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# A BILL FOR AN ACT

RELATING TO A CONTROLLING INTEREST TRANSFER TAX.

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

1           SECTION 1. The legislature finds that there are numerous  
2 complex transactions occurring in Hawaii that involve the  
3 purchase, transfer, or exchange of real property located in  
4 Hawaii through the sale or exchange of ownership interests in  
5 legal entities. Under the State's current tax laws, many of  
6 these complex transactions involving the transfer of real  
7 property located in Hawaii are taking place without any tax  
8 considerations, including the payment of conveyance taxes.

9           The purpose of this Act is to create a new tax separate  
10 from the conveyance tax that is imposed on an entity with a  
11 controlling interest of the entity that transfers ownership of  
12 real property owned by the entity through the sale of the  
13 entity. It is the intent of this Act that the newly created tax  
14 would capture taxes on transactions designed to avoid liability  
15 under the conveyance tax.

16           SECTION 2. The Hawaii Revised Statutes is amended by  
17 adding a new chapter to be appropriately designated and to read  
18 as follows:



1 "CHAPTER

2 CONTROLLING INTEREST TRANSFER TAX

3 § -1 Definitions. As used in this chapter:

4 "Controlling interest" means:

5 (1) In the case of a corporation, more than fifty per cent  
6 of the total combined voting power of all classes of  
7 stock of the corporation; and

8 (2) In the case of a partnership, association, trust, or  
9 other entity, more than fifty per cent of the capital,  
10 profits, or beneficial interest in the partnership,  
11 association, trust, or other entity.

12 "Department" means the department of taxation.

13 "Director" means the director of taxation.

14 "Entity" means a natural person or any other legal business  
15 organization used in the state pursuant to law, including a  
16 corporation, partnership, and sole proprietor.

17 "True and actual value" means the fair market value as of  
18 the time of the transfer of a controlling interest, not  
19 including the amount of any mortgage, lien, or other  
20 encumbrance.

21 § -2 Administration by director; rules. (a) This  
22 chapter shall be administered by the director. All forms



1 necessary to enforce this chapter shall be prescribed, printed,  
2 and furnished by the director. The director may adopt and shall  
3 enforce rules pursuant to chapter 91 to administer and enforce  
4 this chapter.

5 (b) In addition to any other rules necessary to administer  
6 and enforce this chapter, the director shall adopt rules:

- 7 (1) Establishing a system to notify the department of  
8 changes in the controlling interest of any entity  
9 subject to this chapter;
- 10 (2) Establishing requirements as to the responsibility for  
11 filing returns if there is no single person who  
12 conveys the controlling interest in any entity subject  
13 to this chapter; and
- 14 (3) Providing for the filing of any liens necessary to  
15 enforce the payment of taxes, and any penalties or  
16 interest required by this chapter.

17 § -3 Tax on transfer of controlling interest in entity  
18 possessing real property; rate of tax applied to the value of  
19 the real property. (a) There is imposed a tax on the sale or  
20 transfer for consideration of a controlling interest in any  
21 entity which possesses, directly or indirectly, an interest in  
22 real property in this state when the present true and actual



1 value of the interest in real property equals or exceeds \$2,000,  
2 and when:

3 (1) The transfer of a controlling interest is made by a  
4 seller or transferor or by a group of sellers or  
5 transferors acting in concert; provided that sellers  
6 or transferors who are related to each other by blood  
7 or marriage are presumed, unless shown to the  
8 contrary, to be acting in concert; and

9 (2) The controlling interest in an entity transfers real  
10 property to a transferee or to a group of transferees  
11 acting in concert; provided that:

12 (A) Where transferees are related and one influences  
13 or controls the actions of another (such as  
14 parent and subsidiary corporations, parents and  
15 children, and husbands and wives.), the  
16 transferees shall be presumed to be acting in  
17 concert; and

18 (B) Where transferees have negotiated and will  
19 consummate their purchase of ownership interests  
20 in unity (such as transfers that are closely  
21 related in time, transferees that are few in  
22 number, or purchase contracts that contain mutual



1 terms, and agreements among transferees binding  
2 them to a course of action with respect to the  
3 transfers.), the transferees shall be presumed to  
4 be acting in concert.

5 The tax shall be imposed on the present true and actual value of  
6 the interest in real property transferred at the rate set forth  
7 in section 247-2. The tax shall be payable by the entity or  
8 entities selling or transferring the controlling interest, or as  
9 designated by the director pursuant to rule. If the entity owns  
10 less than a one hundred per cent interest in the real estate,  
11 the tax shall be based on the actual percentage of ownership,  
12 with no further discounts on account of minority ownership.

13 (b) A taxable sale or transfer of a controlling interest  
14 may occur in one transaction or in a series of transactions.  
15 Transactions that occur within six months of each other are  
16 presumed, unless shown to the contrary, to be a series of  
17 transactions.

18 (c) In addition to the exemptions under section 247-3, the  
19 tax imposed by subsection (a) shall not apply to:

20 (1) Any sale or transfer of a controlling interest in any  
21 entity to the extent that the entity possesses,  
22 directly or indirectly, an interest in real property



1 located in an area of any county designated as an  
2 enterprise zone in accordance with section 209E-4, but  
3 shall apply to the extent the entity possesses,  
4 directly or indirectly, an interest in real property  
5 in this state located outside the area designated as  
6 an enterprise zone; and

7 (2) Any sale or transfer of real property, however  
8 effected, if it consists of a mere change in identity  
9 or form of ownership of an entity where there is no  
10 change in the beneficial ownership, including  
11 transfers to a corporation or partnership that is  
12 wholly owned by the transferor.

