From: Lawrence Scadden [lscadden@hawaii.rr.com]
Sent: Saturday, March 06, 2010 5:10 PM
To: HSGtestimony
Subject: Testimony in support of SB 2575

Representative Rida Cabanilla,
Chair, Committee on Housing

Testimony from Lawrence Scadden, Advocacy Chair, Big Island Community Alliance Partners
76-177 Kamehamalu Street
Kailua-Kona, HI 96740
Telephone: 808-329-7133

Committee on Housing Hearing, 3-10-2010, House Conference Room 329

In support of SB 2575, SD2.

Representative Cabanilla and Members of the House Committee on Housing:

I am writing in support of SB 2575, SD2, on behalf of Community Alliance Partners on the Big Island. This measure contains two points of specific interest to residents who are homeless or who are living in poverty. We who advocate on their behalf support this legislation because it can increase the amount of affordable housing in the state of Hawaii.

First, there continues to be a need for additional affordable housing for the large number of homeless and poverty-stricken residents in Hawaii. Too often housing that has, in the past, been considered affordable, has rents raised significantly, increasing revenue for owners, but placing the units beyond the affordability of many low-income individuals and families. This bill requires housing considered to be affordable to remain so for at least ten years after a resale. That is a positive step toward increasing the state inventory of affordable rentals.

Second, The state's rental trust fund needs to be shored up against losses from other revenue sources (e.g., conveyance taxes.) This bill would create an anti-speculation capital gains tax with 50% of the revenue to be placed in the rental trust fund, revenue that will aid many needy individuals and families.

Thank you for the opportunity to submit our testimony. We urge the House of Representatives Housing Committee to support the passage of this measure and recommend its passage to the full House and legislature.

Lawrence Scadden
Advocacy Committee Chair, Big Island Community Alliance Partners

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March 9, 2010

The Honorable Rida Cabanilla, Chair
House Committee on Housing
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2575, S.D.2, Relating to Housing

HEARING: Wednesday, March 10, 2010 at 9:00 a.m.

Aloha Chair Cabanilla, Vice Chair Chong and Members of the Committee:

I am Craig Hirai, a member of the Taxation and Finance Subcommittee, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **opposes** S.B. 2575, S.D.2 which: (a) assesses a graduated anti-speculation tax on the capital gains realized on real property held from less than six months and up to twenty four months before being sold; and (b) deposits revenues equally in to the General Fund and the Rental Housing Trust Fund.

S.B. 2575, S.D.2 imposes an additional anti-speculation capital gains tax of: (a) 60% of the capital gains tax owed if real property was held by the seller for less than six months; (b) 30% of the capital gains tax owed if real property was held by the seller for six months but less than twelve months; and (c) 15% of the capital gains tax owed if real property was held by the seller for twelve months up to and including twenty-four months.

Please note that under federal and Hawai'i income tax law, gains received by a real estate dealer from his or her business operations will be taxed as ordinary income (not capital gain).

A real estate dealer is a person who buys and sells real property as a separate business, with a view to the gains and the profits derived from such sales. Whether a taxpayer is a real estate dealer or investor is a question of fact. A taxpayer may be found to be engaged in the business of buying and selling real estate by reason of the taxpayer's organization and method of activities.

The IRS is unlikely to challenge a taxpayer who claims to be a real estate dealer in order to pay tax at the ordinary income rate (which is the same as the short-term capital gains rate) and thereby avoid the anti-speculation capital gains tax under S.B. 2575, S.D.2. The entire burden of enforcing the anti-speculation capital gains tax will therefore fall on the State of Hawai'i Department of Taxation.

HAR respectfully submits that S.B. 2575, S.D.2 is unfair to small investors, will not materially impede the speculative turnover of real property in Hawai'i, and may not raise much additional revenue for the General Fund and Rental Housing Trust Fund.

Mahalo for the opportunity to testify.

From: Tina Desuacido [tina500@juno.com]
Sent: Monday, March 08, 2010 10:55 AM
To: HSGtestimony
Subject: Tax Foundation Testimony
Attachments: s2575e10.pdf

TRANSMISSION OF TESTIMONY

Date: Monday, March 8, 2010

To: House Committee on Housing

From: Tax Foundation of Hawaii

TOTAL PAGES - 3

For: Representative Rida Cabanilla, Chair

Testifier: Lowell L. Kalapa, President - Tax Foundation of Hawaii

Lowell Kalapa will not be attending the hearing.

