

JAN 22 2015

A BILL FOR AN ACT

RELATING TO TAXATION.

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

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

4 "§247-A Definitions. For the purposes of this chapter,
5 unless otherwise expressly stated:

6 "Consideration" means the price actually paid or required
7 to be paid for the real property or interest therein, including:

8 (1) Payment for an option or contract to purchase real
9 property, whether or not expressed in the deed and
10 whether paid or required to be paid by money,
11 property, or any other thing of value;

12 (2) Cancellation or discharge of an indebtedness or
13 obligation; or

14 (3) The amount of any mortgage, purchase money mortgage,
15 lien or other encumbrance, whether or not the
16 underlying indebtedness is assumed or taken subject to
17 the encumbrance;



1 provided that, in the case of a controlling interest in any
2 entity that owns real property, consideration shall mean the
3 fair market value of the real property or interest therein,
4 apportioned based upon the percentage of the ownership interest
5 transferred or acquired in the entity.

6 "Conveyance" means the transfer or transfers of any
7 interest in real property by any method, including but not
8 limited to sale, exchange, assignment, surrender, mortgage
9 foreclosure, transfer in lieu of foreclosure, option, trust
10 indenture, taking by eminent domain, conveyance upon liquidation
11 or by a receiver, or transfer or acquisition of a controlling
12 interest in an entity with an interest in real property.

13 Conveyance of an interest in real property shall include the
14 creation of a leasehold or sublease.

15 "Grantee" means the person who obtains real property or
16 interest therein as the result of a conveyance.

17 "Grantor" means the person making the conveyance of real
18 property or interest therein. Where the conveyance consists of
19 a transfer or an acquisition of a controlling interest in an
20 entity that has an interest in real property, "grantor" means
21 the entity that has an interest in real property or a



1 shareholder or partner transferring stock or partnership
2 interest, respectively.

3 "Interest in the real property" includes title in fee, a
4 leasehold interest, a beneficial interest, an encumbrance,
5 development rights, space rights, air rights, or any other
6 interest with the right to the use or occupancy of real property
7 or the right to receive rents, profits, or other income derived
8 from real property.

9 "Real property" means every estate or right, legal or
10 equitable, present or future, vested or contingent, in lands,
11 tenements, or hereditaments, including buildings, structures,
12 and other improvements thereon, that are located in whole or in
13 part within the State.

14 **§247-B Controlling interest; defined; application.** (a)

15 For the purposes of this chapter, "controlling interest" means:

16 (1) In the case of a corporation,

17 (A) Fifty per cent or more of the total combined
18 voting power of all classes of stock of the
19 corporation; or



1 (B) Fifty per cent or more of the capital, profits,
2 or beneficial interest in the voting stock of the
3 corporation; and

4 (2) In the case of a partnership, association, trust, or
5 other entity, fifty per cent or more of the capital,
6 profits, or beneficial interest in the partnership,
7 association, trust, or other entity.

8 (b) In the case of a corporation that has an interest in
9 real property, the transfer or acquisition of a controlling
10 interest in the corporation occurs when a person, or group of
11 persons acting in concert, transfers or acquires a total of
12 fifty per cent or more of the voting stock in the corporation.

13 In the case of a partnership, association, trust, or other
14 entity having an interest in real property, the transfer or
15 acquisition occurs when a person, or group of persons acting in
16 concert, transfers or acquires a total of fifty per cent or more
17 of the capital, profits, or beneficial interest in the entity.

18 For the purposes of this subsection:

19 (1) Persons are acting in concert when they have a
20 relationship such that one person influences or
21 controls the actions of another. For example, if a



1 parent corporation and a wholly-owned subsidiary
2 corporation each sell or purchase a twenty-five per
3 cent interest in an entity, the two corporations shall
4 be considered to have acted in concert to transfer or
5 acquire a controlling interest in the entity; and
6 (2) Where the individuals or entities are not commonly
7 controlled or owned, persons shall be treated as
8 acting in concert when the unity with which the
9 sellers or purchasers have negotiated and will
10 consummate the transfer of ownership interests
11 indicates they are acting as a single entity. If the
12 transfers or acquisitions are completely independent,
13 with each grantor selling or grantee buying without
14 regard to the identity of the other grantors or
15 grantees, then the transfers or acquisitions shall be
16 treated as separate transfers or acquisitions. The
17 grantors or grantees may be required to provide a
18 sworn statement that their transfers or acquisitions
19 are independent of each other. Factors that indicate
20 whether persons are acting in concert shall include
21 the following:



