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# A BILL FOR AN ACT

RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.

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

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

4 "§247- Transfers or acquisitions of controlling  
5 interests in entities; applicability of chapter. (a) The  
6 transfer of a controlling interest in an entity shall be  
7 considered a taxable transaction of the entity's real property  
8 for the purposes of this chapter; provided that:

- 9 (1) The transfer or acquisition of the controlling  
10 interest occurs within any thirty-six-month period;  
11 (2) The controlling interest was transferred in a single  
12 transaction or a series of transactions by a single  
13 person or acquired by a single person or a group of  
14 persons acting in concert;  
15 (3) The entity has an interest in real property located in  
16 this State;



1       (4) The transfer is not otherwise exempt under section  
2               247-3; and

3       (5) The transfer was made for valuable consideration.

4       (b) For the sole purpose of determining whether a transfer  
5 or acquisition pursuant to the exercise of an option occurred  
6 within the thirty-six-month taxable transfer period, the date  
7 that the option agreement was executed shall be the date on  
8 which the transfer or acquisition of the controlling interest is  
9 deemed to occur. For all other purposes under this section, the  
10 date the option is exercised shall be the date of the transfer  
11 or acquisition of the controlling interest.

12       (c) For purposes of this subsection, all acquisitions of  
13 persons acting in concert shall be aggregated for purposes of  
14 determining whether a transfer or acquisition of a controlling  
15 interest has taken place. The department of taxation shall  
16 adopt rules to determine when persons are acting in concert,  
17 which shall consider the following:

18       (1) Persons shall be treated as acting in concert when  
19               they have a relationship with each other such that one  
20               person influences or controls the actions of another  
21               through common ownership; and



1       (2) When persons are not commonly owned or controlled,  
2       they shall be treated as acting in concert only when  
3       the unity with which the purchasers have negotiated  
4       and will consummate the transfer of ownership  
5       interests supports a finding that they are acting as a  
6       single entity; provided that, if the acquisitions are  
7       completely independent and each purchaser buys without  
8       regard to the identity of the other purchasers, the  
9       acquisitions shall be considered separate  
10       acquisitions.

11       (d) The department of taxation may, at the director's  
12 option, enforce the obligation of the seller under this chapter  
13 as follows:

14       (1) In the transfer or acquisition of a controlling  
15       interest of a profit corporation, the director may  
16       enforce the obligation against:

17       (A) The corporation in which a controlling interest  
18       is transferred or acquired;

19       (B) The person or persons who acquired the  
20       controlling interest in the corporation; or



1           (C) When the corporation is not a publicly traded  
2           company, against the person or persons who  
3           transferred the controlling interest in the  
4           corporation; and

5           (2) In the transfer or acquisition of a controlling  
6           interest of any other corporation, partnership,  
7           association, trust, or other entity, the director may  
8           enforce the obligation against either:

9           (A) The entity in which a controlling interest is  
10           transferred or acquired; or

11           (B) The person or persons who transferred or acquired  
12           the controlling interest in the entity.

13           (e) All taxes collected pursuant to this section shall be  
14           deposited into the dwelling unit revolving fund established  
15           pursuant to section 201H-191.

16           (f) For purposes of this section, "controlling interest"  
17           means:

18           (1) For a profit corporation, either fifty per cent or  
19           more of the total combined voting power of all classes  
20           of stock of the profit corporation entitled to vote,  
21           or fifty per cent of the capital, profits, or



1           beneficial interest in the voting stock of the profit  
2           corporation; and  
3           (2) For any other corporation or a partnership,  
4           association, trust, or entity, fifty per cent or more  
5           of the capital, profits, or beneficial interest in the  
6           corporation, partnership, association, trust, or other  
7           entity."

8           SECTION 2. Section 201H-191, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10           "(a) There is created a dwelling unit revolving fund. The  
11 funds appropriated for the purpose of the dwelling unit  
12 revolving fund, controlling interest transfer taxes pursuant to  
13 section 247- , and all moneys received or collected by the  
14 corporation for the purpose of the revolving fund shall be  
15 deposited in the revolving fund. The proceeds in the revolving  
16 fund shall be used to reimburse the general fund to pay the  
17 interest on general obligation bonds issued for the purposes of  
18 the revolving fund, for the necessary expenses in administering  
19 housing development programs and regional state infrastructure  
20 programs, and for carrying out the purposes of housing  
21 development programs and regional state infrastructure programs,



1 including but not limited to the expansion of community  
2 facilities and regional state infrastructure constructed in  
3 conjunction with housing and mixed-use transit-oriented  
4 development projects, permanent primary or secondary financing,  
5 and supplementing building costs, federal guarantees required  
6 for operational losses, and all things required by any federal  
7 agency in the construction and receipt of federal funds or low-  
8 income housing tax credits for housing projects."

