

JAN 17 2014

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 with an interest in real property, "grantor" means the
21 entity with an interest in real property or a shareholder or



1 partner transferring stock or partnership interest,
2 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, 2015,
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, 2015.

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, 2015, 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, 2015,
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.** The tax imposed by
11 section 247-1 shall apply to the following conveyances at the
12 lowest rate provided in section 247-2(1), regardless of the
13 amount of consideration:

14 (1) 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; and

19 (2) 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 limited partnership, as
2 determined by applying section 318 (with respect to
3 constructive ownership of stock) of the Internal
4 Revenue Code of 1986, as amended, to the constructive
5 ownership of interests in the partnership.

6 **§247-D Disclosure of certificates unlawful; penalty.** (a)

7 A certificate of conveyance required to be filed under section
8 247-6, and the report of any investigation of the certificate or
9 of the subject matter of the certificate, shall be confidential.

10 It shall be unlawful for any person or any officer or
11 employee of the State to:

12 (1) Intentionally make known any certificate or
13 certificate information filed pursuant to this
14 chapter, or any report of any investigation of the
15 certificate or of the subject matter of the
16 certificate; or

17 (2) Wilfully permit any certificate, certificate
18 information, or report so made, or any copy thereof,
19 to be seen or examined by any person;

20 provided that, for tax purposes, the grantor or grantee, their
21 authorized agent, or persons with a material interest in the



1 certificate, certificate information, or report may examine the
2 certificate, certificate information, or report.

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

6 (1) Trustees;

7 (2) Partners;

8 (3) In the case of a corporate certificate, persons named
9 in a board resolution or a one per cent shareholder;

10 (4) The person authorized to act for a corporation in
11 dissolution;

12 (5) The shareholder of an S corporation;

13 (6) In the case of an estate's or decedent's certificate,
14 the personal representative, trustee, heir, or
15 beneficiary of the estate or trust;

16 (7) The committee, trustee, or guardian of any person
17 specified in paragraphs (1) to (6) who is incompetent;

18 (8) The trustee in bankruptcy or receiver and the
19 attorney-in-fact of any person specified in paragraphs
20 (1) to (7);

21 (9) Persons duly authorized by the State in connection
22 with their official duties;



1 (10) Any officer or employee of any county in the State for
2 official county business purposes, including real
3 property tax assessment;

4 (11) Any duly accredited tax official of the United States
5 or of any state or territory;

6 (12) The Multistate Tax Commission or its authorized
7 representative;

8 (13) Members of a limited liability company; and

9 (14) A person contractually obligated to pay the taxes
10 assessed against another when the latter person is
11 under audit by the department of taxation.

12 Any violation of this subsection shall be a misdemeanor.

13 (c) Nothing in this section shall prohibit the registrar
14 of conveyances or the assistant registrar of the land court
15 from:

16 (1) Imprinting a seal, under section 247-5, indicating the
17 amount of tax paid; or

18 (2) Complying with the provisions of section 502-26.

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

21 §247-E Conformity to Constitution, etc. In computing the
22 amounts of any tax imposed under this chapter, there shall be



1 excepted or deducted from the amounts of consideration so much
2 thereof as, under the Constitution and laws of the United
3 States, the State is prohibited from taxing, but only so long as
4 and only to the extent that the State is so prohibited."

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

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

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



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

- 11 (1) Except as provided in paragraph (2):
- 12 (A) Ten cents per \$100 for ~~[properties with a value~~
13 ~~of]~~ conveyances where the consideration is less
14 than \$600,000;
- 15 (B) Twenty cents per \$100 for ~~[properties with a~~
16 ~~value of]~~ conveyances where the consideration is
17 at least \$600,000, but less than \$1,000,000;
- 18 (C) Thirty cents per \$100 for ~~[properties with a~~
19 ~~value of]~~ conveyances where the consideration is
20 at least \$1,000,000, but less than \$2,000,000;