Date of Hearing: March 10, 2010

Time of Hearing: 9:00 am

SB 2575, SD-2 - Relating to Housing (3 pages)

Number of Copies - 20

Thank you

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Anti-speculation capital gains tax

BILL NUMBER: SB 2575, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to impose an anti-speculation, short-term capital gains tax on the net capital gains realized from the sale of real property, less commissions, fees, and other charges related to the sale. The tax shall be imposed on the seller and shall be 60% of the capital gains tax owed on the sale of real property if held by the seller for less than six months prior to the sale; 30% if the real property was held for six months but less than 12 months; or 15% if the real property was held between 12 months and 24 months.

This tax shall not apply to: (1) real property sold to provide affordable housing to a resident earning less than 140% of the median Hawaii income as determined by the department of taxation which will not be resold in less than ten years; (2) a principal residence sold due to change in employment, health, or unforseen circumstances; and (3) properties exempted under IRC section 1033. Stipulates that the sale of unimproved real property shall be subject to this section. Requires the department of taxation to deposit 50% of all tax realizations pursuant to this section into the rental housing trust fund and 50% into the general fund. Properties that qualify for a county homeowner's exemption or to military personnel selling property as a result of military relocation orders shall not be subject to this tax.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS: It appears that this measure is being proposed as a means of penalizing "speculators" as it proposes an anti-speculation capital gains tax on the "profit" realized from the sale of residential real property if the property is sold within two years after acquisition unless the property is to be utilized as affordable housing.

It should be noted that the additional tax may not deter prospective investors as there is nothing magical about holding property for a number of years before selling the property as any additional costs incurred, such as proposed by this measure, will no doubt be passed on to the buyer or figured into the selling price of the residence. Thus, the proposed measure may increase the selling price of housing in the state rather than deter so-called speculative buying.

Speculation is defined as to assume a business risk in hope of gain, especially to buy and sell in expectation of profiting from market fluctuations. Perhaps in another type of society or kind of economic philosophy, such a tax would be acceptable, if not mandatory. However, in our free-market economy speculation is encouraged. Unfortunately, when the speculation is in real estate or more specifically in homes, it elicits a negative response from a community where the availability of housing is limited. Thus, perhaps if one were to point a finger of blame for the rise in the cost of housing, it should be at government. With restrictions on conversion of lands from other uses to urban use and numerous regulations, building codes, infrastructure standards, lengthy approval processes, etc., it is no wonder that the supply of housing cannot meet the current demand. A good investor will see that where supply is limited, there is no doubt that prices will increase as the supply becomes even more constricted.

Speculation and the responding taxes were quite popular years ago when "foreign investors" invaded the real estate market and homeowners and commercial properties were eager to cash in on their real estate holdings. Once those investors left, the economic doldrums of the 1990's set in where many residents were over their heads in debt as the equity in their residences sank below mortgage levels. Those who were caught in this vacuum discovered that real estate is an illiquid and risky investment. Unlike a savings account, the funds invested in real property cannot be shifted or recouped very quickly nor do they pay a guaranteed interest rate. Property investors will buy and sell when conditions are most favorable. That favorable moment may occur within two years after purchase or it could occur in ten years after purchase. The market dictates when and if conditions are favorable for a sale of assets. A tax, such as this measure proposes, merely skews the market and may, in fact, deter any investment as there is the risk of incurring the tax should the asset be sold within the prescribed period.

A measure such as this speculation tax fails to recognize the forces and factors which make for an attractive environment in which to do business, one that recognizes that no investor plunks his money down so he can take a loss. If enacted, this measure would send out strong signals to investors that Hawaii is not a good place to invest capital if there is the potential that the philosophy reflected in this proposal will be extended to other types of investments, whether it be real or personal property. Without the influx of new capital, the potential for economic growth in Hawaii will continue to be dismal.