9 SECTION 3. 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. For purposes of this chapter, "transfers or  
2 conveyances" shall include the transfer or acquisition within  
3 any thirty-six-month period of a controlling interest in any  
4 entity with an interest in real property located in this State  
5 for valuable consideration."

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

8 "**§247-3 Exemptions.** The tax imposed by section 247-1  
9 shall not apply to:

- 10 (1) Any document or instrument that is executed prior to  
11 January 1, 1967;
- 12 (2) Any document or instrument that is given to secure a  
13 debt or obligation;
- 14 (3) Any document or instrument that only confirms or  
15 corrects a deed, lease, sublease, assignment,  
16 transfer, or conveyance previously recorded or filed;
- 17 (4) Any document or instrument between husband and wife,  
18 reciprocal beneficiaries, or parent and child, in  
19 which only a nominal consideration is paid;
- 20 (5) Any document or instrument in which there is a  
21 consideration of \$100 or less paid or to be paid;



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





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



1           (13) Any document or instrument conveying real property  
2                    from a testamentary trust to a beneficiary under the  
3                    trust;

4           (14) Any document or instrument conveying real property  
5                    from a grantor to the grantor's revocable living  
6                    trust, or from a grantor's revocable living trust to  
7                    the grantor as beneficiary of the trust;

8           ~~[(15) Any document or instrument conveying real property, or~~  
9                    ~~any interest therein, from an entity that is a party~~  
10                  ~~to a merger or consolidation under chapter 414, 414D,~~  
11                  ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~  
12                  ~~new entity;~~

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



1    ~~[(17)]~~ (16) Any document or instrument that conforms to the  
 2           transfer on death deed as authorized under chapter  
 3           527."

4           SECTION 5. Section 247-4, Hawaii Revised Statutes, is  
 5 amended by amending subsection (a) to read as follows:

6           "(a) ~~[The]~~ Except as provided in section 247- , the tax  
 7 imposed by this chapter shall be paid by the grantor, lessor,  
 8 sublessor, assignor, transferor, seller, conveyer, or any other  
 9 person conveying realty, or any interest therein, by a document  
 10 or instrument subject to section 247-1; except, however, in the  
 11 case where the United States or any agency or instrumentality  
 12 thereof or the State or any agency, instrumentality, or  
 13 governmental or political subdivision thereof is the grantor,  
 14 lessor, sublessor, assignor, transferor, seller, or conveyer,  
 15 the tax shall be paid by the grantee, lessee, sublessee,  
 16 assignee, transferee, purchaser, or conveyee, as the case may  
 17 be."

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

20           "**§247-7 Disposition of taxes.** ~~[All]~~ Except as provided in  
 21 section 247- , all taxes collected under this chapter shall be



1 paid into the state treasury to the credit of the general fund  
2 of the State, to be used and expended for the purposes for which  
3 the general fund was created and exists by law; provided that of  
4 the taxes collected each fiscal year:

5 (1) Ten per cent or \$5,100,000, whichever is less, shall  
6 be paid into the land conservation fund established  
7 pursuant to section 173A-5; and

8 (2) Fifty per cent or \$38,000,000, whichever is less,  
9 shall be paid into the rental housing revolving fund  
10 established by section 201H-202."

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 January 1, 2025.

14

INTRODUCED BY: 



# S.B. NO. 2044

**Report Title:**

DOTAX; Conveyance Tax; Controlling Interest Transfers; Dwelling Unit Revolving Fund; Rules

**Description:**

Establishes that the transfer of a controlling interest in an entity that owns real property in the state shall be subject to the conveyance tax established in chapter 247, HRS. Requires the conveyance tax collected on the transfer of the controlling interests to be deposited into the Dwelling Unit Revolving Fund. Requires the Department of Taxation to adopt rules.

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