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



- 1 (C) Forty cents per \$100 for [~~properties with a value~~
2 ~~of~~] conveyances where the consideration is at
3 least \$1,000,000, but less than \$2,000,000;
- 4 (D) Sixty 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) Eighty-five 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) One dollar and ten cents per \$100 for [~~properties~~
11 ~~with a value of~~] conveyances where the
12 consideration is at least \$6,000,000, but less
13 than \$10,000,000; and
- 14 (G) One dollar and twenty-five cents per \$100 for
15 [~~properties with a value of~~] conveyances where
16 the consideration is \$10,000,000 or greater,
17 of [~~such actual and full~~] the consideration; provided that in
18 the case of a lease or sublease, this chapter shall apply only
19 to a lease or sublease whose full unexpired term is for a period
20 of five years or more, and in those cases, including (where
21 appropriate) those cases where the lease has been extended or
22 amended, the tax in this chapter shall be based on the cash



1 value of the lease rentals discounted to present day value and
2 capitalized at the rate of six per cent, plus the actual and
3 full consideration paid or to be paid for any and all
4 improvements, if any, that shall include on-site as well as off-
5 site improvements, applicable to the leased premises; and
6 provided further that the tax imposed for each transaction shall
7 be not less than \$1."

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

10 "§247-3 Exemptions. The tax imposed by section 247-1
11 shall not apply to[+] the following conveyances:

- 12 (1) Any [~~document or instrument~~] conveyance that is
13 executed prior to January 1, 1967;
- 14 (2) Any [~~document or instrument~~] conveyance that is given
15 to secure a debt or obligation;
- 16 (3) Any [~~document or instrument~~] conveyance that only
17 confirms or corrects a deed, lease, sublease,
18 assignment, transfer, or conveyance previously
19 recorded or filed;
- 20 (4) Any [~~document or instrument~~] conveyance between
21 husband and wife, reciprocal beneficiaries, or parent



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



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

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

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

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

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



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

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

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

11 [~~(15) 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 [~~(16) 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 federal Internal Revenue~~



- 1 ~~Code of 1986, as amended, to the constructive~~
- 2 ~~ownership of interests in the partnership; and~~
- 3 ~~(17)]~~ (15) Any ~~[document or instrument]~~ conveyance that
- 4 conforms to the transfer on death deed as authorized
- 5 under chapter 527~~[-]~~;
- 6 (16) Any conveyance from a limited partner to a general
- 7 partner of a limited partnership that owns an
- 8 affordable rental housing project for which low-income
- 9 housing tax credits have been issued under section
- 10 235-110.8 or 241-4.7 or section 42 of the Internal
- 11 Revenue Code of 1986, as amended; and
- 12 (17) Any conveyance that consists solely of a transfer or
- 13 acquisition of a controlling interest in an entity
- 14 between persons who have each held an ownership
- 15 interest in the entity for a minimum of three years
- 16 immediately preceding the conveyance."

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

19 "**§247-4 Payment and liability of the tax.** (a) The tax
 20 imposed by this chapter shall be paid by the grantor~~[, lessor,~~
 21 ~~sublessor, assignor, transferor, seller, conveyer, or any other~~
 22 ~~person conveying realty, or any interest therein, by a document~~



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

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

16 (c) If the grantor has failed to pay the tax imposed by
17 this chapter at the time required by subsection (b) or if the
18 grantor is exempt from the tax, the grantee shall pay the tax.
19 If the grantee is required to pay the tax because the grantor
20 has failed to pay, the grantor and the grantee shall be jointly
21 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 [~~transaction~~] 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; and
- 20 (12) For any conveyance exempted under section 247-3(17),
21 the grantor and the grantee shall file a certificate
22 declaring that the conveyance consists solely of a



1 transfer or acquisition of a controlling interest in
2 an entity between persons who have each held an
3 ownership interest in the entity for a minimum of
4 three years immediately preceding the conveyance.

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 the
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. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act shall take effect on July 1, 2015 and
16 shall apply to conveyances of interests in real property
17 occurring after June 30, 2015.

18

INTRODUCED BY:

R. D. D. J.
by request



S.B. NO. 2556

Report Title:

Conveyance Tax; Controlling Interest Transfer

Description:

Imposes a conveyance tax on the conveyance of a controlling interest of an entity with an interest in real property in the State. Applies to conveyances occurring after 6/30/15.

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

