

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 247
CONVEYANCE TAX

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Historical Note: Chapter 247 of Title 18, Administrative Rules, is based substantially upon Regulation No. 73-8 of the Department of Taxation. [Eff 1/6/75; R 2/16/82]

HRS §247-1 §18-247-1 Imposition of tax. Chapter 247 of the Hawaii Revised Statutes, imposes a tax on all transfers or conveyances of realty or any interest therein by way of deeds, leases, subleases, assignments of leases, 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 any other person, by his direction. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-1)

HRS §247-1 §18-247-1.1 Definitions. (a) As used in these rules:

“Actual and full consideration” means the price or amount (whether cash or otherwise) actually paid or ultimately required to be paid for real property including the value of any liens, or encumbrances thereon at the time of sale, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, transfer, or conveyance.

“Authorized representative” means a party or parties who or which have been duly authorized or duly appointed to act for and on behalf of the subject party or parties, such as an executor, trustee, guardian, administrator, commissioner, attorney-at-law or attorney-in-fact. A licensed real estate broker, escrow agent, escrowee or escrow holder may qualify as an “authorized representative” provided he or it is duly authorized in writing.

“Date of transaction” means the date the document is executed, or the date of the last acknowledgment, whichever is later.

“Director” means the Director of Taxation of the State of Hawaii.

“Document” means deeds, leases, subleases, assignments of lease, agreements of sale, assignments of agreement of sale, instruments, writings, and the like.

“Purchaser” means grantee, lessee, sublessee, assignee, transferee, vendee, or conveyee.

“Seller” means grantor, lessor, sublessor, assignor, transferor, vendor, or conveyor.

(b) Use of gender and number. Words importing the singular may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may also include the feminine. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-9)

HRS §247-2 **§18-247-2** **Basis and rate of tax.** (a) The tax imposed by chapter 247, HRS, aforesaid (hereinafter referred to as “Conveyance Tax”), shall be based on the actual and full consideration, and shall be at the rate of five cents (\$.05) on each one hundred dollars (\$100) of such actual and full consideration; provided, however, that in the case of a lease or sublease the provisions of the conveyance tax law shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including where appropriate those cases where the lease has been extended or amended, 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 six per cent (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 conveyance tax imposed for each transaction shall be not less than one dollar (\$1.00).

(b) In exchange of properties, the consideration shall be the market value of all properties exchanged plus any other consideration. In assignments of leases, the tax shall be based on the actual and full consideration paid for the leasehold and the value of any increase in lease rental discounted to present value.

(c) A schedule showing the amount of tax applicable to the actual and full consideration paid is attached hereto, marked Appendix I, and made a part hereof and examples of how to compute the lease rent when there is an extension of term or increase in length, marked Appendix II. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-2)

HRS §247-3 **§18-247-3** **Exemptions.** The conveyance tax shall not apply to:

(a) Any document which is executed prior to January 1, 1967.
 (b) Any document which is given only to secure a debt or obligation.
 (c) Any document which only confirms or corrects a document previously recorded or filed.
 (d) Any document between a husband and wife, or parent and child, in which only a nominal consideration is paid. “Parent” means a person who is the natural parent of the child or who has legally adopted the child, and the word “child” includes both minors and adults.

(e) Any document in which there is a consideration of \$100 or less paid or to be paid.

(f) Any document or instrument 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 thereof; provided, however, that the conveyance taxes have been fully paid upon such agreement of sale, and where applicable, upon such assignment of agreement of sale.

(g) Any document 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 are the only parties thereto.

(h) Any document 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, executed, pursuant to eminent domain proceedings, actual or threatened, 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.

(j) Any document or instrument which solely conveys or grants an easement or easements. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-3)

HRS §247-4 **§18-247-4** **Payment and liability of the tax.** (a) The conveyance tax shall be paid by the seller or any other person conveying realty, or any interests therein, by a document subject to the provision of Administrative Rules §18-247-1; 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 seller, the conveyance tax shall be paid by the purchaser.

