

---

---

# 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 it is ambiguous  
2 whether or not existing law imposes a conveyance tax on the  
3 transfer or conveyance of realty in instances where an entity or  
4 individual sells, transfers, or exchanges stock of an entity  
5 that holds title to realty, or any interest therein, that is  
6 located in Hawaii to an unrelated entity or individual.

7           The legislature further finds that it is reasonable for  
8 transfers of realty via the sale, transfer, or exchange of stock  
9 to be subject to the State's conveyance tax, just as direct  
10 transfers of real estate via purchase and sale agreements are  
11 subject to the conveyance tax.

12           The purpose of this Act is to:

13           (1) Clarify that the sale, transfer, or exchange of a  
14 legal entity's stock, to the extent that the sale,  
15 transfer, or exchange of stock reflects changes in  
16 ownership or control of realty located in the State,  
17 shall be deemed a transfer or conveyance of realty  
18 that is subject to the conveyance tax when the sale,



1 transfer, or exchange of the stock is executed with an  
2 unrelated entity or individual; and

3 (2) Provide for specific exceptions to this requirement.

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

6 **"§247-1 Imposition of tax.** (a) There is hereby imposed  
7 and shall be levied, collected, and paid, a tax as hereinafter  
8 provided, on all transfers or conveyances of realty or any  
9 interest therein, by way of deeds, leases, subleases,  
10 assignments of lease, agreements of sale, stock transfers under  
11 subsection (b), assignments of agreement of sale, instruments,  
12 writings, and any other document, whereby any lands, interests  
13 in land, tenements, or other realty sold shall be granted,  
14 assigned, transferred, or otherwise conveyed to, or vested in,  
15 the purchaser or purchasers, lessee or lessees, sublessee or  
16 sublessees, assignee or assignees, or any other person or  
17 persons, by the person's or their direction.

18 (b) The sale, transfer, or exchange of stock by a legal  
19 entity or individual that owns or leases realty located in the  
20 State or has a controlling interest in the realty to an  
21 unrelated entity or individual, to the extent that the sale,  
22 transfer, or exchange of stock reflects changes in ownership or



1 control of the realty, shall be deemed a transfer or conveyance  
2 of an interest in the realty for purposes of subsection (a) and  
3 taxed accordingly. The conveyance tax shall be based upon the  
4 lesser of the most recent county real property tax assessed  
5 value of the realty or, if available, a current qualified  
6 appraisal by a licensed real estate appraiser in the State.

7 This subsection shall not apply to:

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

20 (c) For purposes of this section:

21 "Controlling interest" means:



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

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

11       "Unrelated entity or individual" means an entity or  
12       individual that does not have a controlling interest in the  
13       transferring entity prior to the sale, transfer, or exchange of  
14       stock, or series of sales, transfers, or exchanges of stock  
15       within a twelve-month period."

16       SECTION 3. Section 247-6, Hawaii Revised Statutes, is  
17       amended by amending subsection (a) to read as follows:

18       "(a) Any party, with the exception of governmental bodies,  
19       agencies, or officers, to a document or instrument subject to  
20       this chapter, or the party's authorized representative, shall  
21       file, in the manner and place which the director of taxation  
22       shall prescribe, a certificate of conveyance setting forth the



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

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2013.

15



**Report Title:**

Conveyance Tax; Sale of Stock; Realty

**Description:**

Clarifies that the sale, transfer, or exchange of a legal entity's stock, to the extent that the sale, transfer, or exchange of stock reflects changes in ownership or control of realty located in the State, shall be deemed a transfer or conveyance of realty that is subject to the conveyance tax when the sale, transfer, or exchange of the stock is executed with an unrelated entity or individual. Provides for exceptions. (SD1)

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

