JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
H.B. No. 2778, Relating to Taxation

BEFORE THE:
House Committee on Tourism

DATE:	Thursday, February 01, 2024
TIME:	10:30 a.m.
LOCATION:	State Capitol, Room 423

Chair Quinlan, Vice-Chair Hussey-Burdick, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 2778 for your consideration.

H.B 2778 amends sections 237D-1 and 237D-2, Hawaii Revised Statutes (HRS), to add new definitions and a surcharge on the transient accommodations tax (TAT). The newly-defined terms are "booking service," "county," "hosting platform," and "transient vacation rental," with "transient vacation rental" meaning either short-term rental home, short-term vacation rental, transient vacation rental, transient vacation unit, or transient vacation use, as defined by county ordinance. The surcharge added to TAT for transient vacation rentals located outside of a zoned resort area is equal to either " (1) Five per cent on the gross rental or gross rental proceeds derived from furnishing transient accommodations; (2) Five per cent on the fair market rental value of a resort time share vacation unit; or (3) $25 per day[,]" whichever is greater. H.B 2778 takes effect on January 1, 2025.

The Department notes that enforcement of the surcharge may be challenging, as the Department does not have the subject-matter expertise to determine whether a rental unit qualifies as a transient vacation rental, as defined by county ordinance. Additionally, the definition of a transient vacation rental may vary from county to county and may change over time. The definition of a transient vacation rental under county law may also differ from the definition of a transient accommodation under chapter 237D, HRS. For example, a transient vacation rental may be defined under county ordinance as a rental of less than 30 days, but a transient accommodation under chapter 237D, HRS is a rental of less than 180 days. In this situation, it is unclear whether the surcharge will apply if the unit is rented for 30 days or more, but less than 180 days.

The Department further notes that the imposition of an alternative minimum surcharge of $25 per day (if greater than 5 percent of the gross rental proceeds) may complicate the tax forms and recordkeeping for taxpayers. For ease of administration, the Department suggests eliminating the $25 alternative minimum surcharge.

Furthermore, the Department suggests that section 237D-1, HRS, be amended to add a definition for "zoned resort area," and that citations to the county ordinances be added to the definition of "transient vacation rental."

Thank you for the opportunity to provide comments on this measure.

HB-2778
Submitted on: 1/30/2024 1:14:46 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Paul Nachtigall	Individual	Oppose	Remotely Via Zoom

Comments:

Unfortunatetly there is a problem in the City and County of Honolulu's language regarding zoning and districts. Kuilima Estates West is in a legally designated Resort District but is zoned residential A-1 for those that live there as may be seen by reading the City ordinance 22-7.. It is also a resort district that allows legal licensed short term rentals that pay TAT (10.5%), OTAT (3%) and GET (4.7%) taxes plus license fees of 1000 or 500 dollars per year to rent properties as vacation rentals. Property taxes are designated by use. Those that short term rent pay the city about 4 times as much in property taxes as those that reside there. Kuilima Estates West Rentals are very heavily taxed. Most Short Term Rental Units are owned by people that live on Oahu and are over 55 years old. I URGE you to take a look at actual tax numbers and how they compare to a hotel room tax income before adding an additional 5% tax with this bill. That 5% would increase immediate taxes to 23.2% (before property and income taxes) and likely drive many of us out of business and kill the goose that is now paying the golden tax egg.

HB-2778
Submitted on: 1/30/2024 2:08:41 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Penny Lee	Individual	Oppose	Written Testimony Only

Comments:

This is a prejudicial and mean taxation bill initiated by the hotel/resort lobby and meant to destroy the small business competition. Targeting a special sub group of transient accommodations with "special" taxation is illegal. Is this not also Antitrust violation?
Funny they would like to add a tax based on "fair market rental value of a resort time share vacation unit". Timeshares are an extremely profitable and highly extractive business for corporate developers taking over Hawaii's best beaches and prime resort locations. Also Real Estate REITs in Hawaii enjoy exceptional tax breaks. Who is exploiting who?

HB-2778
Submitted on: 1/30/2024 2:09:35 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Axel Kratel	Individual	Oppose	Remotely Via Zoom

Comments:

Let them eat cake! That seems to be the aim of this bill, to disenfranchise small mom and pop operators of small bed and breakfasts and hosted farm stays in rural Hawaii and protect wealthy offsbore hotel interests. It's the hotels in the resort zones that are responsible for the blatant over-tourism yet it's the small Hawaii resident Mom and Pop operators who will get punished. A $25/day tax will pretty much kill our business and it picks large offshore owned corporate hotels as winners when in fact it is them who over-burden Hawaii infrastructure. I am sure you will ignore my testimony since it's the big hotels that pay for your election campaigns.

HB-2778
Submitted on: 1/30/2024 3:10:16 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael Boucher	Individual	Oppose	Written Testimony Only

Comments:

I am opposed to this bill. 2 easy reasons

1, it is not tenable. There are no accounting systems that can manage this fee structure. Including the state's accounting sytem. It is not reconcilable to do greater of 5% or 25$ per night.

