

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



DEAN MINAKAMI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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Statement of **DEAN MINAKAMI**

Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON WATER & LAND

February 13, 2024 at 10:30 a.m.
State Capitol, Room 430

In consideration of
H.B. 1628
RELATING TO TAXATION.

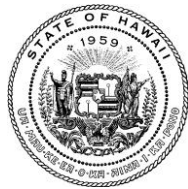
HHFDC **supports** HB 1628, which imposes conveyance tax on the transfer of a controlling interest of an entity with an interest in real property. It stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate.

This bill closes a loophole that enables parties (usually large investors) to avoid paying conveyance tax by transferring real property through entity-level transactions. That is, rather than conveying the real property, one party acquires the entity that owns the real property from another party.

Thank you for the opportunity to testify on this bill.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 1628, Relating to Taxation.

BEFORE THE:

House Committee on Water & Land

DATE: Tuesday, February 13, 2024

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 430

Chair Ichiyama, Vice-Chair Poepoe, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 1628 for your consideration.

H.B. 1628 makes several changes to chapter 247, Hawaii Revised Statutes (HRS), which governs the conveyance tax. Chiefly, the measure adds two new sections to chapter 247, HRS, to impose the conveyance tax on transfers or acquisitions, including those that might otherwise be exempt from conveyance tax, that result in both:

- 1) The transfer of a controlling interest in an entity, with an interest in real property located in the state, for valuable consideration; and
- 2) The transfer of control or ownership of the real property located in the state, within any twelve-month period,

except for transfers or acquisitions where there is no change in "beneficial ownership."

The first new section, 247-A, HRS, also specifies that "all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place" and requires the Department to adopt administrative rules to make such a determination. It also gives the Department the option to enforce certain obligations of the seller and provides a definition of

"controlling interest" for different types of entities.

The measure also provides in a new section 247-B, HRS, that the conveyance tax imposed on several types of transfers and acquisitions, as well as conveyances to any organization certified by the Hawaii Housing Finance and Development Corporation (HHFDC) for low-income housing development, will be taxed at the lowest rate applicable under section 247-2, HRS. H.B. 1628 also expands the definition of "transfers or conveyances" in section 247-1, HRS, to include "the transfer or acquisition of a controlling interest" as defined by the new section A, and amends section 247-3, HRS by eliminating the current conveyance tax exemptions for:

- 1) conveyances from an entity that is party to a merger or consolidation to the surviving or new entity;
- 2) conveyances from a dissolving limited partnership to its general partner with at least a 90 per cent interest; and
- 3) conveyances to any nonprofit or for-profit organization that has been certified by the Hawaii housing finance and development corporation for low-income housing development.

The bill takes effect on July 1, 2024.

The Department notes that adding a tax on controlling interest transfers to the conveyance tax would pose significant administrative and enforcement problems.

Chiefly, the Department lacks both the subject-matter expertise and the administrative resources to make many of the determinations that would be required to apply the new tax. For example, it is not clear to the Department what constitutes "valuable consideration" (page 2, line 6), or "beneficial ownership" (page 2, line 12).

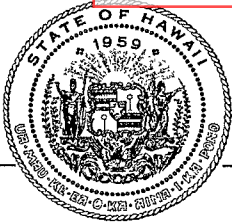
It is also unclear what the tax base will be for transfers of a controlling interest. Under section 234-2, HRS, the amount of conveyance tax is determined by applying the rate of tax to the actual and full consideration paid for the conveyance of the property. In situations where there is no actual conveyance of property, it is unclear how the conveyance tax will be calculated.

Moreover, even though the Director of Taxation is directed to adopt rules to determine whether persons are acting in concert for the purpose of transferring or acquiring a controlling interest, it is unclear to the Department how to evaluate criteria such as "one person influencing or controlling the actions of another through common ownership," or "purchasers negotiating and consummating the transfer of ownership interests" in such a way to "support a finding that the persons are acting as a single entity." Additionally, even if the Department did have subject-matter expertise in this area, there are very few resources with which to properly evaluate and validate a taxpayer's assertions regarding changes in the control and ownership of their business.

