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

13 (b) For the purpose of determining whether, pursuant to
14 the exercise of an option, a controlling interest was
15 transferred or acquired within a twelve-month period, the date
16 that the option agreement was executed shall be the date upon
17 which the transfer or acquisition of the controlling interest is
18 deemed to have occurred. For all other purposes under this
19 chapter, the date upon which the option is exercised shall be
20 the date of the transfer or acquisition of the controlling
21 interest.



1 (c) For the purposes of this section, with regard to
2 persons acting in concert:

3 (1) All acquisitions of persons acting in concert shall be
4 aggregated for the purpose of determining whether a
5 transfer or acquisition of a controlling interest has
6 occurred;

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

11 (3) Persons shall be considered to be acting in concert
12 only when the unity with which the parties negotiate
13 and consummate the transfer of ownership interests
14 supports a finding that the persons are acting as a
15 single entity; and

16 (4) If acquisitions are completely independent and each
17 party acts without regard to the identity of the other
18 parties, the acquisitions shall be considered separate
19 acquisitions.

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

21 (1) In the case of a corporation:

1 (A) Fifty per cent or more of the total combined
2 voting power of all classes of stock of the
3 corporation entitled to vote; or

4 (B) Fifty per cent or more of the capital, profits,
5 or 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 (e) If the actual or full consideration paid or to be
12 paid, as described in section 247-2, cannot be determined from
13 the value of the transfer of controlling interest, the
14 conveyance tax shall be based upon the fair market value of the
15 realty on the date of the transfer or acquisition.

16 (f) The director shall adopt rules pursuant to chapter 91
17 to implement this section, including rules for determining
18 whether persons are acting in concert for the purpose of
19 effectuating the transfer of a controlling interest.

20 §247-B Taxation at the lowest rate. The tax imposed by
21 section 247-1 shall apply to the following at the lowest rate



1 provided in section 247-2(1), regardless of the value of the
2 real property:

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

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

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

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

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

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

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

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

19 "**§247-2 Basis and rate of tax.** The tax imposed by section
20 247-1 shall be based on the actual and full consideration
21 (whether cash or otherwise, including any promise, act,
22 forbearance, property interest, value, gain, advantage, benefit,



1 or profit), paid or to be paid for all transfers or conveyance
2 of realty located in the State or any interest therein, that
3 shall include any liens or encumbrances thereon at the time of
4 sale, lease, sublease, assignment, transfer, or conveyance, and
5 shall be at the following rates:

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

7 (A) Ten cents per \$100 for properties with a value of
8 less than \$600,000;

9 (B) Twenty cents per \$100 for properties with a value
10 of at least \$600,000, but less than \$1,000,000;

11 (C) Thirty cents per \$100 for properties with a value
12 of at least \$1,000,000, but less than \$2,000,000;

13 (D) Fifty cents per \$100 for properties with a value
14 of at least \$2,000,000, but less than \$4,000,000;

15 (E) Seventy cents per \$100 for properties with a
16 value of at least \$4,000,000, but less than
17 \$6,000,000;

18 (F) Ninety cents per \$100 for properties with a value
19 of at least \$6,000,000, but less than
20 \$10,000,000; and

21 (G) One dollar per \$100 for properties with a value
22 of \$10,000,000 or greater; and



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

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

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

17 "**§247-3 Exemptions.** The tax imposed by section 247-1
18 shall not apply to:

- 19 (1) Any document or instrument that is executed prior to
20 January 1, 1967;
- 21 (2) Any document or instrument that is given to secure a
22 debt or obligation;



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

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



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

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

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

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 that conforms to the
5 transfer on death deed as authorized under chapter
6 527."

7 SECTION 6. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 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. (SD1)

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not legislation or evidence of legislative intent.*