- 1 (A) The transfers or acquisitions are closely related
- 2 in time;
- 3 (B) There are few grantors or grantees;
- 4 (C) The contracts of sale contain mutual terms; and
- 5 (D) The grantors or grantees have entered into an
- 6 agreement, in addition to the sales contract,
- 7 binding themselves to a course of action with
- 8 respect to the transfer or acquisition.

9 (c) Notwithstanding the definition of "controlling
10 interest" and the exercise thereof in subsections (a) and (b),
11 the tax imposed by this chapter shall apply to:

12 (1) The original conveyance of shares of stock in a
13 cooperative housing corporation as defined in section
14 421I-1, or limited-equity housing cooperative as
15 defined in section 421H-1, in connection with the
16 grant or transfer of a right of occupancy by the
17 cooperative housing corporation or limited-equity
18 housing cooperative; and

19 (2) The subsequent conveyance of the stock in a
20 cooperative housing corporation or limited-equity



1 housing cooperative in connection with the grant or
2 transfer of a right of occupancy by the owner thereof.

3 (d) For purposes of determining whether or not a
4 controlling interest is transferred or acquired, only transfers
5 or acquisitions of interests occurring on or after July 1, 2015,
6 shall be added together.

7 A transfer or acquisition made on or after July 1, 2015,
8 does not have to be included, for purposes of determining
9 whether or not a controlling interest is transferred or
10 acquired; provided that the transfer or acquisition is made
11 pursuant to a binding written contract that was entered into
12 before July 1, 2015.

13 (e) In the case of a transfer or acquisition of an
14 interest in an entity that has an interest in real property, on
15 or after July 1, 2015, that is followed by a subsequent transfer
16 or acquisition of an additional interest or interests in the
17 same entity, the transfers or acquisitions shall be added
18 together to determine if a transfer or acquisition of a
19 controlling interest has occurred.

20 (f) In the case of a transfer or acquisition of a
21 controlling interest in an entity, on or after July 1, 2015,



1 where the conveyance tax is paid on that transfer or acquisition
2 and there is a subsequent transfer or acquisition of an
3 additional interest in the same entity, it shall be considered
4 that a second transfer or acquisition of a controlling interest
5 has occurred, which shall be subject to the conveyance tax.

6 (g) No transfer or acquisition of an interest in an entity
7 that has an interest in real property shall be added to another
8 transfer or acquisition of an interest in the same entity if the
9 transfers or acquisitions occur more than three years apart,
10 unless the transfers or acquisitions were so timed as part of a
11 plan to avoid the conveyance tax.

12 (h) For the purposes of applying the tax imposed under
13 this chapter to the transfer or acquisition of a controlling
14 interest in an entity, the tax shall be imposed when there is a
15 transfer or an acquisition of a controlling interest in the same
16 conveyance.

17 §247-C Taxation at the lowest rate. Notwithstanding any
18 exemption under section 247-3, the tax imposed by section 247-1
19 shall apply to the following conveyances at the lowest rate
20 provided in section 247-2(1), regardless of the amount of
21 consideration:



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

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

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

18 §247-D Disclosure of certificates unlawful; penalty. (a)

19 A certificate of conveyance required to be filed under section
20 247-6, and the report of any investigation of the certificate or
21 of the subject matter of the certificate, shall be confidential.



1 It shall be unlawful for any person or any officer or
2 employee of the State to:

3 (1) Intentionally make known any certificate or
4 certificate information filed pursuant to this
5 chapter, or any report of any investigation of the
6 certificate or of the subject matter of the
7 certificate; or

8 (2) Wilfully permit any certificate, certificate
9 information, or report so made, or any copy thereof,
10 to be seen or examined by any person;

11 provided that, for tax purposes, the grantor or grantee, their
12 authorized agent, or persons with a material interest in the
13 certificate, certificate information, or report may examine the
14 certificate, certificate information, or report.

