

ACT 10

A Bill for an Act Relating to Taxation of Conveyances, Creating a New Chapter 128A, Making an Appropriation from General Funds for the Implementation of Chapter 128A, and Providing for Refunds, Amending Section 115-28 of the Revised Laws of Hawaii 1955, as Amended.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is hereby added to the Revised Laws of Hawaii 1955, as amended, a new chapter 128A to read as follows:

"CHAPTER 128A. CONVEYANCE TAX

128A-1. Imposition of tax. There is hereby imposed and shall be levied, collected, and paid, a tax as hereinafter provided, on all deeds, leases, subleases, assignments of lease, agreements of sale, assignments of agreement of sale, instruments, writings, and any other document, whereby any lands, interests in land, tenements, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, lessee or lessees, sublessee or sublessees, assignee or assignees, or any other person or persons, by his, her, or their direction.

128A-2. Basis and rate of tax. The tax herein shall be based on the actual and full consideration paid or to be paid, which shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the rate of $\frac{1}{2}$ mill (.0005) per dollar of such actual and full consideration; provided, however, that in the case of a lease or sublease, the tax herein shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of 6%, plus the actual and full consideration paid or to be paid for any and all improvements, if any, which shall include on site as well as off site improvements, applicable to the leased premises; and provided further, that the tax imposed for each transaction shall be not less than \$1.

128A-3 Exemptions. The tax imposed by the provisions of 128A-1 shall not apply to:

(a) Any document or instrument which is recorded in the office of the registrar of conveyances or filed with the office of the assistant registrar of the land court prior to the effective date of this Act.

(b) Any document or instrument which is given to secure a debt or obligation.

(c) Any document or instrument which only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.

(d) Any document or instrument between husband and wife, or parent and child, in which only a nominal consideration is paid.

(e) Any document or instrument in which there is no consideration paid or to be paid.

(f) Any deed conveying real property which is executed pursuant to the provisions of an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided, however, that the taxes hereunder have been fully paid upon such agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale.

(g) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State of Hawaii or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, lessor, sublessor, assignor, transferor, seller, or conveyor, except as hereinafter provided in section 128A-4.

(h) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State of Hawaii or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments.

(i) Any document or instrument executed pursuant to eminent domain proceedings by the United States or any agency or instrumentality thereof or the State of Hawaii or any agency, instrumentality, or governmental or political subdivision thereof.

128A-4. Payment and liability of the tax. (a) The tax imposed by this chapter shall be paid by the grantor, lessor, sublessor, assignor, transferor, seller, conveyor, or any other person or persons conveying realty, or any interest therein, by a document or instrument subject to the provisions of section 128A-1; except, however, in the case where the United States or any agency or instrumentality thereof or the State of Hawaii or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, lessor, sublessor, assignor, transferor, seller, or conveyor, the tax shall be paid by the grantee, lessee, sublessee, assignee, transferee, purchaser, or conveyee, as the case may be.

(b) The tax imposed by this chapter shall be paid at such place or places as the director of taxation may direct and shall be paid no later than thirty days after the taxable transaction, and in any event prior to the imprinting of the seal or seals as provided by section 128A-5.

128A-5. Imprinting of seal. The tax shall be evidenced as paid by the imprinting of an appropriate seal or seals on the document or

instrument, which imprinting or seal itself shall indicate on its face the amount of the tax paid. The seal or seals shall be so imprinted no later than thirty days after the taxable transaction, and, in any event, prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court.

For the purposes of this chapter, the director of taxation may require that the documents or instruments be brought to any of the various offices of the department of taxation for an examination of the instrument or document, or for the purpose of having the seal imprinted on the document or instrument.

128A-6. Affidavit required. (a) All persons made parties to a document or instrument subject to the provisions of this chapter, or their authorized representatives, shall file, in the manner and place which the director of taxation shall prescribe, a duly notarized and executed affidavit or affidavits declaring the actual and full consideration of the property transferred, including thereon any lien or encumbrance on the property. The affidavit or affidavits shall be appended to the document or instrument made subject to the provisions of this chapter and shall be filed with the director of taxation simultaneously with the aforementioned document or instrument for the imprinting of the required seal or seals.

(b) No affidavit is required to be filed for any document or instrument made exempt by section 128A-3, save and except that in the following situations, an affidavit or affidavits must be filed in the manner and place which the director of taxation shall prescribe, within thirty days after the transaction, and, in any event, prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court:

(1) In the case of any document or instrument described under subsection 128A-3(c), all persons made parties to such document or instrument shall file an affidavit or affidavits declaring that the document or instrument merely confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.

