

DAVID Y. IGE
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To: The Honorable Sean Quinlan, Chair;
The Honorable Daniel Holt, Vice Chair;
and Members of the House Committee on Economic Development

From: Isaac W. Choy, Director
Department of Taxation

Date: Friday, February 11, 2022
Time: 10:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1702, Relating to Taxation

The Department of Taxation (Department) offers the following comments regarding H.B. 1702 for your consideration.

H.B. 1702 exempts the net capital gain from the sale of a residential property by a taxpayer who is sixty-five years of age or older from the capital gains tax. The measure is effective upon approval and applies to taxable years beginning after December 31, 2021.

First, the Department notes that while the measure purports to exempt from tax the sale of a residential property by a taxpayer who is sixty-five years of age or older, it would actually subject the gain to ordinary rate that is applicable to the taxpayer, which could be as high as 11 percent.

Second, the Department notes that this measure applies to the sale of **any** residential property by a taxpayer who is sixty-five years of age or older, regardless of whether it is used as a residence by the taxpayer. The property could be a rental real property or even used as a second or vacation home. The Department does not believe that it is necessary or appropriate to provide an exemption for any property other the taxpayer's primary residence.

Third, the Department notes that Hawaii conforms to Internal Revenue Code section 121, which allows a taxpayer (regardless of age) to exclude from taxation up to \$250,000 (\$500,000 for certain married taxpayers).of the capital gain from the sale of real property which was owned and occupied as a principal residence of the taxpayer for two at least of the five years immediately before the sale. This exclusion can be taken only once every two years and can be taken multiple times provided that the conditions for exclusion are otherwise met.

Finally, notwithstanding the foregoing comments, the Department is able to administer this measure with its current effective date.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
ON
HOUSE BILL NO. 1702

February 11, 2022
10:00 a.m.
Room 312 and Videoconference

RELATING TO TAXATION

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 1702 amends Section 235-51, HRS, to exempt the net capital gain from the sale of a residential property by a taxpayer who is 65 years of age or older from the capital gains tax.

B&F notes that the federal American Rescue Plan (ARP) Act restricts states from using ARP Coronavirus State Fiscal Recovery Funds (CSFRF) to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the CSFRF have been spent. If a state cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than the CSFRF, such as:

- By enacting policies to raise other sources of revenue;
- By cutting spending; or
- Through higher revenue due to economic growth.

If the CSFRF provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the U.S. Treasury.

The U.S. Department of Treasury has issued rules governing how this restriction is to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with this ARP restriction.

Thank you for your consideration of our comments.

February 11, 2022

The Honorable Sean Quinlan, Chair

House Committee on Economic Development
Via Videoconference

RE: H.B. 1702, Relating to Taxation

HEARING: Wednesday, February 9, 2022, at 10:00 a.m.

Aloha Chair Quinlan, Vice Chair Holt, and Members of the Committee,

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 10,800 members. HAR **supports** House Bill 1702, which exempts the net capital gain from the sale of a residential property by a taxpayer who is sixty-five years of age or older from the capital gains tax.

A capital gain happens when one sells an investment for a profit, such as stocks, real estate or businesses. The capital gains tax has a disproportionate impact on our kupuna who rely on their investments to convert their assets to spendable income during their retirement, such as for medical bills or nursing home care. As such, HAR supports exempting residential taxpayers 65 years of age or older from the capital gains tax.

Mahalo for the opportunity to testify.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Exemption from Capital Gains Tax for Sale of Residential Property by Elderly Individual

BILL NUMBER: HB 1702

INTRODUCED BY: TODD by request

EXECUTIVE SUMMARY: Exempts the net capital gain from the sale of a residential property by a taxpayer who is sixty-five years of age or older from the capital gains tax.

SYNOPSIS: Amends section 235-51(f), which imposes tax on capital gains, to add a proviso that the subsection shall not apply to the sale of a residential property by a taxpayer who is sixty-five years of age or older.

EFFECTIVE DATE: Upon Approval, applicable to taxable years beginning after December 31, 2021.

STAFF COMMENTS: The measure as introduced does not accomplish what the drafter wanted. As the bill is now written, proceeds from the sale of residential property by a taxpayer 65 years or older will be subject to income tax at ordinary income rates. If it is decided to move the measure forward, the measure should be redrafted as an exemption or exclusion.

Digested: 2/9/2022

HB-1702

Submitted on: 2/8/2022 7:17:52 PM

Testimony for ECD on 2/11/2022 10:00:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------------|---------------------|---------------------------|-----------------------------------|
| Lynn Murakami Akatsuka | Individual | Support | No |

Comments:

To Members of the House Committee on Economic Development,

I strongly support the passage of HB 1702 to exempt the net capital gain from the sale of a residential property by a taxpayer who is 65 years of age or older. This will help senior citizens who is a Hawaii resident immensely.

Thank you for the opportunity to testify in support of HB 1702.

LATE

HB-1702

Submitted on: 2/10/2022 5:05:25 PM

Testimony for ECD on 2/11/2022 10:00:00 AM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Joanne | Individual | Support | No |

Comments:

Members of the House Committee on Economic Development,

My name is Joanne L. Silva age 72. I am a resident of Hilo, Hawaii. I am asking that you put into State statues HB 1702.

I moved to the Big Island in 1988. My family was living in the Kaumana area. Upon the death of my father in 1993, the home was deeded to me. It is a four bedroom home on a 10,000 sq. ft. lot. I moved in and soon realized that it was too much for me to handle. During my stay in the home I had a mental breakdown and had to leave. I had been under the care of Care Hawaii as well as the State of Hawaii Mental Health Department. I was taken by ambulance to Hilo Medical Center Emergency Room and given care. From there I was taken to and spent a period of time at Care Hawaii's LCRS home. Once stabilized I went to Mental Health Kokua's 24 hour group home and later transitioned to their 8-16 hour home. This all happened over a period of several years. My next step was to get an apartment in downtown Hilo. I transitioned in 2014 to the 2 bedroom apartment where I now reside. The Kaumana home is rented and helps to pay the rent on the apartment and cover repairs on the home. The cost of living is rising dramatically and my savings account is rapidly dwindling. I will need to sell the home in the near future. I am concerned that the after tax income will not be sufficient to meet my needs into the future. I want to continue to live independently for as long as possible, be healthy and contribute to the community without depending on County, State or Federal assistance. I am asking you to consider allowing me and seniors 65+ to sell their homes capital gains tax free.

Respectfully submitted,