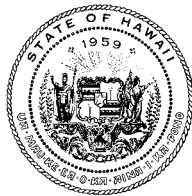


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

STANLEY SHIRAKI
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

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**SENATE COMMITTEE ON WAYS & MEANS
TESTIMONY REGARDING SB 2887 SD1
RELATING TO TAXATION**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 22, 2010
TIME: 10AM
ROOM: 211

This measure, among other things, amends the provisions relating to the withholding tax on real property sold by nonresidents. As amended, this measure requires an affidavit to be provided by a transferee where the property is acquired by foreclosure. The measure was also amended to provide a "deminimis" exception for timeshares.

The Department of Taxation (Department) provides the following comments.

CLARIFY IN THE FORECLOSURE AFFIDAVIT THAT NO INCOME TAX IS DUE—The Department does not object to exempting transactions where the transferee acquires the real property via foreclosure; provided that there would otherwise be no gain (or tax owed) on the transaction. The Department is acceptable to the affidavit requirement in order to obtain an exemption from paying withholding taxes on foreclosure transactions; provided that the government is given sufficient basis to ensure no income taxes are owed. The Department requests that the following be added:

If the transferee furnishes an affidavit to the department that the transferee acquired the real property pursuant to foreclosure or a deed in lieu of foreclosure and that no income tax is due on the transfer;

CLARIFY PARAGRAPH (3)—The Department is unclear of the purpose of proposed paragraph (3). The Department is concerned that, without further elaboration on this paragraph's intent, that it could impact tax collections.

RE-EVALUTATE DEMINIMIS EXCEPTION THRESHOLD FOR TIMESHARES—The Department, at this time, does not object to a deminimis exception for timeshares. However, the Department suggests that the committee study the current \$100,000 amount to ensure it is practical and will not impact tax collections. The Department believes that the \$100,000 threshold for timeshare may be too high. A large majority of timeshares may be unnecessarily exempted, which are owned by nonresidents who are the target of this tax.

REVENUE LOSS—It is estimated that this measure will result in a revenue loss of approximately \$95,000 per year, until the rate of foreclosures begins to fall.



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

February 22, 2010

TO: Senate Ways and Means Committee
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

FROM: Ed Thompson
ARDA-Hawaii

DATE: Monday, February 22, 2010
Conference Room 211

RE: **SB2887,SD1, Relating to Taxation**

Chair Kim and Members of the Committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for ten percent of the State's lodging inventory with 7,700 timeshare units. Timeshare has had consistent occupancy rates, even during the current tough economic times. This has made our industry a vital partner and a diverse component of the visitor industry in Hawaii.

ARDA-Hawaii supports SB2887, SD1. The purpose of this provision of HARPTA is to ensure that the State has the ability to collect taxes on transfers of real estate owned by non-residents and creates a process whereby a buyer and seller must notify the State of the transaction. The proposed changes in paragraphs (f) (2) and (f) (3) are intended to balance the needs of the State with the likely impact from a transaction from which no tax is owed, as in the case of a sale at a loss or by virtue of a creditor acquiring the property due to a failure of a borrower from paying on a mortgage.

As currently written, all non-resident sellers of timeshares in resale transactions must either pay the Hawaii Department of Taxation ("DOTAX" or the "Department") five percent of the gross proceeds or file a Form N-288 with DOTAX. The N-288 is to substantiate that the property was sold at a loss. DOTAX must then quickly review and approve the N-288 and return it to the seller prior to the closing. If the Department cannot timely do this, the seller will need to have five percent withheld and then file a non-resident return, claiming a refund for the full amount of the withholding.

There are an increasing number of timeshare transactions in Hawaii each year that are either property exchanges wherein the timeshare owner is “upgrading” their current timeshare interest by buying a more expensive one (upon which taxes will be paid) or that involve the foreclosure process where a timeshare owner who is in default of the terms of their mortgage or assessment payment and wishes to provide the developer or association a deed in lieu of foreclosure. In these cases, there is either no taxable gain by the timeshare owner as they are either spending more money on the upgraded interest than their original timeshare was worth or they are simply deeding over their timeshare interest to the developer for no monetary gain. In such cases, the consumer owes no revenue to the State because there is no taxable gain, so it does not make sense to require the timeshare owner to file an N-288 with the State.