The Department would be forced to essentially rely on a taxpayer's voluntary reporting and disclosure for audit and enforcement purposes.

If the Committee wishes to advance this measure, the Department requests that the effective date be postponed until January 1, 2026. This will provide time for implementation of this measure, including promulgating administrative rules, providing taxpayer education, and making the necessary form and instruction changes.

Thank you for the opportunity to provide comments on this measure.



STATE OF HAWAII
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& SUSTAINABLE DEVELOPMENT

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Statement of
MARY ALICE EVANS, Interim Director

before the
THE HOUSE COMMITTEE ON WATER AND LAND
Tuesday, February 13, 2024
10:30 AM
State Capitol, Conference Room 430

in consideration of
BILL NO HB1628
RELATING TO TAXATION.

Chair Ichiyama, Vice Chair Poepoe, and Members of the House Committee on Water and Land:

The Office of Planning and Sustainable Development (OPSD) supports HB1628, which imposes conveyance tax on the transfer of a controlling interest of an entity with an interest in real property. It stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership, and imposes the conveyance tax on certain transfers of real property at the lowest tax rate.

This bill closes a loophole that enables parties (typically large investors and corporate entities) to avoid paying conveyance tax by transferring real property through entity-level transactions. Instead of conveying the real property directly, one party acquires the entity that owns the real property from another party, via stock sales or other types of ownership transactions.

Per the Legislature's direction and funding in Act 88, SLH 2021, Sec. 39, OPSD recently completed the *TOD Infrastructure Finance and Delivery Strategy*, which identified possible revenue sources to fund infrastructure for housing development (see https://files.hawaii.gov/dbedt/op/lud/Reports/TOD_InfraFin_Strategy_20231221.pdf). The study identified the need for regular, predictable revenue sources to help finance regional public infrastructure to facilitate transit-oriented development on state, county, and private lands. Closing this loophole by applying the conveyance tax on transfers of controlling interest will help provide these needed funds.

Thank you for the opportunity to testify on this measure.



February 9, 2024

Representative Linda Ichiyama, Chair
Representative Mahina Poepoe, Vice Chair
House Committee on Water & Land

Comments and Concerns Regarding HB 1628 Relating to Taxation; Conveyance Tax; Controlling Interest Transfer (Imposes a conveyance tax on the conveyance of a controlling interest of an entity that has an interest in real property. Stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate.)

Tuesday, February 13, 2024, 10:30 a.m.; State Capitol, Conference Room 430, Via Videoconference

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

HB 1628. This bill proposes to impose the conveyance tax on transfers of entity ownership when the transfer of entity ownership is essentially equivalent to the sale of an interest in real property located in this State. In essence, the measure attempts to expand the application of the conveyance tax from conveyances of real estate to conveyances of controlling interests in entities owning real estate in this State.

LURF acknowledges the stated purpose of this bill, which is to apply the state conveyance tax to transfers of entity ownership when such transfer is essentially equivalent to the sale of an interest in real property. However, based on the following reasons and considerations, LURF **opposes HB 1628**, and must request that this bill **be held** in Committee.

Background. The measure does not specifically include the reason for the proposed expansion of the application of the conveyance tax to conveyances of controlling interests in entities owning real estate, however, it is presumed that the bill is not only intended to close the existing loophole for Hawaii entities holding Hawaii real property to avoid payment of conveyance taxes, but potentially also as a method to increase the State's general fund and raise more revenue for various programs now funded and sought to be funded by the State conveyance tax.

LURF's Position.

1. Transfers of “controlling interests” are not “conveyances” of Real Property, and Rightfully Should Not be Made Subject to the Conveyance Tax Law.