It is interesting to note that an affordable housing project on Oahu which initially barred investors, imposed buybacks and shared appreciation provisions announced that it would lift those restrictions and invited investors to consider the property. That announcement underscores the importance of investors in the real estate market. Much as lawmakers would like to believe that "investors" are nasty "speculators," investors play an important role in making a housing project pencil out. Should a measure such as this be adopted, the message would be very clear that investors are not welcomed in Hawaii, in particular in the real estate market. Whether or not the holding period is short termed or long-term, the message would still be that investors are unwelcome in Hawaii.

While the proposed measure would earmark 50% of the receipts from the proposed tax for the rental housing trust fund, it should be remembered that earmarking such receipts should be approached with extreme caution. Reliance on an activity that may be affected by the tax imposed forebodes the inadequacy of the revenues to be realized. If the tax is successful in deterring quick turnovers of such land, then the revenues may prove to be insufficient to accomplish the goals of the fund.

On the other hand, if investors find the new tax a matter of course for doing business and investing in such land, then there may be a plethora of revenues for the fund. But, at the same time, it must be realized that the cost of the tax will be passed on to subsequent purchasers and the cost of all such real estate will continue to escalate at a much faster pace. So what is taxed as a "speculative" sale may be offered for owner occupancy somewhere down the line; however, the cost to the potential owner-occupant will have been artificially inflated by the amount of the speculation tax. The result is that all similar properties will rise in cost as other owners believe their properties can command a similar asking price.

Instead of such draconian measures as this tax represents, lawmakers should be searching for ways to make Hawaii an attractive place to do business, to streamline the permitting and land use process, to provide the supporting infrastructure to the agricultural community that is so desperately needed, and reduce the burden of taxes and the commensurate spending that drives the greed for new and more revenues. Structural reform is needed in a community where government is the intimidating giant overshadowing the private sector that produces the jobs needed by Hawaii's people. It is time that lawmakers took a long hard look outside their ivory towers and if they did, measures such as this would never be forwarded.

One of the economists contracted for the 1989 Tax Review Commission was asked to look at the issue of nonresident investment and speculation in real estate in Hawaii which was rampant at the time and her conclusion was:

> External investment has played a significant role in the growth and development of Hawaii's economy, and it appears that the state will continue to depend on external sources of capital. This creates a difficult problem for tax policy when returns to foreign investors are not taxed the same as returns to resident or domestic nonresident investors. On the one hand, discriminatory taxation is unconstitutional with negative impacts on desirable capital flows; on the other hand, uncaptured capital gains on foreign investment is a violation of the equity principle. . . . New capital formation has positive net benefits for the state. Policy changes should not act to discourage such investment. Indeed, they should encourage new capital formation. . .

In the drive for affordable housing, it is government that is the culprit, exacting costly requirements that delay the timely delivery of such housing and, in turn, drive up the cost. One has to also question whether or not all of the tax incentives thrown at the construction industry during the past half dozen years drove the cost of construction higher at a much faster pace making the term affordable housing an oxymoron.

Digested 3/8/10

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 09, 2010 3:24 PM
To: HSGtestimony
Cc: poshiro@abinc.com
Subject: Testimony for SB2575 on 3/10/2010 9:00:00 AM
Attachments: SB2575SD2CapitalGainsTax.pdf

Testimony for HSG 3/10/2010 9:00:00 AM SB2575

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Paul Oshiro
Organization: Alexander & Baldwin
Address: 822 Bishop Street Honolulu, HI
Phone: 525-6640
E-mail: poshiro@abinc.com
Submitted on: 3/9/2010

Comments:

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SB 2575 SD2
RELATING TO HOUSING

PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.

MARCH 10, 2010

Chair Cabanilla and Members of the House Committee on Housing:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 2575 SD2, "A BILL FOR AN ACT RELATING TO HOUSING." We respectfully oppose this bill.

This bill imposes a new capital gains tax on the sale of real property held for less than twenty four months. We are concerned with the negative impact that this measure may have upon Hawaii's businesses, residents, and our economy. We anticipate that the new tax imposed by this bill, which will be imposed on both residential and non-residential properties, will increase both the cost of housing and cost of doing business here in Hawaii. The bill may also have a negative impact in attracting outside investments in Hawaii businesses and other entities.

Based on the aforementioned we respectfully request that this bill be held in your Committee.

Thank you for the opportunity to testify.