, the consideration shall be presumed  
4 to be the fair market value of the real property or interest  
5 therein. These presumptions shall prevail until disproven, and  
6 the burden of disproving the presumptions shall be on the person  
7 liable for payment of the tax."

8        SECTION 6. Section 247-5, Hawaii Revised Statutes, is  
9 amended to read as follows:

10        "§247-5 Imprinting of seal[-]; evidence of payment. (a)  
11 [The] Except for a conveyance where no instrument evidencing the  
12 conveyance is recorded or filed with the registrar of  
13 conveyances or the assistant registrar of the land court, the  
14 tax shall be evidenced as paid by the imprinting of an  
15 appropriate seal or seals on the document or instrument, which  
16 imprinting or seal itself shall indicate on its face the amount  
17 of the tax paid. The seal or seals shall be so imprinted upon  
18 the payment of the tax, together with the appropriate penalty  
19 and interest where applicable, and, in any event, prior to the  
20 recordation or filing of the document or instrument with the  
21 registrar of conveyances or the assistant registrar of the land  
22 court.



1        (b) For the purposes of this chapter, the director may  
2 require that the documents or instruments be brought to any of  
3 the various offices of the department of taxation for an  
4 examination of the instrument or document, or for the purpose of  
5 having the seal imprinted on the document or instrument."

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

8        "**§247-6 Certificate of conveyance required.** (a) [Any  
9 ~~party,~~] The grantor and the grantee, with the exception of  
10 governmental bodies, agencies, or officers, [~~to a document or~~  
11 ~~instrument subject to this chapter,~~] or the [party's] grantor's  
12 or grantee's authorized representative[~~]~~] shall file, in the  
13 manner and place [~~which~~] that the director of taxation shall  
14 prescribe, a certificate of conveyance setting forth the [actual  
15 ~~and full~~] consideration of the [~~property transferred,~~]  
16 conveyance, including any lien or encumbrance on the real  
17 property[~~]~~ or interest therein, and any other facts as the  
18 director may by rules prescribe. The certificate of conveyance  
19 shall be verified by a written declaration thereon that the  
20 statements made therein are subject to the penalties in section  
21 231-36. The certificate shall be appended to [~~the~~] any document  
22 or instrument made subject to this chapter and shall be filed



1 with the director simultaneously with the aforementioned  
2 document or instrument for the imprinting of the required seal  
3 or seals.

4 (b) No certificate of conveyance is required to be filed  
5 for any document or instrument made exempt by section 247-3,  
6 except that in the following situations, [a] an exemption  
7 certificate shall be filed in the manner and place that the  
8 director shall prescribe, within ninety days after the  
9 [~~transaetion~~] conveyance or prior to the recordation or filing  
10 of the document or instrument with the registrar of conveyances  
11 or the assistant registrar of the land court or after the  
12 ninety-day period, recordation, or filing as the director shall  
13 prescribe:

14 (1) For any [~~document or instrument described~~] conveyance  
15 exempted under section 247-3(3), [~~any party to the~~  
16 ~~document or instrument~~] the grantor and the grantee  
17 shall file a certificate declaring that the [~~document~~  
18 ~~or instrument~~] conveyance merely confirms or corrects  
19 a deed, lease, sublease, assignment, transfer, or  
20 conveyance previously recorded or filed.

21 (2) For any [~~document or instrument described~~] conveyance  
22 exempted under section 247-3(4), [~~any party to the~~





1 ~~document or instrument]~~ the grantor and the grantee  
2 shall file a certificate declaring the amount of the  
3 nominal consideration paid and marital or parental  
4 relationship of the [~~parties.~~] grantor and the  
5 grantee.

6 (3) For any [~~document or instrument described]~~ conveyance  
7 exempted under section 247-3(5), [~~any party to the~~  
8 ~~document or instrument]~~ the grantor and the grantee  
9 shall file a certificate declaring the reasons why the  
10 consideration is \$100 or less.