13 § -4 Filing return and payment of tax. On or before the  
14 last day of the month following the month in which the sale or  
15 transfer of a controlling interest in an entity that is subject  
16 to the tax imposed by section -3 occurs, a return shall be  
17 filed with the director by the entity or entities conveying the  
18 controlling interest, as designated by and in a form as the  
19 director may prescribe pursuant to rules adopted under chapter  
20 91.



1           §   -5 Penalties. Any person in violation of this chapter  
2 shall be subject to penalties provided under title 14 and shall  
3 be guilty of a misdemeanor.

4           §   -6 Records maintenance. Any entity with respect to  
5 which there is a sale or transfer of a controlling interest in  
6 the entity, which sale or transfer is subject to the tax imposed  
7 by section     -3, shall maintain a record of the seller or  
8 transferor, and report every transfer of a controlling interest  
9 in its stock or in its capital, profits, or beneficial  
10 interests, and other information as the director may require.  
11 The report shall be filed at least annually or more frequently  
12 as may be required at a location pursuant to rules adopted by  
13 the director."

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

16           "§247-2 Basis and rate of tax. The tax imposed by section  
17 247-1 and section     -3 shall be based on the actual and full  
18 consideration (whether cash or otherwise, including any promise,  
19 act, forbearance, property interest, value, gain, advantage,  
20 benefit, or profit), paid or to be paid for all transfers or  
21 conveyance of realty or any interest therein, that shall include  
22 any liens or encumbrances thereon at the time of sale, lease,



1 sublease, assignment, transfer, or conveyance, and shall be at  
2 the following rates:

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

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

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

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

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

12 (E) Seventy cents per \$100 for properties with a  
13 value of at least \$4,000,000, but less than  
14 \$6,000,000;

15 (F) Ninety cents per \$100 for properties with a value  
16 of at least \$6,000,000, but less than  
17 \$10,000,000; and

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

20 (2) For the sale of a condominium or single family  
21 residence for which the purchaser is ineligible for a  
22 county homeowner's exemption on property tax:





- 1 (A) Fifteen cents per \$100 for properties with a  
2 value of less than \$600,000;
- 3 (B) Twenty-five cents per \$100 for properties with a  
4 value of at least \$600,000, but less than  
5 \$1,000,000;
- 6 (C) Forty cents per \$100 for properties with a value  
7 of at least \$1,000,000, but less than \$2,000,000;
- 8 (D) Sixty cents per \$100 for properties with a value  
9 of at least \$2,000,000, but less than \$4,000,000;
- 10 (E) Eighty-five cents per \$100 for properties with a  
11 value of at least \$4,000,000, but less than  
12 \$6,000,000;
- 13 (F) One dollar and ten cents per \$100 for properties  
14 with a value of at least \$6,000,000, but less  
15 than \$10,000,000; and
- 16 (G) One dollar and twenty-five cents per \$100 for  
17 properties with a value of \$10,000,000 or  
18 greater,
- 19 of such actual and full consideration; provided that in the case  
20 of a lease or sublease, this chapter shall apply only to a lease  
21 or sublease whose full unexpired term is for a period of five  
22 years or more, and in those cases, including (where appropriate)



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

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

11 "§247-3 Exemptions. The tax imposed by section 247-1 and  
12 section -3 shall not apply to:

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



- 1           (5) Any document or instrument in which there is a  
2                   consideration of \$100 or less paid or to be paid;
- 3           (6) Any document or instrument conveying real property  
4                   that is executed pursuant to an agreement of sale, and  
5                   where applicable, any assignment of the agreement of  
6                   sale, or assignments thereof; provided that the taxes  
7                   under this chapter have been fully paid upon the  
8                   agreement of sale, and where applicable, upon such  
9                   assignment or assignments of agreements of sale;
- 10          (7) Any deed, lease, sublease, assignment of lease,  
11                   agreement of sale, assignment of agreement of sale,  
12                   instrument or writing in which the United States or  
13                   any agency or instrumentality thereof or the State or  
14                   any agency, instrumentality, or governmental or  
15                   political subdivision thereof are the only parties  
16                   thereto;
- 17          (8) Any document or instrument executed pursuant to a tax  
18                   sale conducted by the United States or any agency or  
19                   instrumentality thereof or the State or any agency,  
20                   instrumentality, or governmental or political  
21                   subdivision thereof for delinquent taxes or  
22                   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) Any document or instrument conveying real property, or  
14                    any interest therein, from a dissolving limited  
15                    partnership to its corporate general partner that  
16                    owns, directly or indirectly, at least a ninety per  
17                    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) Any document or instrument conveying real property to  
2                    any nonprofit or for-profit organization that has been  
3                    certified by the Hawaii housing finance and  
4                    development corporation for low-income housing  
5                    development."

6           SECTION 5. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9           SECTION 6. New statutory material is underscored.

10          SECTION 7. This Act shall take effect upon its approval  
11 and shall apply to taxable years beginning after December 31,  
12 2009.



**Report Title:**

Taxation; Controlling Interest Transfer Tax

**Description:**

Establishes a controlling interest transfer tax imposed at the rate set under the conveyance tax, to be administered by the director of taxation on any transfer of interest of more than 50 percent in an entity holding real property in the state.

(HB1921 HD2)

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