(b) The conveyance tax shall be paid at the office of the Registrar of Conveyances and shall be due and payable in any event prior to the imprinting of the seal as hereinafter provided in §18-247-5. Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39, HRS. The penalty for late filing shall commence after the ninety day filing period of the taxable transaction. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-4)

HRS §247-5 **§18-247-5** **Imprinting of seal.** (a) The conveyance tax shall be evidenced as paid by the imprinting of a seal on the document at the time that the said tax is paid at the office of the registrar of conveyances. The seal shall be so imprinted upon payment of the tax together with the appropriate penalty and interest where applicable, and, in any event, prior to the recordation or filing of the document with the registrar of conveyances or the assistant registrar of the Land Court.

(b) In implementing these rules, the director may require that the documents be brought to any of the district offices of the department of taxation for an examination of the document, or for the purpose of having the seal imprinted on the document. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-5)

HRS §247-6 §18-247-6 Certificate of conveyance required. (a) Except as otherwise provided in these rules, at least one person made a party, with the exception of governmental bodies, agencies, or officers, to a document subject to the provisions of §18-247-1 herein, or his duly authorized representative shall file with the director of the office of the registrar of conveyances a certificate of conveyance numbered and designated as Form P-64A, "Conveyance Tax Certificate" declaring the actual and full consideration of the property transferred, and any other information as the director shall require. When a single document conveys more than one lot or parcel, the certificate shall list a separate declaration of the actual and full consideration for each lot or parcel subject to waiver by the director, or his designee, prior to the imprinting of the conveyance tax seal. The certificate shall be appended to the document and shall be filed with the director at the office of the registrar of conveyances.

(b) No certificate is required to be filed for any document executed prior to January 1, 1967, and for any document to secure a debt or obligation or release of such security thereof. A certificate of exemption shall be filed with the director as aforesaid and as required herein within ninety days after the transaction, and, in any event, prior to the recordation or filing of the document with the registrar of conveyances or the assistant registrar of the Land Court for the following situations:

- (1) In the case of any document described in section 247-3(3), HRS, and §18-247-3(c), at least one person made a party to such document shall file a certificate declaring that the document merely conforms or corrects a document previously recorded or filed.
- (2) In the case of any document described in section 247-3(4), HRS, and §18-247-3(d), at least one person made a party to such document shall file a certificate declaring the amount of the nominal consideration paid and the marital or parental relationship of parties.
- (3) In the case of any document described in section 247-3(5), HRS, and §18-247-3(e), at least one person made a party to such document shall file a certificate declaring the reasons why the consideration is \$100.00 or less.
- (4) In the case of any document described in section 247-3(6), HRS, and §18-247-3(f), at least one person made a party to such a document shall file a certificate declaring that the document is made pursuant to an agreement of sale, and where applicable, assignment of agreement of sale.
- (5) In the case of any document described in section 247-3(8), HRS, and §18-247-3(h), at least one person made a party to the tax sale as grantee, assignee, or transferee shall file a certificate declaring the full and actual consideration of the property transferred.

(c) In order to comply with the provisions of §18-247-6, at least one person made a party to a document subject thereto or his duly authorized representative, shall make a declaration of all pertinent information with respect to the property transferred by completing and signing the form, numbered and designated as Form P-64B, "Exemption from Conveyance Tax" and filing the same with the director, as aforesaid.

(d) Notwithstanding the foregoing, where the director deems it impracticable to require the filing of a certificate or to obtain the signature of any or all parties to a certificate required under this section, he may, in his discretion, waive the requirement of filing the certificate or of securing the signature of any party to the certificate.

(e) No document, for which a certificate is required to be filed with the director 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 certificate has been duly filed. If the document is exempt from the conveyance tax, such an imprint shall be so affixed stating the exemption, the receipt of the required certificate and the date of filing. If the exempt document is additionally exempt from the filing of a certificate, this fact shall be so imprinted.

(f) Confidentiality of the certificate. 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 certificate filed or to wilfully permit any such certificate or any copy thereof to be seen or examined by any person other than the person executing such certificate or his 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 (\$500) or imprisonment not exceeding one year, or both. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-6)

HRS §247-7 §18-247-7 Disposition of taxes. All taxes collected under chapter 247, HRS, shall be paid into the State Treasury to the credit of the general fund of the State. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-7)