15 (b) For the purposes of this section, unless otherwise
16 provided by law, persons with a material interest in a
17 certificate, certificate information, or report shall include:

18 (1) Trustees;

19 (2) Partners;

20 (3) In the case of a corporate certificate, persons named
21 in a board resolution or a one per cent shareholder;



- 1 (4) The person authorized to act for a corporation in
- 2 dissolution;
- 3 (5) The shareholder of an S corporation;
- 4 (6) In case of an estate's or decedent's certificate, the
- 5 personal representative, trustee, heir, or beneficiary
- 6 of the estate or trust;
- 7 (7) The committee, trustee, or guardian of any person
- 8 specified in paragraphs (1) to (6) who is incompetent;
- 9 (8) The trustee in bankruptcy or receiver and the
- 10 attorney-in-fact of any person specified in paragraphs
- 11 (1) to (7);
- 12 (9) Persons duly authorized by the State in connection
- 13 with their official duties;
- 14 (10) Any officer or employee of any county in the State for
- 15 official county business purposes, including real
- 16 property tax assessment;
- 17 (11) Any duly accredited tax official of the United States
- 18 or of any state or territory;
- 19 (12) The Multistate Tax Commission or its authorized
- 20 representative;
- 21 (13) Members of a limited liability company; and



1 (14) A person contractually obligated to pay the taxes
2 assessed against another when the latter person is
3 under audit by the department of taxation.

4 Any violation of this subsection shall be a misdemeanor.

5 (c) Nothing in this section shall prohibit the registrar
6 of conveyances or the assistant registrar of the land court from
7 imprinting a seal, under section 247-5, indicating the amount of
8 tax paid.

9 (d) No recorded instrument effecting a conveyance shall be
10 considered a certificate for the purposes of this section.

11 §247-E Conformity to Constitution, etc. In computing the
12 amounts of any tax imposed under this chapter, there shall be
13 excepted or deducted from the amounts of consideration so much
14 thereof as, under the Constitution and laws of the United
15 States, the State is prohibited from taxing, but only so long as
16 and only to the extent that the State is so prohibited."

17 SECTION 2. Section 247-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§247-1 Imposition of tax.** There is hereby imposed and
20 shall be levied, collected, and paid, a tax [~~as hereinafter~~
21 ~~provided, on all transfers or conveyances of realty or any~~



1 ~~interest therein, by way of deeds, leases, subleases,~~
2 ~~assignments of lease, agreements of sale, assignments of~~
3 ~~agreement of sale, instruments, writings, and any other~~
4 ~~document, whereby any lands, interests in land, tenements, or~~
5 ~~other realty sold shall be granted, assigned, transferred, or~~
6 ~~otherwise conveyed to, or vested in, the purchaser or~~
7 ~~purchasers, lessee or lessees, sublessee or sublessees, assignee~~
8 ~~or assignees, or any other person or persons, by the person's or~~
9 ~~their direction.] on each conveyance of any interest in real~~
10 ~~property."~~

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

13 "**§247-2 Basis and rate of tax.** The tax imposed by section
14 247-1 shall be based [on] upon the [~~actual and full~~]
15 consideration [~~(whether cash or otherwise, including any~~
16 ~~promise, act, forbearance, property interest, value, gain,~~
17 ~~advantage, benefit, or profit)] , paid or to be paid for all
18 [~~transfers or conveyance] conveyances of [~~realty] real property,~~
19 or any interest therein, that shall include any liens or
20 encumbrances thereon at the time of sale, lease, sublease,~~~~



1 assignment, transfer, or conveyance[~~r~~] and shall be at the
2 following rates:

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

4 (A) Ten cents per \$100 for [~~properties with a value~~
5 ~~of~~] conveyances where the consideration is less
6 than \$600,000;

7 (B) Twenty cents per \$100 for [~~properties with a~~
8 ~~value of~~] conveyances where the consideration is
9 at least \$600,000, but less than \$1,000,000;

10 (C) Thirty cents per \$100 for [~~properties with a~~
11 ~~value of~~] conveyances where the consideration is
12 at least \$1,000,000, but less than \$2,000,000;