HB 1628 would inappropriately subject sales of controlling interests in an entity to the conveyance tax regardless of whether real estate may be the primary or largest asset owned by the entity. Given that transfers of controlling interests are not conveyances of real property, and given the clear intent underlying HRS Chapter 247, the methods sought to be used to impose a tax on transfers of stock (i.e., amendment or expansion of the existing conveyance tax law) is improper.

Furthermore, as far as LURF is aware, proponents of this measure have not justified the existence of or the need to close any loophole used by Hawaii landholding entities to avoid the payment of conveyance taxes; and have not presented any information, credible and material facts or circumstances required to prove that this proposed legislation is in fact necessary, or that the State's economy will significantly improve as a result of taking the action proposed.

If a revenue generating tax is what is actually intended by the proponents of this bill, then that should be made clear and the true purpose of this measure, as well as the terms and provisions relating to all aspects of such an expansion of the conveyance tax, including administration, imposition, compliance, and enforcement, should be fully vetted by the public.

2. Proper, Efficient, and Effective Implementation of the Conveyance Tax Proposed by this Bill, would Require Administration and Enforcement by Personnel and Agencies with the Expertise to Render Complex, Time-Consuming, and Subjective Determinations.

In its endeavor to ensure conveyances of entities owning real property are taxed identically to conveyances of actual real property, HB 1628 in effect, creates a broad, complex, revenue generating tax, which, as discussed above, is far from what was intended when the conveyance tax was initially enacted by the Hawaii Legislature.

The bill itself is fraught with terms, requirements and exemptions relating to the imposition of, and compliance with the proposed expanded conveyance tax, which would assumedly continue to be administered by the Hawaii Bureau of Conveyances (Bureau). LURF questions the ability of the Bureau, as well as the costs which may need

to be incurred, especially given the current non-tax expertise of its staff, to administer and enforce the requirements prescribed by the bill, as well as collect the conveyance tax, particularly in complex transactions. By way of example, in computing the amounts of conveyance taxes to be imposed by this bill, would the Bureau be able to identify and determine technical tax issues such as the amounts which should be excepted or deducted from the amounts of consideration being transferred as prescribed by federal laws?

And despite the inclusion of certain definitions of terms to be construed in HRS Chapter 247 and additional factors that have been delineated in this bill, as a practical matter, in order that HB 1628 be properly and effectively implemented, determinations as identified in the measure must still be made pursuant to rules directed to be adopted by the State Department of Taxation (“DoTax”), but administered and enforced by the Bureau. These determinations including, for example, whether or not a controlling interest is being transferred or acquired, and whether or not a single person or group of persons are acting in concert for the purpose of effectuating a transfer or acquisition, involve assessments of subjective issues which entail significant time, expense, knowledge and expertise of individuals in specialized subject matters (both conveyance and tax) who may not be presently qualified to conduct such reviews.

3. The Hawaii Conveyance Tax was Never Intended to be and Should not Operate as a Revenue-Generating Tax.

LURF’s position is that the Hawaii Conveyance Tax was never intended as a revenue-generating tax. Hawaii Revised Statutes (“HRS”), Chapter 247 (Conveyance Tax), was purposefully enacted in 1966 to provide the DoTax with informational data for the determination of market value of properties transferred, and to assist the DoTax in establishing real property assessed values. In short, the sole intent of the conveyance tax was originally to cover the administrative costs of collecting and assessing said informational data, which necessarily entails the recording of real estate transactions, as performed by the Bureau of Conveyances. As such, the conveyance tax should not be utilized as a vehicle to generate revenue, especially for non-conveyance tax-related funds and programs.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has successfully implemented changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (e.g.. land conservation fund; rental housing trust fund; and natural area reserve fund) to the point where there is no longer any clear nexus between the benefits sought by the original Act and the charges now proposed to be levied upon property-holding entities transferring ownership; and 2) also to impose conveyance taxes to the point said revenues now appear to far exceed the initially stated purpose of, or needs identified in the Act.