11 (4) For any [~~document or instrument described in]~~  
12 conveyance exempted under section 247-3(6), [~~any party~~  
13 ~~to the document or instrument]~~ the grantor and the  
14 grantee shall file a certificate declaring that the  
15 [~~document or instrument]~~ conveyance is made pursuant  
16 to an agreement of sale, and where applicable, an  
17 assignment or assignments of agreements of sale.

18 (5) For any [~~document or instrument described]~~ conveyance  
19 exempted under section 247-3(8), [~~any person made a~~  
20 ~~party to the document or instrument as]~~ the grantee [,  
21 ~~assignee, or transferee]~~ shall file a certificate



1 declaring the full and actual consideration of the  
2 property transferred.

3 (6) For any [~~document or instrument described~~] conveyance  
4 exempted under section 247-3(11), [~~any party to the~~  
5 ~~document or instrument~~] the grantor and the grantee  
6 shall file a certificate declaring each owner's:

7 (A) Undivided interest in the real property and the  
8 value of that interest before partition; and

9 (B) Proportionate interest and the value of that  
10 interest after partition.

11 (7) For any [~~document or instrument described~~] conveyance  
12 exempted under section 247-3(12), [~~any party to the~~  
13 ~~document or instrument~~] the grantor and the grantee  
14 shall file a certificate declaring that the [~~document~~  
15 ~~or instrument~~] conveyance is made pursuant to an order  
16 of the court and containing the court case number.

17 (8) For any [~~document or instrument described~~] conveyance  
18 exempted under section 247-3(13), [~~any party to the~~  
19 ~~document or instrument~~] the grantor and the grantee  
20 shall file a certificate declaring that the document  
21 or instrument conveys real property from a  
22 testamentary trust to a trust beneficiary.



1           (9) For any [~~document or instrument described~~] conveyance  
2           exempted under section 247-3(14), [~~any party to the~~  
3           ~~document or instrument~~] the grantor and the grantee  
4           shall file a certificate declaring that the document  
5           or instrument conveys real property from the grantor  
6           to a grantor's revocable living trust or from a  
7           grantor's revocable living trust to the grantor.

8           (10) For any conveyance exempted under section 247-3(15),  
9           the grantor and the grantee shall file a certificate  
10           declaring that the conveyance conforms to the transfer  
11           on death deed, as authorized under chapter 527.

12           (11) For any conveyance exempted under section 247-3(16),  
13           the grantor and the grantee shall file a certificate  
14           declaring that the conveyance is from a limited  
15           partner to a general partner of a limited partnership  
16           that owns an affordable rental housing project for  
17           which low-income housing tax credits have been issued  
18           under section 235-110.8 or 241-4.7 or section 42 of  
19           the Internal Revenue Code of 1986, as amended.

20           (12) For any conveyance exempted under section 247-6(17),  
21           the grantor and the grantee shall file a certificate  
22           declaring that the conveyance consists solely of a



1           change in controlling interest in an entity holding an  
2           interest in realty between persons with ownership  
3           interests in the entity for a minimum of three years  
4           immediately preceding the transfer.

5           (c) The form of the certificate and the procedure to be  
6 followed for the submission of the [~~certificate~~] certificates  
7 shall be prescribed by the director.

8           (d) Notwithstanding the foregoing, where the director  
9 deems it impracticable to require the filing of a certificate or  
10 certificates or to obtain the signatures of any or all [~~parties~~]  
11 grantors or grantees to a certificate or certificates required  
12 under this section, the director [~~may~~], in the director's  
13 discretion, may waive the requirement of filing the certificate  
14 or certificates or of securing the signature of any or all  
15 [~~parties to the certificate or certificates.~~] grantors or  
16 grantees.

17           (e) No document or instrument, on account of which a  
18 certificate is required to be filed with the office of the  
19 director under this section, shall be accepted for recordation  
20 or filing with the registrar of conveyances or the assistant  
21 registrar of the land court, unless the certificate has been  
22 duly filed.