New Section (h) is intended to insure that inadvertent failures to file by non-residents will not have their liability (other than interest and penalties) exceed the actual taxable amount owed to the State had the consumer filed timely.

For these reasons, we believe it would be beneficial for the State as well as the non-resident timeshare owners to have this change in the law.

Thank you for the opportunity to offer testimony in support of this measure.



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

February 22, 2010

TO: Senate Ways and Means Committee
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

AMENDED
TESTIMONY

FROM: Ed Thompson
ARDA-Hawaii

DATE: Monday, February 22, 2010
Conference Room 211

RE: **SB2887,SD1, Relating to Taxation**

Chair Kim and Members of the Committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for ten percent of the State's lodging inventory with 7,700 timeshare units. Timeshare has had consistent occupancy rates, even during the current tough economic times. This has made our industry a vital partner and a diverse component of the visitor industry in Hawaii.

ARDA-Hawaii supports SB2887, SD1, but recommends that Section 1 (f) (2) be deleted from the bill.

As currently written, all non-resident sellers of timeshares in resale transactions must either pay the Hawaii Department of Taxation ("DOTAX" or the "Department") five percent of the gross proceeds or file a Form N-288 with DOTAX. The N-288 is to substantiate that the property was sold at a loss. DOTAX must then quickly review and approve the N-288 and return it to the seller prior to closing. If the Department cannot timely do this, the seller will need to have five percent withheld and then file a non-resident return, claiming a refund for the full amount of the withholding.

There are an increasing number of timeshare transactions in Hawaii each year that are either property exchanges wherein the timeshare owner is "upgrading" their current timeshare interest by buying a more expensive one (upon which taxes will be paid) or that involve the foreclosure process where a timeshare owner who is in default of the

terms of their mortgage or assessment payment and wishes to provide the developer or association a deed in lieu of foreclosure. In these cases, there is either no taxable gain by the timeshare owner as they are either spending more money on the upgraded interest than their original timeshare was worth or they are simply deeding over their timeshare interest to the developer for no monetary gain. In such cases, the consumer owes no revenue to the State because there is no taxable gain, so it does not make sense to require the timeshare owner to file an N-288 with the State.

New Section (h) is intended to insure that inadvertent failures to file by non-residents will not have their liability (other than interest and penalties) exceed the actual taxable amount owed to the State had the consumer filed timely.

For these reasons, we believe it would be beneficial for the State as well as the non-resident timeshare owners to have this change in the law.

Thank you for the opportunity to offer testimony in support of this measure.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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MEMORANDUM

TO: Senator Donna Mercado Kim
Chair, Committee on Ways and Means
VIA EMAIL: WAMTestimony@Capitol.hawaii.gov

FROM: Gary Slovin / Mihoko Ito

DATE: February 21, 2010

RE: **S.B. 2887, SD1 – Relating to Taxation**
Hearing: Monday, February 22, 2010 at 10:00 a.m.

Dear Chair Kim and Members of the Committee:

We submit the following comments on behalf of **Wyndham Worldwide (“Wyndham”)**, a timeshare company with substantial interests in Hawaii including Wyndham Vacation Ownership, with its resort at Waikiki Beach Walk.

Wyndham **supports** S.B. 2887, SD1, which streamlines the process by which non-resident sellers of property pay taxes on the disposition of real property.

This measure eliminates the requirement that a withholding tax and related documentation be submitted to the State where there is no taxable gain on the sale or the transaction is *de minimis*. Where no revenue is owed to the State, it makes sense to eliminate this requirement, both to ease the administrative burden on the Department of Taxation and to make the transaction more efficient.

For these reasons, we respectfully ask the Committee to pass this measure.

Thank you very much for the opportunity to submit comments.

February 20, 2010

The Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: S.B. 2887, S.D.1 Relating to Taxation

HEARING: Monday, February 22, 2010 at 10:00 a.m.

Aloha Chair Kim, Vice Chair Tsutsui and Members of the Committee:

I am Myoung Oh, Government Affairs Director, offering comments 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 **supports** S.B. 2887, S.D.1, which amends the income tax code regarding the withholding of tax on the disposition of real property by nonresident sellers.