Specifically created programs and special funds deserve funding through broad taxes on the public and the State General Fund, rather than through the conveyance tax, which targets few, is unreliable, and fluctuates with the housing market.

Moreover, because the conveyance tax is dependent on activity in the real estate market, it is considered an undependable source and should not be relied upon to fund important programs.

4. The proposed measure may create a significant disincentive for business in Hawaii.

At a time when the Hawaii economy is still stumbling from the impact of the Covid pandemic and the Maui fires, and is attempting to encourage business expansion in, and attract business operations to Hawaii, HB 1628 actually creates a disincentive, and will have a substantial negative impact on persuading new and existing land-holding businesses to open or expand in Hawaii, or to relocate their operations to this State. The proposed additional cost of doing business in Hawaii as a result of this bill would certainly appear to negatively outweigh any positive revenue impact resulting from the imposition of conveyance taxes pursuant to the measures.

5. The imposition of conveyance tax as proposed by this bill may drive up the cost of lands for agricultural production, affordable and market homes, and commercial development.

The proposed imposition of the conveyance tax on transfers of controlling interests which affect **agricultural lands** will be passed on to farmers and other agricultural operators, making it even harder for agriculture to survive in Hawaii; the proposed imposition of the tax on transfers which affect **land intended for housing developments** will be passed on to home buyers and will thus increase the price of homes and exacerbate the affordable housing problem in Hawaii; and the proposed imposition of the conveyance tax onto transfers which affect **commercial properties** will also be passed on to small businesses, creating yet another substantial financial burden on them.

For the reasons stated above, LURF respectfully recommends that **HB 1628 be held in this Committee.**

Thank you for the opportunity to provide comments regarding this proposed measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: CONVEYANCE, Controlling Interest Transfer

BILL NUMBER: HB 1628

INTRODUCED BY: EVSLIN, KILA, POEPOE

EXECUTIVE SUMMARY: Imposes conveyance tax on the transfer of a controlling interest of an entity with an interest in real property. Stipulates that the imposition of the conveyance tax on transfers of entity ownership shall not apply to any transfer of interest or acquisition between entities wholly owned by the same common ownership that results in no change in the beneficial ownership. Imposes the conveyance tax on certain transfers of real property at the lowest tax rate.

SYNOPSIS: Adds new section 247-A, HRS, to impose the chapter 247 conveyance tax on transfers or acquisitions, including those combined with otherwise exempt transfers, by any person or entity acting alone or in concert, within a 12 month period that result in:

- 1) the transfer of a controlling interest in an entity with an interest in real property located in this State for valuable consideration and
- 2) the transfer of control or ownership of the real property located in this State.

The tax will not apply to any transfer or acquisition that is a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. This includes transfers to an entity wholly owned, directly or indirectly, by the same common ownership as the transferor.

Controlling interest in a corporation is defined as 50% or more of the combined voting power, capital, profits or beneficial interest. For a partnership, association, trust, or other entity, controlling interest means 50% or more of the capital, profits, or beneficial interest in such entity.

Defines “persons acting in concert”. Director shall adopt rules for determining persons acting in concert for purposes of transferring or acquiring a controlling interest.

Adds new section 247-B, HRS, to impose the conveyance tax to the following, at the lowest rate provided in section 247-2(1), regardless of value of the real property:

- 1) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, 425E, or 428 to the surviving or new entity;
- 2) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying

section 318 (with respect to constructive ownership of stock) of the Internal Revenue Code of 1986, as amended;

- 3) Any document or instrument conveying real property to any nonprofit or for-profit organization that has been certified by the Hawaii housing finance and development corporation for low-income housing development; and
- 4) Any document or instrument conveying real property, or any interest therein, to or from a wholly-owned corporation or limited liability company.