(2) In the case of any document or instrument described under subsection 128A-3(d), all persons made parties to such document or instrument shall file an affidavit or affidavits declaring the amount of the nominal consideration paid and marital or parental relationship of the parties.

(3) In the case of any document or instrument described under subsection 128A-3(e), all persons made parties to such document or instrument shall file an affidavit or affidavits declaring the reasons why no consideration is paid or to be paid.

(4) In the case of any deed described in subsection 128A-3(f), all persons made parties to such a deed shall file an affidavit or affidavits declaring that the deed is made pursuant to an agreement of sale, and where applicable, an assignment or assignments of agreements of sale.

(5) In the case of any document or instrument described under

subsection 128A-3(g), those persons made parties to the document or instrument as grantees, lessees, assignees, sublessees, transferees, purchasers, or conveyees, shall file an affidavit or affidavits declaring the full and actual consideration of the property transferred.

(6) In the case of any document or instrument described under subsection 128A-3(h), those persons made parties to the document or instrument as grantees, assignees, or transferees shall file an affidavit or affidavits declaring the full and actual consideration of the property transferred.

(c) The form of the affidavit or affidavits and the procedure to be followed for the submission of the affidavit or affidavits shall be prescribed by the director of taxation.

(d) Notwithstanding the foregoing, where the director of taxation deems it impracticable to obtain the signature of any or all parties to an affidavit or affidavits required under this section, he may, in his discretion, waive the requirement of securing the signature of any or all parties to the affidavit or affidavits.

(e) No document or instrument, on account of which an affidavit or affidavits are required to be filed with the office of the director of taxation under this section, shall be accepted for recordation or filing with the registrar of conveyances or the assistant registrar of the land court, unless such affidavit or affidavits have been duly filed.

(f) Except as provided by law, it shall be unlawful for any officer or employee of the State to make known intentionally information imparted by the affidavit or affidavits filed under this chapter or to wilfully permit any such affidavit or affidavits or any copy thereof to be seen or examined by any person other than the person or persons executing such affidavit or affidavits, or their duly authorized agents, or any person duly authorized by the State in connection with their official duties. Any offense against the foregoing provisions shall be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or both.

128A-7. Disposition of taxes. All taxes collected under the provisions of this chapter shall be paid into the state treasury to the credit of the general fund of the State of Hawaii, to be used and expended for the purposes for which said general fund was created and exists by law.

128A-8. Refunds. The director of taxation may order the refund in whole or in part of any tax which has been erroneously or unjustly paid. Such order shall be made in accordance with the provisions of section 115-28 of the Revised Laws of Hawaii 1955, as amended.

128A-9. Enforcement and administration. The director of taxation shall administer and enforce the taxes imposed by this chapter. He may prescribe rules and regulations not inconsistent with the provisions herein for their detailed and efficient administration. At any time after the making of a conveyance or transfer subject to the tax imposed by this chapter, he may investigate and ascertain whether said tax, in the proper amount, was paid. For this purpose, the director may invoke all statutory powers vested in him, including but not

limited to, the provisions of section 115-11 of the Revised Laws of Hawaii 1955, as amended.

128A-10. Collection. All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this chapter, so far as applicable, for the purpose of collecting the tax imposed herein.

128A-11. Penalty for false declaration. Any person knowingly making a false declaration on any affidavit or affidavits provided for by this chapter for the purpose of defrauding the State, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment for not more than one year, or both.

128A-12. Jurisdiction; district magistrates. Enforcement of the penalties provided in this chapter shall be within the jurisdiction of the several district magistrates in accordance with the provisions of section 115-16 of the Revised Laws of Hawaii 1955, as amended.

128A-13. Short title. This chapter may be cited as the 'conveyance tax law.' "

SECTION 2. There is hereby appropriated out of the general revenues of the State, not otherwise appropriated, the sum of \$5,500, or so much thereof as may be necessary to the department of taxation for the necessary expenses connected with implementing the provisions of this Act.

SECTION 3. Section 115-28 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended as follows:

(a) The first sentence of subsection (b) thereof is hereby amended to read as follows:

"The provisions of this subsection shall apply to all taxes except those collected under chapters 128 and 128A and those collected under a chapter containing a provision for credit and refund of the amount of tax paid in excess of the tax imposed by such chapter."

(b) Renumber subsection (c) thereof and all references to subsection (c) therein to read subsection (d), and to add a new subsection (c) to read as follows:

"(c) The provisions of this subsection shall apply to the taxes collected under chapter 128A.

There may be refunded in the manner provided in subsection (d) of this section such conveyance tax as has been erroneously or unjustly paid."

SECTION 4. This Act shall take effect on January 1, 1967.

(Approved April 5, 1966.) S.B. 63.