State law requires that the withholding tax will apply to real property transactions in Hawai'i, where the seller is an out-of-state resident. Buyers must withhold a specified percentage of the "amount realized" by the Seller on the sale of the property and forward this amount to the Department of Taxation. The tax withheld is 5% of the sales price, unless a certificate has been processed that allows escrow to withhold a reduced amount. However, transactions are subject to the withholding tax even if the seller will recognize no gain or will incur a loss (unless the Seller requests a waiver by submitting Form N-288B no later than 10 days prior to the transfer).

HAR believes that S.B. 2887, S.D.1, will streamline the process for the transfer of real property by nonresident sellers, allow for the collection of taxes owed and allow for the timely transfer of real property where no taxes are owed and no gain is realized.

Mahalo for the opportunity to submit comments on this measure.

**SENATE COMMITTEE ON
WAYS AND MEANS**

February 22, 2010

Senate Bill 2887, SD 1 Relating to Taxation

Chair Kim and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing Marriott Vacation Club International (Marriott).

Marriott supports Senate Bill 2887, SD 1 Relating to Taxation, which provides that in the case of a foreclosure, a deed in lieu of foreclosure, or in a situation wherein real property is acquired in Hawaii that is worth more than the real property in Hawaii for which it is exchanged, no withholding under Chapter 235 is required. The bill also provides relief for transferee from tax liability if the department of taxation has collected from the transferor, an amount equal to or exceeding the tax liability. Senate Bill 2887, SD 1 also includes a “*de minimus* exemption” as allowed in several other states, notably California.

The amount of staff time to process disposition requests (Form N-288B) or the withholding certificates (Form N-288A) and subsequent taxpayer refunds (Forms N-288C or N-15) would be lessened and, due to the low probability of a taxable gain, would have a negligible effect on state revenues. Generally most time share sales to second buyers have not had an appreciable gain and in the case of upgrades, no gain.

For these reasons we request your passage of this measure. Thank you for the opportunity to present this testimony.



9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

February 22, 2010

Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means

Re: SB 2887 SD1, Relating to Taxation - Support
Hawaii State Capitol Conference Room 211, 10 AM

Aloha Chair Kim, Vice Chair Tsutsui, and Committee members:

I'm Robin Suarez, Vice President & Associate General Counsel for Starwood Vacation Ownership. We support the changes proposed in SB 2887 SD1, Relating to Taxation.

As currently written, all non-resident sellers of real property must either pay the Hawaii Department of Taxation ("HDOT" or the "Department") five percent of the gross proceeds or file a Form N-288 with HDOT. The N-288 is to substantiate that the property was sold at a loss. HDOT must then quickly review and approve the N-288 and return it to the seller prior to closing. If the Department cannot timely do this, the seller will have to have the five percent withheld and then file a non-resident return, claiming a refund for the full amount of the withholdings.

This bill clarifies that no withholding tax or related paperwork is required to be submitted for transactions involving a non-resident seller where there is no monetary gain. This clarification would apply to timeshare transactions such as property exchanges wherein the timeshare owner upgrades their current timeshare interest by buying a more expensive one or timeshare transactions involving a deed in lieu of foreclosure process. The deed in lieu foreclosure process occurs when a timeshare owner who is in default of the terms of their mortgage or assessment payment deeds the property back to the developer or owners association to avoid foreclosure. In either circumstance, there is no taxable gain by the timeshare owner as they are either spending more money on the upgraded interest than their original timeshare was worth or they are simply deeding over their timeshare interest to the developer for no monetary gain.

This bill provides important clarification to the withholding provisions and will create significant streamlining by eliminating unnecessary and unproductive paperwork and filings with the State of Hawaii. In addition, New Section (h) is intended to insure that inadvertent failures to file by non-residents will not have their liability (other than interest and penalties) exceed the actual taxable amount owed to the State had the consumer timely filed.

For these reasons, we respectfully request your support and passage of this bill.

Sincerely,

Robin Suarez
Vice President & Associate General Counsel for Starwood Vacation Ownership