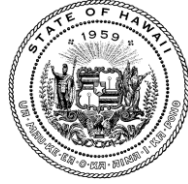


DAVID Y. IGE
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DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
And Members of the Senate Committee on Judiciary

From: Rona M. Suzuki, Director
Department of Taxation

Re: **S.B. 2216 S.D. 1, Relating to Taxation**

Date: Wednesday, February 26, 2020

Time: 1:10 P.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) appreciates the intent of S.B. 2216, S.D. 1, but has serious concerns regarding its ability to administer the new tax and provides the following comments.

S.B. 2216, S.D. 1, creates a new tax on vacant residential real property. The Senate Committee on Housing made substantial amendments to the measure, including making the tax a conveyance tax and providing that a unit is vacant if not in use for at least 50 days in a calendar year. The tax is equal to five per cent of the county real property tax assessed value of the unit per year. S.B. 2216, S.D. 1, is effective on January 1, 2021.

Although the Committee Report for this measure indicates that the new tax was intended to be a conveyance tax due upon the transfer or conveyance of residential real property, the measure in its current form does not accomplish the intent. The tax is imposed yearly whether or not a transfer or conveyance is being made. If the intent was to create a conveyance tax due upon transfer, the Department suggests creating new brackets or a surcharge on existing conveyance tax laws codified in chapter 247, Hawaii Revised Statutes.

The measure defines "vacant" to mean that the residential real property is in use less than 50 days in a calendar year. The word "use" can be interpreted very broadly and this measure does not provide a specific definition to resolve the ambiguity. For example, "use" could include a unit storing personal property, using it as a mailing address, or stopping by on a weekly basis only to care for the property. To clarify this ambiguity, the Department suggests specifically defining "use." In addition, it appears that the measure would penalize an owner who leases or rents the property to a tenant who does not use the unit.

The Department also has serious concerns about its ability to determine whether property is

“vacant.” There is no reasonable way that the Department will be able to prove that a property was somehow occupied for 50 days in a calendar year. Thus, if this new tax were to become law, the State would need to rely on voluntary compliance alone as no determination on eligibility may be made.

The Department notes that the measure contains no exemptions from the new tax. There are instances where an owner may have legitimate reasons for leaving a unit vacant such as military deployment, ongoing renovations, hospitalization or being away from Hawaii for medical treatment, legal disputes over ownership of the property, inability to find a tenant or buyer, or a situation where the unit is vacant because the owner is caring for another.

Finally, the Department defers to the Department of the Attorney General regarding the constitutionality of this measure.

Thank you for the opportunity to provide comments.

SB-2216-SD-1

Submitted on: 2/24/2020 3:35:49 PM

Testimony for WAM on 2/26/2020 1:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

Strongly Oppose.

February 26, 2020

The Honorable Donovan Dela Cruz, Chair

Senate Committee on Ways and Means

The Honorable Karl Rhoads, Chair

Senate Committee on Judiciary

State Capitol, Room 211

Honolulu, HI 96813

RE: S.B 2216, SD1, Relating to Taxation

HEARING: Wednesday, February 26, 2020, at 1:10 p.m.

Aloha Chair Dela Cruz, Chair Rhoads, and Members of the Joint Committees,

I am Ken Hiraki, Director of Government Affairs, testifying on behalf of the Hawai'i Association of REALTORS® (“HAR”), the voice of real estate in Hawai'i, and its over 10,000 members. HAR **strongly opposes** S.B. 2216, SD1, which establishes an empty homes tax against certain residential property owners who own a vacant residential unit in the State

Under this measure, it defines vacant as residential real property that is in use less than 50 days in a calendar year. To put that in perspective, based on the median value as of December 2019, the following would be the amount owed based on property type:

	Median:	5% New Tax	Conveyance Tax:	Total Tax:
<i>Single Family Home</i>	\$ 820,000	\$41,000	\$1,640 (10 cents per \$100)	\$42,640
<i>Condominium</i>	\$ 425,500	\$21,275	\$425.50 (20 cents per \$100)	\$21,700.50

Furthermore, this measure applies to property that are vacant and defines vacant as residential real property that is in use less than 50 days in a calendar year. There are numerous reasons why a person would have their home vacant for a period of time, such as serving in the military or traveling out of State for work.

