

SB2112

Measure Title: RELATING TO LEASEHOLD CONVERSION.
Report Title: Leased Fee Interest Sale; Capital Gains; Exempt from Taxation
Description: Extends the sunset provision of Act 166, SLH 2007, to extend the exemption from taxation of capital gains realized from the sale of leased fee interest in condominium units to association of apartment owners or residential cooperative corporations until 1/1/18.
Companion: HB2391
Package: None
Current Referral: CPN, WAM
Introducer(s): FUKUNAGA, BAKER, ESPERO

<u>Sort by</u> <u>Date</u>		Status Text
1/19/2012	S	Introduced.
1/19/2012	S	Passed First Reading.
1/20/2012	S	Referred to CPN, WAM.
1/30/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-09-12 9:00AM in conference room 229.

**HAWAII COUNCIL OF ASSOCIATIONS
OF APARTMENT OWNERS**
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February 5, 2012

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice-Chair
Senate Committee on Commerce and Consumer Protection

Re: Testimony in Support of SB 2112, Re Leasehold Conversion
Hearing: Wed., February 9, 2012, 9 a.m. Conf. Rm. #229

Chair Baker and Vice-Chair Taniguchi and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO). HCAAO support this bill that would extend the Act 166 exemption that would allow residential lessees to get fee simple ownership of their homes and would allow lessor of residential leasehold properties to obtain tax relief if they sell the leased fee to their lessees and we urge you to pass it.

In 2004, HCAAO was a member of the City's Leasehold Task Group that was charged with finding voluntary solutions that would allow apartment owner-occupants to acquire their leased-fee interest. One of the recommendations of the Task Group was to get favorable tax legislation that would motivate lessors to sell their leased-fee interest to lessee owner-occupants – specifically a law that would exempt the lessor's sale proceeds from capital gains tax. The Task Group heard that some lessors would agree to sell their fee to lessees if they could get favorable tax treatment. Doing a 1031 tax-deferred exchange requires attorneys and accountants and realtors (i.e., to find the exchange property) and that was considered too expensive and complicated by some lessors.

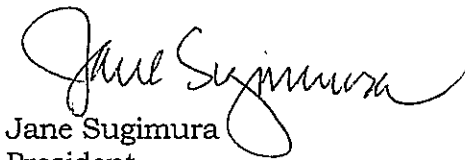
The City Ordinance that allowed for mandatory lease-to-fee conversion was repealed in late 2004. Now the only way that lessees can own their homes in fee is to motivate lessors by providing a limited tax incentive.

We agree with and incorporate by reference the testimony of Monarch Properties in support of this measure.

We believe that the State economy will benefit from the increased sales of leasehold property by way of increased conveyance tax fees and income taxes on commissions earned by the brokers involved in such transactions. Further, hopefully the sales proceeds received by lessors will be spent or invested in the State of Hawaii and will promote the local economy. This is a fair trade-off to giving these limited tax incentives to lessors.

Most importantly, these sales will result in a voluntary conversion of lease to fee for residential lessees throughout the State. For many apartment lessees on Oahu this will be their only opportunity for fee simple homeownership.

Thank you for the opportunity to testify on this bill.



Jane Sugimura
President



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February 9, 2012

The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 2112, Relating to Leasehold Conversion

HEARING: Thursday, February 9, 2012, at 9:00 a.m.

Aloha Chair Baker, Vice-Chair Taniguchi, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** S.B. 2112, which extends the sunset provision of Act 166, SLH 2007, to extend the exemption from taxation of capital gains realized from the sale of leased fee interest in condominium units to association of apartment owners or residential cooperative corporations until January 1, 2018.

HAR believes that exempting of one-hundred percent of the gain on the sale of a lessor's underlying fee interest should help to induce lessors to voluntarily sell lessees the fee interests in their homes.

Lessor representatives have cited exemption from state and federal income taxes as an incentive that could induce a significant number of lessors to voluntarily sell underlying fee interests to their residential lessees.

Mahalo for the opportunity to testify.