2. most BnB's take in much less than 500/night so the fee will be 25$ per night. On a 100/night room that would mean that the host will be adding an additional 43% to the base rate collected. I can see 1, 2, or 3% but 25% is out of this world.

2. the number is excessive and completly biased. This is not fair governemt. A copy of this proposal is being sent to the ACLU for legal review.

HB-2778
Submitted on: 1/30/2024 3:22:02 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Barnfield	Individual	Oppose	Written Testimony Only

Comments:

Please do not attach an additional tax bill 2778. We are already taxed to death. Please do not keep using STR's as a means for income. You justified additional tax to employ enforcement persons yet you haven't fullfilled that justification. You will out price Hawaii at this rate for tourists to come visit the islands.

Sincerely

Wendy Barnfield

HB-2778
Submitted on: 1/30/2024 3:32:24 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michelle Kratel	Individual	Oppose	Remotely Via Zoom

Comments:

For far too long, the state government of Hawaii has pretended to care about the little guy, the small business owner, the community, the Ohana. And yet, for decades our state government has caved to huge corporate interests and allowed our state to be exploited by mainland and foreign corporations who do nothing but extract financial and material resources from our islands, leaving those of us who live here with only crumbs. While the state has had decades to work to establish other industries in Hawaii, tourism still remains the only real player on the field, and as usual, it’s only the large corporations who are allowed to earn a profit in the Hawaii tourism industry. The rest of us can eat cake.

Anyone who owns or rents property in this state and attempts to leverage that property to earn a living is met time and time again with draconian regulations that serve only to hurt small mom and pop business operators and ultimately our community. Those of us who use part of our homes to rent out to visitors are vilified and demonized as being the cause of the state’s affordable housing crisis, and we are the ones expected to bear the burden of solving this problem. Hawaii has many problems, not the least of which is affordable housing. Hawaii has the highest cost of living of any state in the nation, and among the lowest wages of any state in the nation, and we are one of the worst states for economic opportunity. That is the crux of our problem. We are a state devoid of economic opportunity. Everyone I know in Hawaii struggles to afford just the basics. People assume that if you operate a short term rental property, you are simply rolling in money. Nothing could be further from the truth. My husband and I own a farm in Hilo, we raise 2 boys, and I work in a full-time supervisory job at the Hawaii Police Department. Farming makes no money, and my salary from my county job barely covers the mortgage on our farm. The short term rental is the only thing that allows us to put food on the table, pay for gas, insurance, utilities, and other life necessities. With all of the taxes that we must pay, we barely have enough for any extras or unexpected expenses. All we are trying to do is earn a living and provide for our family, as are the majority of short term rental operators in this state. None of us want to see out-of-state investors or huge real estate corporations buying up single-family properties and turning them into vacation rentals. But this bill will be devastating to small family operators like mine who are just renting our part of our own home where we live. Without the income from our rental, we could no longer afford to live here. Every year since we began operating our business in Hawaii, I’ve been looking over my shoulder waiting to see when the next hammer is going to fall. These heavy-handed taxes and policies are punitive only to the little guy. Why don’t the huge corporations pay their share?

As a resident of Hawaii County and a civil servant in the Hawaii Police Department, I bring valuable technology skills to Hawaii, skills that our police department desperately needs, but has great difficulty finding, thanks to Hawaii's brain drain. The lack of economic opportunity in Hawaii combined with low wages is driving educated, talented people away from this state in search of better opportunities elsewhere. These are problems that affect everyone in Hawaii, and they are not the fault of small business short term rental operators. Hawaii cannot simply tax its way out of every problem. This bill is short sighted, damaging, and will do nothing but create further economic burden on an already heavily burdened population.

HB-2778
Submitted on: 1/30/2024 4:15:51 PM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jillian Marohnic	Individual	Oppose	Written Testimony Only

Comments:

"The legislature finds that the operation of transient vacation rental units in areas that are not zoned as resort areas creates adverse impacts in the affected areas."

The bill's premise is unsubstantiated and untrue in many cases. Here in Volcano, our vacation rentals are an asset to the neighborhood. We converted Section 8 housing that hosted junk cars, chained dogs, and fighting cocks into a beautiful vacation rental with immaculate yard. When we applied for the Non-conforming Use Certificate (NUC) our neighbors did not object. In fact, all the NUC applicants had to notify neighbors and tell them how to object and complain. If there were complaints, I would imagine that the NUC would not have been granted. This bill suggests a 5% TAT surcharge or $25 nightly, whichever is higher. Our rentals go for $190 per night, so the $25 surcharge is 13%. Added to the current 18% taxes on our transient accommodations, we would now have to collect 31% taxes. That is absolutely absurd.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS TAX; Surcharge on Accommodations Outside of Zoned Resort Areas

BILL NUMBER: HB 2778

INTRODUCED BY: YAMASHITA

EXECUTIVE SUMMARY: Establishes a surcharge on the state transient accommodations tax for transient vacation rental units located outside a zoned resort area.

SYNOPSIS: Amends section 237D-1, HRS, by adding new definitions:

Defines "Booking service" as any reservation or payment service provided by a person or entity that facilitates a transient vacation rental transaction between an operator and a prospective renter, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation or payment services provided for the transient vacation rental transaction.