1        (f) If any or all of the grantors or any or all of the  
2 grantees, or their authorized representatives, have failed to  
3 sign a certificate under this section, the certificate shall be  
4 accepted if it is signed by any one of the grantors or by any  
5 one of the grantees; provided that the grantors and grantees not  
6 signing the certificate, personally or through their authorized  
7 representative, shall not be relieved of any liability for the  
8 tax imposed by this chapter, and the period of limitations for  
9 assessment of tax or of additional tax shall not apply to such  
10 grantor or grantee.

11        [~~f~~] (g) Within twenty-one business days after the end of  
12 each week, or as soon thereafter as possible, the director of  
13 taxation shall provide to the administrator of each county's  
14 real property assessment division, without charge, an image of  
15 all certificates of conveyance that were filed. For each  
16 certificate of conveyance, the image shall include the  
17 following:

- 18            (1) Document number;  
19            (2) Date of the filing;  
20            (3) Name of grantor and grantee;  
21            (4) Tax map key number;  
22            (5) Location of the real property by island; and



1 (6) Address for real property assessment notice and tax  
2 bill."

3 SECTION 8. Section 247-6.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§247-6.5 **Limitation period for assessment, levy,**  
6 **collection, or credit.** The amount of conveyance taxes imposed  
7 by this chapter shall be assessed or levied, and the  
8 overpayment, if any, shall be credited within three years after  
9 filing of the [~~certificate~~] certificates prescribed by section  
10 247-6. No proceeding in court without assessment for the  
11 collection of the taxes shall be begun after the expiration of  
12 the three-year period. Where the assessment of the tax imposed  
13 by this chapter has been made within the period of limitation  
14 applicable thereto, the tax may be collected by levy or by a  
15 proceeding in court under chapter 231; provided that the levy is  
16 made or the proceeding was begun within fifteen years after the  
17 assessment of the tax. For any tax that has been assessed prior  
18 to July 1, 2009, the levy or proceeding shall be barred after  
19 June 30, 2024.

20 Notwithstanding any other provision to the contrary in this  
21 section, the limitation on collection after assessment in this  
22 section shall be suspended for the period:



- 1 (1) The taxpayer agrees to suspend the period;
- 2 (2) The assets of the taxpayer are in control or custody
- 3 of a court in any proceeding before any court of the
- 4 United States or any state, and for six months
- 5 thereafter;
- 6 (3) An offer in compromise under section 231-3(10) is
- 7 pending; and
- 8 (4) During which the taxpayer is outside the State if the
- 9 period of absence is for a continuous period of at
- 10 least six months; provided that if at the time of the
- 11 taxpayer's return to the State the period of
- 12 limitations on collection after assessment would
- 13 expire before the expiration of six months from the
- 14 date of the taxpayer's return, the period shall not
- 15 expire before the expiration of the six months.

16 In the case of a false or fraudulent certificate filed with  
17 the intent to evade tax, or of a failure to file a certificate,  
18 the tax may be assessed or levied at any time."

19 SECTION 9. Section 247-9, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§247-9 Enforcement and administration.** The director of  
22 taxation shall administer and enforce the taxes imposed by this



1 chapter. The director may prescribe rules and regulations not  
2 inconsistent with the provisions herein for their detailed and  
3 efficient administration. At any time after the making of a  
4 conveyance [~~or transfer~~] subject to the tax imposed by this  
5 chapter, the director may investigate and ascertain whether the  
6 tax, in the proper amount, was paid. For this purpose, the  
7 director may invoke all statutory powers vested in the director,  
8 including but not limited to section 231-7."

9 SECTION 10. In codifying the new sections added by section  
10 1 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 11. This Act shall apply to conveyances of  
14 interests in real property occurring after June 30, 2014.

15 SECTION 12. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 13. This Act shall take effect on July 1, 2014.

18

INTRODUCED BY: 

JAN 15 2014





# H.B. NO. 1703

**Report Title:**

Conveyance Tax; Controlling Interest Transfer

**Description:**

Imposes a conveyance tax on the conveyance of a controlling interest of an entity that has an interest in real property in the State. Applies to conveyances occurring after 06/30/2014. Effective 07/01/2014.

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