Makes conforming amendments to section 247-3, HRS.

EFFECTIVE DATE: July 1, 2024.

STAFF COMMENTS: The bill imposes conveyance tax on transfers of entity ownership when the transfer is equivalent to the sale of a real property interest. Currently, rather than directly conveying the real property, one party may acquire the entity that owns the real property from another party; to avoid the tax. If there is an economic change in ownership, then it is equitable that the conveyance tax should apply. However, we have several concerns with the bill as drafted.

Impact on Business Environment

This proposal increases the cost of restructuring ownership of entities by eliminating the exemption for conveyances of real property by an entity upon merger or consolidation. Upon a transfer of a controlling interest of an entity, the entity generally continues operations with either additional capital and/or new management, without specific values or consideration attributed to the entity's underlying real estate or other properties.

This tax increase will have a negative impact on entities looking for ways of staying in business. As costs and overhead increase, employers must find ways to stay in business by either increasing prices to their customers or cutting back on costs. This measure will increase the cost for the alternative of raising capital through restructuring.

Additionally, the bill will impose tax on conveyances of real property to nonprofits or for-profit organizations for low-income housing development which will increase the costs of providing affordable housing.

Institutional Expertise

The agency set up to capture the conveyance tax is the Hawaii bureau of conveyances. It records deeds and other conveyance instruments that are presented to it. There is no problem having the bureau review documents for certain exemptions based on the tenor of the document or having the department of taxation brought in to review more complex exemptions or documents. But with this bill, someone will need to look out for transactions that aren't normally required to be reported to anyone (purchases and sales of interests in entities) and aggregating or recharacterizing successive transactions over a 12-month period. Certainly the bureau is not

institutionally equipped to do that, it would be a stretch for the department of taxation which has had only limited involvement with this tax before, and the bill itself doesn't appear to give taxpayers or the agencies guidance as to how taxpayers are supposed to be reporting, or how agencies are supposed to be collecting the tax on the more complex transactions. Suppose, for example, company A holding real property merges into company B, with company B surviving. At present, the transaction is evidenced by a certificate of merger filed with the department of commerce and consumer affairs and nothing needs to be filed at the bureau of conveyances. If the intent is now to require the certificate of merger to be filed at the bureau which would make the transaction subject to the conveyance tax, it is not delineated in the measure.

Technical concerns

The general exception to the tax is for “any transfer or acquisition that consists of the mere change in identity or form of ownership *where there is no change in the beneficial ownership, including transfers to an entity wholly owned, directly or indirectly, by the same common ownership as the transferor.*” (Emphasis added.) This exception conflicts with new section 247-B that applies the lowest rate of tax to specified situations. For example, in section 247-B(4), the owner remains the same when conveying real property to or from a *wholly-owned* corporation or limited liability company. However, this transfer would be subject to tax under new section 247-B, but would be exempt under the general exception in new section 247-A(a). In addition, a merger would be taxable as drafted in new section 247-B (1), however, depending on the individual structure and parties, there could be no beneficial ownership change. Clarification is recommended to avoid compliance and enforcement challenges.

New section 247-B indicates the lowest rate of tax in section 247-2(1) applies to four enumerated transfers/acquisitions “regardless of the value of the real property.” What, then, does the tax rate apply to? The value of the real property? Or the total value of everything involved in the transaction?

New section 247-B(4) states that the lowest rate of conveyance tax applies to a conveyance “to or from a wholly-owned corporation or limited liability company.” As written, the exception would apply to conveyances other than those to or from the owner of the entity. We question whether the intent of the exception was so broad.

If this bill is to move forward, more serious thought should be given to reporting, compliance and enforcement issues, as well as being aware of the economic impact and burden on Hawaii's business environment.