13 (D) Fifty cents per \$100 for [~~properties with a value~~
14 ~~of~~] conveyances where the consideration is at
15 least \$2,000,000, but less than \$4,000,000;

16 (E) Seventy cents per \$100 for [~~properties with a~~
17 ~~value of~~] conveyances where the consideration is
18 at least \$4,000,000, but less than \$6,000,000;

19 (F) Ninety cents per \$100 for [~~properties with a~~
20 ~~value of~~] conveyances where the consideration is



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



- 1 (E) Eighty-five cents per \$100 for [~~properties with a~~
2 value of] conveyances where the consideration is
3 at least \$4,000,000, but less than \$6,000,000;
- 4 (F) One dollar and ten cents per \$100 for [~~properties~~
5 with a value of] conveyances where the
6 consideration is at least \$6,000,000, but less
7 than \$10,000,000; and
- 8 (G) One dollar and twenty-five cents per \$100 for
9 [~~properties with a value of~~] conveyances where
10 the consideration is \$10,000,000 or greater,
11 of [~~such actual and full~~] the consideration; provided that in
12 the case of a lease or sublease, this chapter shall apply only
13 to a lease or sublease whose full unexpired term is for a period
14 of five years or more, and in those cases, including (where
15 appropriate) those cases where the lease has been extended or
16 amended, the tax in this chapter shall be based on the cash
17 value of the lease rentals discounted to present day value and
18 capitalized at the rate of six per cent, plus the actual and
19 full consideration paid or to be paid for any and all
20 improvements, if any, that shall include on-site as well as off-
21 site improvements, applicable to the leased premises; and



1 provided further that the tax imposed for each transaction shall
2 be not less than \$1."

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

5 "§247-3 Exemptions. The tax imposed by section 247-1
6 shall not apply to[+] the following conveyances:

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



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



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



1 action or termination of reciprocal beneficiary
2 relationship;

3 (13) Any [~~document or instrument conveying real property~~]
4 conveyance from a testamentary trust to a beneficiary
5 under the trust;

6 (14) Any [~~document or instrument conveying real property~~]
7 conveyance from a grantor to the grantor's revocable
8 living trust, or from a grantor's revocable living
9 trust to the grantor as beneficiary of the trust;

10 [~~(15) Any document or instrument conveying real property, or~~
11 ~~any interest therein, from an entity that is a party~~
12 ~~to a merger or consolidation under chapter 414, 414D,~~
13 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
14 ~~new entity;~~

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



- 1 ~~Code of 1986, as amended, to the constructive~~
2 ~~ownership of interests in the partnership; and~~
- 3 ~~{(17)}~~ (15) Any ~~[document or instrument]~~ conveyance that
4 conforms to the transfer on death deed as authorized
5 under chapter 527[-];
- 6 (16) Any conveyance from a limited partner to a general
7 partner of a limited partnership that owns an
8 affordable rental housing project for which low-income
9 housing tax credits have been issued under section
10 235-110.8 or 241-4.7 or section 42 of the Internal
11 Revenue Code of 1986, as amended; and
- 12 (17) Any conveyance that consists solely of a change in
13 controlling interest in an entity holding an interest
14 in realty between persons with ownership interests in
15 such entity for a minimum of three years immediately
16 preceding the transfer."

17 SECTION 5. Section 247-4, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§247-4 Payment and liability of the tax.** (a) The tax
20 imposed by this chapter shall be paid by the grantor [~~, lessor,~~
21 ~~sublessor, assignor, transferor, seller, conveyer, or any other~~



1 ~~person conveying realty, or any interest therein, by a document~~
2 ~~or instrument subject to section 247-1, except, however,] ;~~
3 provided that in the case where the United States or any agency
4 or instrumentality thereof or the State or any agency,
5 instrumentality, or governmental or political subdivision
6 thereof is the grantor [~~, lessor, sublessor, assignor,~~
7 ~~transferor, seller, or conveyor]~~, the tax shall be paid by the
8 grantee [~~, lessee, sublessee, assignee, transferee, purchaser, or~~
9 ~~conveyee, as the case may be]~~.

