
A BILL FOR AN ACT

RELATING TO THE CONTROLLING INTEREST TRANSFER TAX.

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

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

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

9 (1) The transfer or acquisition of the controlling
10 interest occurs within any thirty-six-month period;

11 (2) The controlling interest was transferred in a single
12 transaction or a series of transactions by a single
13 person or acquired by a single person or a group of
14 persons acting in concert;

15 (3) The entity has an interest in real property located in
16 this State;



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

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

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

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

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



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

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

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

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

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



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

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

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

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

13 (e) All taxes collected pursuant to this section shall be
14 deposited in accordance with section 247-7.

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

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



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

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

10 "(a) There is created a dwelling unit revolving fund. The
11 funds appropriated for the purpose of the dwelling unit
12 revolving fund, controlling interest transfer taxes distributed
13 pursuant to section 247-7(3), and all moneys received or
14 collected by the corporation for the purpose of the revolving
15 fund shall be deposited in the revolving fund. The proceeds in
16 the revolving fund shall be used to reimburse the general fund
17 to pay the interest on general obligation bonds issued for the
18 purposes of the revolving fund, for the necessary expenses in
19 administering housing development programs and regional state
20 infrastructure programs, and for carrying out the purposes of
21 housing development programs and regional state infrastructure



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

10 SECTION 3. Section 247-1, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§247-1 Imposition of tax.** There is hereby imposed and
 13 shall be levied, collected, and paid, a tax as hereinafter
 14 provided, on all transfers or conveyances of realty or any
 15 interest therein, by way of deeds, leases, subleases,
 16 assignments of lease, agreements of sale, assignments of
 17 agreement of sale, instruments, writings, and any other
 18 document, whereby any lands, interests in land, tenements, or
 19 other realty sold shall be granted, assigned, transferred, or
 20 otherwise conveyed to, or vested in, the purchaser or
 21 purchasers, lessee or lessees, sublessee or sublessees, assignee



1 or assignees, or any other person or persons, by the person's or
2 their direction. For purposes of this chapter, "transfers or
3 conveyances" shall include the transfer or acquisition within
4 any thirty-six-month period of a controlling interest in any
5 entity with an interest in real property located in this State
6 for valuable consideration."

7 SECTION 4. Section 247-2, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§247-2 Basis and rate of tax.** (a) The tax imposed by
10 section 247-1 shall be based on the actual and full
11 consideration (whether cash or otherwise, including any promise,
12 act, forbearance, property interest, value, gain, advantage,
13 benefit, or profit), paid or to be paid for all transfers or
14 conveyance of realty or any interest therein, or in the case of
15 a transfer or acquisition of a controlling interest pursuant to
16 section 247- , the fair market value of the real property
17 owned by the entity at the time the controlling interest is
18 transferred or acquired, that shall include any liens or
19 encumbrances thereon at the time of sale, lease, sublease,
20 assignment, transfer, or conveyance, and shall be at the
21 following rates:



- 1 (1) Except as provided in paragraph (2):
- 2 (A) Ten cents per \$100 for properties with a value of
- 3 less than \$600,000;
- 4 (B) Twenty cents per \$100 for properties with a value
- 5 of at least \$600,000, but less than \$1,000,000;
- 6 (C) Thirty cents per \$100 for properties with a value
- 7 of at least \$1,000,000, but less than \$2,000,000;
- 8 (D) Fifty cents per \$100 for properties with a value
- 9 of at least \$2,000,000, but less than \$4,000,000;
- 10 (E) Seventy cents per \$100 for properties with a
- 11 value of at least \$4,000,000, but less than
- 12 \$6,000,000;
- 13 (F) Ninety cents per \$100 for properties with a value
- 14 of at least \$6,000,000, but less than
- 15 \$10,000,000; and
- 16 (G) One dollar per \$100 for properties with a value
- 17 of \$10,000,000 or greater; and
- 18 (2) For the sale of a condominium or single family
- 19 residence for which the purchaser is ineligible for a
- 20 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~~] the actual and full consideration; provided that in
- 20 the case of a lease or sublease, this chapter shall apply only
- 21 to a lease or sublease whose full unexpired term is for a period



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

11 (b) For purposes of this section, "fair market value"
 12 means, for purposes of transfers or acquisitions of a
 13 controlling interest pursuant to section 247- , the value of
 14 real property, as stated on the most recent real property
 15 assessment issued by the county in which the real property is
 16 located."