Additionally, there are other reasons why a home could be vacant, such as property owners renovating their property before selling. Or, because this tax would apply to transfers, it would also apply to families that lost their loved ones and the property is conveyed to their children.

For the foregoing reasons, we respectfully request this measure be held.

Mahalo for the opportunity to testify.

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TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: REAL PROPERTY, Empty Homes Tax

BILL NUMBER: SB 2216, SD-1

INTRODUCED BY: Senate Committee on Housing

EXECUTIVE SUMMARY: Establishes an empty homes conveyance tax against certain residential property owners who own a vacant residential unit in the State.

SYNOPSIS: Adds a new chapter to the HRS to impose an empty homes tax against residential property owners who own a vacant residential unit. The tax is to be 5% of the gross value of the unit per year. Monthly payments of the tax appear to be required. Administrative provisions of the GET are incorporated by reference.

EFFECTIVE DATE: January 1, 2021.

STAFF COMMENTS: Although the proposed empty homes tax is ostensibly modeled on the GET, it looks and quacks like a real property tax in that it is imposed against the property owner just like the real property tax is now; it is imposed based on usage of real property (vacant versus otherwise); and is based on the value of the real property involved.

As such, the tax is likely to run afoul of article VIII, section 3 of the Hawaii Constitution that grants the counties exclusive authority to impose real property tax. The Hawaii Supreme Court has recently stated that “[a]rticle VIII, section 3 was expressly and manifestly designed to transfer to the counties broad powers of real property taxation,” that “the purpose of the amendment was to place the burden of the real property taxation system at the county level,” and further, that the amendment, along with the legislative enactments contained in HRS Chapter 246A, which provided for the orderly transfer of property taxation power to the counties, “covered the whole subject [of real property taxation] and embraced the entire law in that regard.” *In re Kaheawa Wind Power, LLC*, No. SCAP-17-00000816, slip op. at 26-27 (Haw. Jan. 21, 2020) (quoting *In re Gardens at West Maui Vacation Club*, 90 Haw. 334, 341, 978 P.2d 772, 779 (1999)). The state, therefore, is precluded from imposing a tax on real property, vacant or otherwise.

In SD1, the committee attempted to save the tax by making it a conveyance tax. However, the tax applies whether or not the property is conveyed. The recharacterization is not credible.

Digested 2/24/2020



SB 2216, SD1, RELATING TO TAXATION

FEBRUARY 26, 2020 · SENATE WAYS AND MEANS
COMMITTEE AND SENATE JUDICIARY COMMITTEE
· CHAIRS SEN. DONOVAN DELA CRUZ AND SEN.
KARL RHOADS

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2216, SD1, relating to down payments, which establishes an empty homes conveyance tax against certain residential property owners who own a vacant residential unit in the State.

Today, **the lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2019* report found that a full-time worker would need to earn \$36.82/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015.

Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 111 hours per week to afford a modest one-bedroom apartment at fair market value and 146 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu rent has increased by more than 25 percent. While 43 percent of Hawai'i residents are renters (a

number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$16.68/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai'i report that they are "doubling up" or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 63 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to 83 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by more than 4,700 people, to 1,415,872, from July 2018 to July 2019, when births, deaths, and migration were accounted for. That's the biggest numerical population drop since 2015 and it made Hawai'i one of just ten states in the country to lose population in 2019, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Establishing a tax on vacant homes is a novel policy to pursue to increase our state's housing supply. **Urban Honolulu currently has a vacancy rate of approximately 12 percent, or 30,000 units, which is one of the highest vacancy rates in the country.** Vancouver has already implemented a vacancy tax. Its real estate boom led to the average sale price of all categories of residential property rising to roughly \$1.4 million U.S. dollars for a detached house in 2016, leaving Vancouver residents reeling. Vancouver, like Hawai'i, is a magnet for nonresident real estate investment. After implementing a vacancy tax, however, the city took in nearly \$30 million in new revenue and, as intended, vacancy rates began to decline.

We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action **now** to increase our affordable housing supply for working families.