10 (b) The tax imposed by this chapter shall be paid at
11 [~~such~~] a place or places as the director of taxation may direct
12 and shall be due and payable no later than ninety days after the
13 taxable [~~transaction,~~] conveyance and in any event prior to the
14 imprinting of the seal or seals as provided by section 247-5.
15 Penalties and interest shall be added to and become a part of
16 the tax, when and as provided by section 231-39.

17 (c) If the grantor has failed to pay the tax imposed by
18 this chapter at the time required by subsection (b) or if the
19 grantor is exempt from the tax, the grantee shall pay the tax.
20 If the grantee is required to pay the tax because the grantor



1 has failed to pay, the grantor and the grantee shall be jointly
2 and severally liable for the tax.

3 (d) For the purposes of this chapter, all conveyances
4 shall be presumed taxable. Where the consideration includes
5 property other than money, the consideration shall be presumed
6 to be the fair market value of the real property or interest
7 therein. These presumptions shall prevail until disproven, and
8 the burden of disproving the presumptions shall be on the person
9 liable for payment of the tax."

10 SECTION 6. Section 247-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§247-5 Imprinting of seal[-]; evidence of payment. (a)**
13 **[The] Except for a conveyance where no instrument evidencing the**
14 **conveyance is recorded or filed with the registrar of**
15 **conveyances or the assistant registrar of the land court, the**
16 **tax shall be evidenced as paid by the imprinting of an**
17 **appropriate seal or seals on the document or instrument, which**
18 **imprinting or seal itself shall indicate on its face the amount**
19 **of the tax paid. The seal or seals shall be so imprinted upon**
20 **the payment of the tax, together with the appropriate penalty**
21 **and interest where applicable, and, in any event, prior to the**



1 recordation or filing of the document or instrument with the
2 registrar of conveyances or the assistant registrar of the land
3 court.

4 **(b)** For the purposes of this chapter, the director may
5 require that the documents or instruments be brought to any of
6 the various offices of the department of taxation for an
7 examination of the instrument or document, or for the purpose of
8 having the seal imprinted on the document or instrument."

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

11 "**§247-6 Certificate of conveyance required.** (a) [Any
12 party,] The grantor and the grantee, with the exception of
13 governmental bodies, agencies, or officers, [~~to a document or~~
14 ~~instrument subject to this chapter,~~] or the [party's] grantor's
15 or grantee's authorized representative[~~]~~ shall file, in the
16 manner and place [~~which~~] that the director of taxation shall
17 prescribe, a certificate of conveyance setting forth the [~~actual~~
18 ~~and full~~] consideration of the [~~property transferred,~~]
19 conveyance, including any lien or encumbrance on the real
20 property[~~]~~ or interest therein, and any other facts as the
21 director may by rules prescribe. The certificate of conveyance



1 shall be verified by a written declaration thereon that the
2 statements made therein are subject to the penalties in section
3 231-36. The certificate shall be appended to [~~the~~] any document
4 or instrument made subject to this chapter and shall be filed
5 with the director simultaneously with the aforementioned
6 document or instrument for the imprinting of the required seal
7 or seals.

8 (b) No certificate of conveyance is required to be filed
9 for any document or instrument made exempt by section 247-3,
10 except that in the following situations, [~~a~~] an exemption
11 certificate shall be filed in the manner and place that the
12 director shall prescribe, within ninety days after the
13 [~~transaction~~] conveyance or prior to the recordation or filing
14 of the document or instrument with the registrar of conveyances
15 or the assistant registrar of the land court or after the
16 ninety-day period, recordation, or filing as the director shall
17 prescribe:

18 (1) For any [~~document or instrument described~~] conveyance
19 exempted under section 247-3(3), [~~any party to the~~
20 ~~document or instrument~~] the grantor and the grantee
21 shall file a certificate declaring that the [~~document~~



1 ~~or instrument]~~ conveyance merely confirms or corrects
2 a deed, lease, sublease, assignment, transfer, or
3 conveyance previously recorded or filed.