17 SECTION 5. Section 247-3, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§247-3 Exemptions.** The tax imposed by section 247-1
 20 shall not apply to:



- 1 (1) Any document or instrument that is executed prior to
2 January 1, 1967;
- 3 (2) Any document or instrument that is given to secure a
4 debt or obligation;
- 5 (3) Any document or instrument that only confirms or
6 corrects a deed, lease, sublease, assignment,
7 transfer, or conveyance previously recorded or filed;
- 8 (4) Any document or instrument between husband and wife,
9 reciprocal beneficiaries, or parent and child, in
10 which only a nominal consideration is paid;
- 11 (5) Any document or instrument in which there is a
12 consideration of \$100 or less paid or to be paid;
- 13 (6) Any document or instrument conveying real property
14 that is executed pursuant to an agreement of sale, and
15 where applicable, any assignment of the agreement of
16 sale, or assignments thereof; provided that the taxes
17 under this chapter have been fully paid upon the
18 agreement of sale, and where applicable, upon [~~such~~]
19 the assignment or assignments of agreements of sale;
- 20 (7) Any deed, lease, sublease, assignment of lease,
21 agreement of sale, assignment of agreement of sale,



1 instrument or writing in which the United States or
2 any agency or instrumentality thereof or the State or
3 any agency, instrumentality, or governmental or
4 political subdivision thereof are the only parties
5 thereto;

6 (8) Any document or instrument executed pursuant to a tax
7 sale conducted by the United States or any agency or
8 instrumentality thereof or the State or any agency,
9 instrumentality, or governmental or political
10 subdivision thereof for delinquent taxes or
11 assessments;

12 (9) Any document or instrument conveying real property to
13 the United States or any agency or instrumentality
14 thereof or the State or any agency, instrumentality,
15 or governmental or political subdivision thereof
16 pursuant to the threat of the exercise or the exercise
17 of the power of eminent domain;

18 (10) Any document or instrument that solely conveys or
19 grants an easement or easements;

20 (11) Any document or instrument whereby owners partition
21 their property, whether by mutual agreement or



1 judicial action; provided that the value of each
2 owner's interest in the property after partition is
3 equal in value to that owner's interest before
4 partition;

5 (12) Any document or instrument between marital partners or
6 reciprocal beneficiaries who are parties to a divorce
7 action or termination of reciprocal beneficiary
8 relationship that is executed pursuant to an order of
9 the court in the divorce action or termination of
10 reciprocal beneficiary relationship;

11 (13) Any document or instrument conveying real property
12 from a testamentary trust to a beneficiary under the
13 trust;

14 (14) Any document or instrument conveying real property
15 from a grantor to the grantor's revocable living
16 trust, or from a grantor's revocable living trust to
17 the grantor as beneficiary of the trust;

18 ~~[(15) Any document or instrument conveying real property, or~~
19 ~~any interest therein, from an entity that is a party~~
20 ~~to a merger or consolidation under chapter 414, 414D,~~



1 ~~415A, 421, 421C, 425, 425E, or 428 to the surviving or~~
2 ~~new entity;~~

3 ~~(16)]~~ (15) Any document or instrument conveying real
4 property, or any interest therein, from a dissolving
5 limited partnership to its corporate general partner
6 that owns, directly or indirectly, at least a ninety
7 per cent interest in the partnership, determined by
8 applying section 318 (with respect to constructive
9 ownership of stock) of the federal Internal Revenue
10 Code of 1986, as amended, to the constructive
11 ownership of interests in the partnership; and

12 ~~[(17)]~~ (16) Any document or instrument that conforms to the
13 transfer on death deed as authorized under chapter
14 527."

15 SECTION 6. Section 247-4, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) ~~[The]~~ Except as provided in section 247- , the tax
18 imposed by this chapter shall be paid by the grantor, lessor,
19 sublessor, assignor, transferor, seller, conveyer, or any other
20 person conveying realty, or any interest therein, by a document
21 or instrument subject to section 247-1; except, however, in the



1 case where the United States or any agency or instrumentality
2 thereof or the State or any agency, instrumentality, or
3 governmental or political subdivision thereof is the grantor,
4 lessor, sublessor, assignor, transferor, seller, or conveyor,
5 the tax shall be paid by the grantee, lessee, sublessee,
6 assignee, transferee, purchaser, or conveyee, as the case may
7 be."

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

10 "**§247-7 Disposition of taxes.** All taxes collected under
11 this chapter shall be paid into the state treasury to the credit
12 of the general fund of the State, to be used and expended for
13 the purposes for which the general fund was created and exists
14 by law; provided that of the taxes collected each fiscal year:

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

18 (2) Fifty per cent or \$38,000,000, whichever is less,
19 shall be paid into the rental housing revolving fund
20 established by section 201H-202[~~-~~]; and



1 (3) _____ per cent or \$ _____, whichever is less,
2 shall be paid into the dwelling unit revolving fund
3 established by section 201H-191."

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect on January 1, 2025.



Report Title:

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

Description:

Establishes that the transfer of a controlling interest in an entity that owns real property in the State shall be subject to the conveyance tax established in Chapter 247, HRS. Requires an unspecified amount of the taxes established under Chapter 247, HRS, to be deposited into the Dwelling Unit Revolving Fund. Requires the Department of Taxation to adopt rules. (SD2)

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