- HRS §247-8 §18-247-8 Refunds.** (a) The director 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 231-23, HRS. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §§231-23, 247-8)
- HRS §247-9 §18-247-9 Enforcement and administration.** (a) The director shall administer and enforce the conveyance tax law. At any time after the making of a conveyance or transfer subject to the conveyance tax, 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 231-7, HRS. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-9)
- HRS §247-10 §18-247-10 Collection of taxes.** (a) All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of these rules, so far as applicable, for the purpose of collecting the conveyance tax. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-10)
- HRS §247-11 §18-247-11 Penalty for false declaration.** (a) Any person knowingly making a false declaration on any certificate provided for in §18-247-6 herein for the purpose of defrauding the State, shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or both. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-11)
- HRS §247-12 §18-247-12 Jurisdiction; district judges.** (a) Enforcement of the penalties provided herein shall be within the jurisdiction of the several district judges in accordance with the provisions of section 231-12, HRS. [Eff 2/16/82] (Auth: HRS §§231-3(9), 247-9) (Imp: HRS §247-12)
- HRS §247-13 §18-247-13 (Reserved)**

Appendix I

Conveyance Tax Schedule

Appendix II

Computation of Lease Rent in Extensions
on Amendments of Lease

Extensions or amendments of lease shall be taxable if there is any extension of term or any increase in rent. The tax shall be based on the rent capitalized for the extended term, or the period where the rental has been increased, or both, provided, the rent to be capitalized shall be the difference in rent.

Example No. 1:Extension of term where there is no increase in rent.

Original lease is for 55 years and the rent is \$100 a year. Ten years later, an extension is granted. There is still 45 years remaining on the original lease. The lease extension is for another 10 years, and the rent for this additional term is \$100 a year.

Solution: Capitalize the rent using the graduated rent method for the extended period of the lease.

$$\begin{aligned} &55 \text{ year factor minus } 45 \text{ year factor times rent involved equals capitalized rent } (15.990 - \\ &15.455) \times \$100 = \text{capitalized rent (called CR)} \\ &\$53.50 = \text{CR} \end{aligned}$$

Example No. 2:Extension of fixed rent period and there is no rental increase and no extension in the overall term of the lease.

Original lease is for 55 years. \$100 is the rent for the first 30 years of the lease.

Ten years later, the fixed rent period is extended by 10 years. The \$100 yearly rent remains the same.

Solution: This extension is not taxable as it does not add value to the leasehold.

Example No. 3:Extension of fixed rent period with an increase in the fixed rent, and no increase in the overall term of the lease.

Original lease is for 55 years. The rent is fixed at \$100 for the first 30 years.

Ten years later, the fixed rent is increased to \$150 and the fixed rent period is extended 10 years. At this time there is 45 years remaining on the original lease.

Solution: Capitalize the difference in rent for the remaining term of the lease.

$$\begin{aligned} &45 \text{ year factor times the net total of the fixed rent after the original fixed rent value is} \\ &\text{subtracted from the new fixed value and this will equal the capitalized rent (called CR)} \\ &(15.455 \times (\$150 - \$100) = \text{CR}). \\ &15.455 \times \$50 = \text{CR} \\ &\$772.75 = \text{CR} \end{aligned}$$

Example No. 4:Extension of lease term where an additional fixed rent period is added and this additional period has an increased rent figure.

Original lease is for 55 years. The first 30 years of this lease have a fixed rent of \$200. The next 5 years of the rent have a fixed rent of \$250.

<u>Period</u>	<u>Term</u>	<u>Fixed Rent Amount</u>
1st period	30 years	\$200
2nd period	5 years	\$250

Nine years later with 46 years remaining on the original lease term the following changes occur. First, the lease term is extended 5 years. Second, a third fixed rent period is added and rent for this period is \$300. Third, the extended term of the lease is now 51 years (46 years remaining on original lease plus 5 year extension of lease).

Solution: Since the rent is increased for the last 25 years of the lease, capitalize the difference in the rent for this portion of the lease. 46 year factor minus 26 year factor times the net difference between the new fixed rent and the old fixed rent

$$(15.524 - 13.003) \times (\$300 - \$250)$$

$$2.521 \times \$50 = \$126.05$$

51 year factor minus 46 year factor times new fixed rent

$$(15.583 - 15.524) \times \$300$$

$$0.059 \times \$300 = \$17.70$$

\$126.05

17.70

Total capitalized rent \$143.75

Note: The factors used are based on the Inwood Table, the present worth of one per annum. One uses the compound interest table which deals with the present value of an ordinary annuity.