4 (2) For any [~~document or instrument described]~~ conveyance
5 exempted under section 247-3(4), [~~any party to the~~
6 ~~document or instrument]~~ the grantor and the grantee
7 shall file a certificate declaring the amount of the
8 nominal consideration paid and marital or parental
9 relationship of the [~~parties.~~] grantor and the
10 grantee.

11 (3) For any [~~document or instrument described]~~ conveyance
12 exempted under section 247-3(5), [~~any party to the~~
13 ~~document or instrument]~~ the grantor and the grantee
14 shall file a certificate declaring the reasons why the
15 consideration is \$100 or less.

16 (4) For any [~~document or instrument described in]~~
17 conveyance exempted under section 247-3(6), [~~any party~~
18 ~~to the document or instrument]~~ the grantor and the
19 grantee shall file a certificate declaring that the
20 [~~document or instrument]~~ conveyance is made pursuant



1 to an agreement of sale, and where applicable, an
2 assignment or assignments of agreements of sale.

3 (5) For any [~~document or instrument described~~] conveyance
4 exempted under section 247-3(8), [~~any person made a~~
5 ~~party to the document or instrument as~~] the grantee[~~,~~
6 ~~assignee, or transferee~~] shall file a certificate
7 declaring the full and actual consideration of the
8 property transferred.

9 (6) For any [~~document or instrument described~~] conveyance
10 exempted under section 247-3(11), [~~any party to the~~
11 ~~document or instrument~~] the grantor and the grantee
12 shall file a certificate declaring each owner's:

13 (A) Undivided interest in the real property and the
14 value of that interest before partition; and

15 (B) Proportionate interest and the value of that
16 interest after partition.

17 (7) For any [~~document or instrument described~~] conveyance
18 exempted under section 247-3(12), [~~any party to the~~
19 ~~document or instrument~~] the grantor and the grantee
20 shall file a certificate declaring that the [~~document~~



1 ~~or instrument]~~ conveyance is made pursuant to an order
2 of the court and containing the court case number.

3 (8) For any [~~document or instrument described]~~ conveyance
4 exempted under section 247-3(13), [~~any party to the~~
5 ~~document or instrument]~~ the grantor and the grantee
6 shall file a certificate declaring that the document
7 or instrument conveys real property from a
8 testamentary trust to a trust beneficiary.

9 (9) For any [~~document or instrument described]~~ conveyance
10 exempted under section 247-3(14), [~~any party to the~~
11 ~~document or instrument]~~ the grantor and the grantee
12 shall file a certificate declaring that the document
13 or instrument conveys real property from the grantor
14 to a grantor's revocable living trust or from a
15 grantor's revocable living trust to the grantor.

16 (10) For any conveyance exempted under section 247-3(15),
17 the grantor and the grantee shall file a certificate
18 declaring that the conveyance conforms to the transfer
19 on death deed, as authorized under chapter 527.

20 (11) For any conveyance exempted under section 247-3(16),
21 the grantor and the grantee shall file a certificate



1 declaring that the conveyance is from a limited
2 partner to a general partner of a limited partnership
3 that owns an affordable rental housing project for
4 which low-income housing tax credits have been issued
5 under section 235-110.8 or 241-4.7 or section 42 of
6 the Internal Revenue Code of 1986, as amended.

7 (12) For any conveyance exempted under section 247-6(17),
8 the grantor and the grantee shall file a certificate
9 declaring that the conveyance consists solely of a
10 change in controlling interest in an entity holding an
11 interest in realty between persons with ownership
12 interests in the entity for a minimum of three years
13 immediately preceding the transfer.

14 (c) The form of the certificate and the procedure to be
15 followed for the submission of the [~~certificate~~] certificates
16 shall be prescribed by the director.

17 (d) Notwithstanding the foregoing, where the director
18 deems it impracticable to require the filing of a certificate or
19 certificates or to obtain the signatures of any or all [~~parties~~]
20 grantors or grantees to a certificate or certificates required
21 under this section, the director [~~may~~], in the director's



1 discretion, may waive the requirement of filing the certificate
2 or certificates or of securing the signature of any or all
3 [~~parties to the certificate or certificates.~~] grantors or
4 grantees.