Digested: 2/11/2024

Feb. 13, 2024, 10:30 a.m.
Hawaii State Capitol
Conference Room 430 and Videoconference

To: House Committee on Water & Land
Rep. Linda Ichiyama, Chair
Rep. Mahina Poepoe, Vice-Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY OPPOSING HB1628 — RELATING TO TAXATION

Aloha Chair Ichiyama and Committee Members,

The Grassroot Institute of Hawaii is concerned about the potential economic impact of [HB1628](#), which would extend the conveyance tax to include the transfer of a controlling interest of an entity with real property located in the state.

Put simply, this is a complex bill that seeks to expand the scope of the conveyance tax to include business transactions, presumably in the hopes of generating sizable tax revenues.

Assuming that the headaches associated with administration and collection of this tax are not enough to give the Committee pause, there is reason to be concerned about its effect on Hawaii business and real estate.

Even when applied directly, transfer taxes can have a negative impact on the economy. A report by the Sage Policy Group noted that high transfer taxes can “lead to decreases in population, real incomes, real estate transactions, investment in structures, and quality of the built environment.”¹

¹ [“The Unintended Consequences of Excessive Transfer Taxes,”](#) Sage Policy Group, Inc. on behalf of the Community Coalition for Jobs and Housing, June 2022, p. 3.

The same report added that transfer taxes are not a reliable source of tax revenues, and are particularly volatile in areas with especially high tax rates.²

In the case of this bill, those negative features of the conveyance tax are compounded by the fact that this bill would create complications and disincentives for the transfer or restructuring of local businesses. Thus it would act as yet another burden on Hawaii businesses, discourage investment and hinder economic growth.

Looking at the broader picture, one must consider that tax increases in general are not a good idea for Hawaii's economy — especially not now when it already has one of the highest tax burdens in the nation.³ Consider these points:

>> Hawaii's population has been declining for the past six years.⁴ Tens of thousands of Hawaii residents have moved to the mainland over the past six years — and mainly to states without income taxes, such as Washington, Nevada, Texas and Florida.⁵ Their departure from the islands is not only emotionally distressing, but economically depressing as well.

>> Fewer people remaining means fewer people to work at our private businesses, or even staff our government agencies. It also means fewer people to pay for Hawaii's ever-increasing tax burden.

>> Higher taxes for those who remain is more fuel for the exodus of our friends, neighbors and family to places that are more affordable. It's a downward spiral economically fostered by the relentless upward spiral of more and more taxes.

>> Hawaii taxes high-income earners at 11%, second only to California at 13.3%.⁶ Hawaii's top 1.5% of taxpayers already pay 34.9% of all income taxes in the state.⁷

>> Hawaii is suffering from a stagnant economy, and both the Economic Research Organization at the University of Hawai'i⁸ and the state Department of Business, Economic Development and Tourism⁹ have predicted continued slow economic growth in 2024. Tax hikes could exacerbate this slowdown, since

² ["The Unintended Consequences of Excessive Transfer Taxes,"](#) p. 2.

³ Jared Walczak and Erica York, ["State and Local Tax Burdens, Calendar Year 2022,"](#) Tax Foundation, April 7, 2022.

⁴ Maria Wood, ["Where People from Hawaii Are Moving to the Most,"](#) 24/7 Wall Street, Jan. 23, 2022.

⁵ Katherine Loughhead, ["How Do Taxes Affect Interstate Migration?"](#) Tax Foundation, Oct. 11, 2022.

⁶ Timothy Vermeer, ["State Individual Income Tax Rates and Brackets for 2023,"](#) Tax Foundation, Feb. 21, 2023.

⁷ ["Hawaii Individual Income Tax Statistics,"](#) Hawaii Department of Taxation report for Tax Year 2021, August 2023, Table 12A.

⁸ Carl Bonham, Byron Gagnes, Steven Bond-Smith, et al., ["State Facing Headwinds as Maui Recovery Begins,"](#) Economic Research Organization at the University of Hawai'i, Dec. 15, 2023.