February 3, 2012

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Committee On Commerce and Consumer Protection

RE: **SB 2112; Relating to Leasehold Conversion**

Dear Chair Baker, Vice-Chair Taniguchi and Committee Members:

I am in support of SB 2112 as it would extend the Act 166 exemption which I believe creates a win-win situation: lessees get fee simple home ownership, fee owners would be incentivized by tax savings to sell their fee interests and there would be millions of dollars put into the economy, likely also generating use tax dollars that would not be generated otherwise.

My company, Monarch Properties, Inc., has specialized in condo and co-op fee conversions and lease rent renegotiations since 1993. Over the past 10 years, we have represented condo and co-op projects in about 90% of all leased-fee purchases that have occurred, which includes 18 condo association and cooperative housing corporation purchases since Act 166, SLH 2007, was enacted and became available beginning in 2008.

The 18 condo and co-op project fee purchase transactions over the past four years are all we know of. They involved 1,482 units and about \$113 million in aggregate sales price.

Excluding one purchase by a condo project (the seller was a tax-exempt entity) and presuming all proceeds were taxable (most of these properties had a very low tax basis), about \$107 million of these sales would have been taxable (none of the 17 taxable sales involved an exchange to defer gains).

I am told the state's tax rate for sales of the magnitude such as these is 7.25% which means there could have been as much as \$7,757,500 in tax, revenue to the State or an average of about \$1,940,000 per year over the past four years since Act 166 has been in effect.

The Department of Taxation said Act 166 exemptions may have cost the State about \$900,000 per year over the past four years, about half the possible taxable amount. There are many variables that can be involved when talking about tax issues involving 17 different sales and sellers. However, the Act 166 exemption:

1. Is known and of interest to lessors and their counsel.
2. Incentivizes landowners to sell their multi-family residential leased-fee interests. Fee sales provide permanent fee simple ownership for many lessees as their lease terms are getting short.

Senator Rosalyn H. Baker, Chair
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3. Appears to have provided about \$1 million per year in state income tax revenue and hundreds of thousands of dollars per year in conveyance tax revenue.
4. Incentivizes use of cash proceeds rather than exchanging them into another property to defer gains. This puts millions of dollars into the economy, aids commerce and generates use taxes like GET and conveyance tax.

Further, by public record search, there are still about 16,714 leasehold condo, co-op and PUD units in Hawaii. Most lessees of these units would dearly like to have a fee purchase opportunity and the Act 166 exemption will help incentivize fee owners to sell, especially elderly fee owners who may want cash proceeds instead of reinvesting into another property at their age.

Please feel free to contact me at 735-0000 if there are any questions or I may be of any assistance.

Sincerely,

MONARCH PROPERTIES, INC.

Michael E. Pang (R)
President and Principal Broker

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SUBJECT: INCOME, Exclusion for leased fee interest

BILL NUMBER: SB 2112

INTRODUCED BY: Fukunaga, Baker, Espero

BRIEF SUMMARY: Amends Act 166, SLH 2007, to extend the January 1, 2013 repeal date to January 1, 2018.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The legislature by Act 166, SLH 2007, provided an income tax exclusion of 100% of the gain derived by a fee simple owner resulting from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of apartment owners or the residential cooperative corporation of the leasehold units. While this act will sunset on December 21, 2012, this measure proposes to extend the income tax exclusion to December 31, 2017.

It should be remembered that while this income tax exclusion is in effect only on the state level, the tax consequences at the federal level could be substantial since such income is not excluded on the federal level. In addition, since there is no similar provision on the federal level, continuing this income tax exclusion would run counter to the intent of the legislature to maintain close conformity with the federal income tax Code in order to minimize differences and, therefore, compliance and administrative costs.

Given that this provision is effective for a very limited time, it is obvious that it was adopted to “take care” of a specific taxpayer who has not been able to unload the fee interest as soon as it had been assumed and is now seeking an extension. Providing a select special interest such a tax break merely shifts the burden of taxes to all other taxpayers and those other taxpayers should hold these legislators accountable for the continued high burden of taxes as a result of granting these special interest tax concessions.

Digested 2/6/12