5 (e) No document or instrument, on account of which a
6 certificate is required to be filed with the office of the
7 director under this section, shall be accepted for recordation
8 or filing with the registrar of conveyances or the assistant
9 registrar of the land court, unless the certificate has been
10 duly filed.

11 (f) If any or all of the grantors or any or all of the
12 grantees, or their authorized representatives, have failed to
13 sign a certificate under this section, the certificate shall be
14 accepted if it is signed by any one of the grantors or by any
15 one of the grantees; provided that the grantors and grantees not
16 signing the certificate, personally or through their authorized
17 representative, shall not be relieved of any liability for the
18 tax imposed by this chapter, and the period of limitations for
19 assessment of tax or of additional tax shall not apply to such
20 grantor or grantee.



1 [~~f~~] (g) Within twenty-one business days after the end of
2 each week, or as soon thereafter as possible, the director of
3 taxation shall provide to the administrator of each county's
4 real property assessment division, without charge, an image of
5 all certificates of conveyance that were filed. For each
6 certificate of conveyance, the image shall include the
7 following:

- 8 (1) Document number;
- 9 (2) Date of the filing;
- 10 (3) Name of grantor and grantee;
- 11 (4) Tax map key number;
- 12 (5) Location of the real property by island; and
- 13 (6) Address for real property assessment notice and tax
14 bill."

15 SECTION 8. Section 247-6.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§247-6.5 Limitation period for assessment, levy,**
18 **collection, or credit.** The amount of conveyance taxes imposed
19 by this chapter shall be assessed or levied, and the
20 overpayment, if any, shall be credited within three years after
21 filing of the [~~certificate~~] certificates prescribed by section



1 247-6. No proceeding in court without assessment for the
2 collection of the taxes shall be begun after the expiration of
3 the three-year period. Where the assessment of the tax imposed
4 by this chapter has been made within the period of limitation
5 applicable thereto, the tax may be collected by levy or by a
6 proceeding in court under chapter 231; provided that the levy is
7 made or the proceeding was begun within fifteen years after the
8 assessment of the tax. For any tax that has been assessed prior
9 to July 1, 2009, the levy or proceeding shall be barred after
10 June 30, 2024.

11 Notwithstanding any other provision to the contrary in this
12 section, the limitation on collection after assessment in this
13 section shall be suspended for the period:

- 14 (1) The taxpayer agrees to suspend the period;
15 (2) The assets of the taxpayer are in control or custody
16 of a court in any proceeding before any court of the
17 United States or any state, and for six months
18 thereafter;
19 (3) An offer in compromise under section 231-3(10) is
20 pending; and



1 (4) During which the taxpayer is outside the State if the
2 period of absence is for a continuous period of at
3 least six months; provided that if at the time of the
4 taxpayer's return to the State the period of
5 limitations on collection after assessment would
6 expire before the expiration of six months from the
7 date of the taxpayer's return, the period shall not
8 expire before the expiration of the six months.

9 In the case of a false or fraudulent certificate filed with
10 the intent to evade tax, or of a failure to file a certificate,
11 the tax may be assessed or levied at any time."

12 SECTION 9. Section 247-9, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§247-9 Enforcement and administration.** The director of
15 taxation shall administer and enforce the taxes imposed by this
16 chapter. The director may prescribe rules and regulations not
17 inconsistent with the provisions herein for their detailed and
18 efficient administration. At any time after the making of a
19 conveyance [~~or transfer~~] subject to the tax imposed by this
20 chapter, the director may investigate and ascertain whether the
21 tax, in the proper amount, was paid. For this purpose, the



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1 director may invoke all statutory powers vested in the director,
2 including but not limited to section 231-7."

3 SECTION 10. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 11. This Act shall apply to conveyances of
8 interests in real property occurring after June 30, 2015.

9 SECTION 12. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 13. This Act shall take effect on July 1, 2015.

12

INTRODUCED BY: *Shannon Chun Oakland*

Bill Hines
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S.B. NO. 122

Report Title:

Conveyance Tax; Controlling Interest Transfer

Description:

Imposes a conveyance tax on the conveyance of a controlling interest of an entity that has an interest in real property in the State. Applies to conveyances occurring after 06/30/2015. Effective 07/01/2015.

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