⁹ Hawaii Department of Business, Economic Development, and Tourism, ["Hawaii Economic Growth Remains Low for 2024 as Recovery Continues,"](#) Dec. 11, 2023.

entrepreneurs will be less likely to want to invest their capital — or “wealth assets,” as the case may be¹⁰ — in Hawaii’s economy.

In short, Hawaii’s residents and businesses need a break from new taxes, tax increase, fees and surcharges. This is not the time to make Hawaii a more expensive place to live and do business.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

¹⁰ Aaron Hedlund, “[How Do Taxes Affect Entrepreneurship, Innovation, and Productivity?](#)” Center for Growth and Opportunity at Utah State University, Dec. 23, 2019; Ergete Ferede, “[The Effects on Entrepreneurship of Increasing Provincial Top Personal Income Tax Rates in Canada,](#)” Fraser Institute, July 10, 2018; Robert Carroll, Douglas Holtz-Eakin, Mark Rider and Harvey S. Rosen, “[Personal Income Taxes and the Growth of Small Firms,](#)” National Bureau of Economic Research, October 2000.



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law and Economic Justice
Support for HB 1628 - Related to Taxation
House Committee on Water & Land
Tuesday, February 13, 2024, at 10:30AM, Conf. Rm. 430 and via Videoconference

Dear Chair Ichiyama, Vice Chair Poepoe, and fellow committee members:

Thank you for the opportunity to express our support for **SUPPORT for HB1628**, which will close the controlled interest loophole as it concerns significant property transfers, as well as some suggested amendments. We commend the efforts to ensure fair taxation practices and promote responsible real estate transactions within Hawai'i.

Controlling interests typically refers to a significant ownership stake or level of control that an individual or entity holds in a property-owning corporation. As written currently, Hawai'i has no way of capturing benefits of large land transfers by powerful entities. The most famous example of this loss was in 2012 when Larry Ellison purchased 90% of Lana'i in Maui County by purchasing a controlling interest in Castle & Cooke Inc. from then CEO David Murdock and effectively evaded Hawaii's transfer tax. **Ellison spent \$300,000,000 to purchase Lana'i and paid \$0 in conveyance tax, if the controlled interest loophole had been closed Hawai'i would have collected \$3,750,000 which would have contributed to our special funds dedicated to building affordable housing and preserving our natural land.**

We humbly request that the committee considers the following amendments to increase the effectiveness of this bill:

Increase the transfer time of controlling interest from 12 months to 36 months. Extending it to 36 months will allow for greater flexibility and accommodate a broader range of real estate transactions. This amendment addresses the complexities involved in certain transfers and provides parties with adequate time to navigate such transactions without undue pressure or constraints.

Exempt affordable housing development projects. Affordable housing continues to play a crucial role in addressing the housing needs of our community, and incentivizing its development through tax exemptions can help with the larger financial burden required to construct these units.

Allow for current conveyance tax rates to apply to controlled interest transfers applied to certain circumstances outlined in HB1628. Currently as written the tax applied would be at the lowest rate (0.1%). For an example like Lana'i that would mean a \$300,000 tax on a \$300,000,000 purchase. Utilizing the current tax rates that would apply to typical real estate transactions allows the state to collect more revenue for affordable housing, land conservation, and the general fund.

We appreciate the opportunity to testify and believe that the proposed amendments will enhance the effectiveness and fairness of HB1628 in Hawaii's tax system and foster a conducive environment for responsible real estate transactions while promoting affordable housing and land conservation.

HB-1628

Submitted on: 2/12/2024 8:30:35 PM

Testimony for WAL on 2/13/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support closing this insane loophole. How did the state let a billionaire buy basically an entire island and pay no conveyance tax on the purchase? That is a truly gross symbol of how the state government is allowing the wealthy to buy up Hawai'i, pricing out local families and destroying what makes Hawai'i special. If there's a way to retroactively tax the purchase of Lana'i, you should do that too.