Defines "County" as the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui; provided that the county of Maui shall include the county of Kalawao for the purposes of this section.

Defines "Hosting platform" as a person or entity that participates in the transient vacation rental business by providing, and collecting or receiving a fee for, booking services through which an operator may offer a transient vacation rental unit. Hosting platforms usually, though not necessarily, provide booking services through an online platform that allows an operator to advertise the transient vacation rental unit through a website provided by the hosting platform and the hosting platform conducts a transaction by which potential renters arrange use and payment, whether the renter pays rent directly to the operator or to the hosting platform.

Defines "Transient vacation rental" as "short-term rental home", "short-term vacation rental", "transient vacation rental", "transient vacation unit", or "transient vacation use", as defined by county ordinance."

Amends the definition of “operator” to mean any person operating a transient accommodation or transient vacation rental, whether as owner or proprietor or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business which involves the actual furnishing of transient accommodation or transient vacation rental.

Amends section 237D-2, HRS, to add an additional tax with regard to a transient vacation rental located outside of a zoned resort area. The amount of the tax will be an additional 5 percentage points or $25 per day, whichever is greater.

EFFECTIVE DATE: January 1, 2025.

STAFF COMMENTS: There appears to be no justification for the punitive treatment of transient vacation units outside of a resort zone (which zone is determined by the county, not the state). If the problem is that the unit is rented in violation of county code, it is not the State's problem to enforce, and county ordinances do permit transient rentals of such units under certain conditions (which this bill apparently ignores).

Digested: 1/30/2024

Aloha Representatives Quinlan, Hussey-Burdick, Holt, Kong, Chica, Lamosao, Nakamura, and Pierick,

My name is Olivia Marohnic, and I am the daughter of long-time vacation rental owners in Volcano, Hawaiʻi. I am writing to testify in opposition to HB2778.

I understand the concerns with Hawaiʻi's housing market and the problems caused by illegal vacation rentals. However, I would like to take this opportunity to provide a perspective into what the opportunity to manage vacation rentals has meant to my family, to me, and to my community. I respectfully request that the Committee consider the disastrous effects that HB 2778 and similar bills will have on families like mine.

My parents started renting in the 1990s, well before Airbnb existed. Their first rental contracts came from putting brochures at the Hilo airport. My mom worked hard for decades to save money to slowly invest into the business, and my dad renovated and managed them himself. When my mom lost her job in 2008, the vacation rental business became our only source of income, and my parents poured themselves into it. When Hawaii County required permits in 2019, my parents immediately applied for and received them. Through a quarter-century of hard work, they have built a legal, solid business that we are incredibly proud of.

Some of my earliest memories are of tagging along with my parents while they managed the business. After graduating from Hilo High School and University of Hawaiʻi at Mānoa, I recently moved home to help my parents as they near retirement age. I am presently the cleaner, but I am learning to manage other aspects of the business, such as bookings, customer service, and property management. I would very much like to take over the business one day, to continue providing for both my parents and my future family.

Growing up in Volcano village, I can also say with certainty that vacation rentals are an integral part of my community. There are few hotels located near Volcano National Park, so tourists stay in Volcano village at vacation rentals integrated within the community. These guests provide a vital source of income for every aspect of Volcano village, from the gas station, to the general store, to the restaurants, to the food trucks. If tourists are unable to stay in Volcano village, and instead must drive to the National Park for day trips from resorts in Kona, these businesses will dry up.

Unlike in other places, land in Volcano is relatively available and affordable, so housing issues felt elsewhere in the State are not as pressing here. I know all of my neighbors and the community is generally supportive of rentals and the life that they bring to Volcano.

Bills like HB 2778, although perhaps well-intentioned, will have a serious, negative impact on my family, myself, and Volcano Village. Taking into account existing state and local taxes, this bill would mean a 30% charge to guests on top of the rental rate. It's hard to imagine any business that could survive being forced to increase prices by 30% while other accommodations like hotels don't bear a similar burden.

If intervention is needed in Hawaii's housing market, then please at least do not paint with such a broad brush that you impact local families that are only trying to follow the law and to make a modest living. We are happy to pay taxes and to do our part in the community, but the supertax burden of HB2778 could be a death toll for the livelihood that we worked so hard to build.

Mahalo,

Olivia Marohnic

HB-2778
Submitted on: 1/31/2024 8:46:33 AM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Liz Lees	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Tourism is an important industry to Hawaii's economy. Over taxation will drive visitors to other destinations. This bill also reeks of Hotel lobby influence. Why discrimanate taxation of short term rentals?

HB-2778
Submitted on: 1/31/2024 9:09:09 AM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Marsha Hee	Individual	Oppose	Written Testimony Only

Comments:

I oppose HB2778. The additional surcharge would unreasonably increase the total percentage or bundle of assessed fees/taxes for legitimate transient vacation rental businesses. This does not serve to sustain small local businesses or provide optioins for Hawaii resident individuals and families seeking affordable short term accommodations.

Marsha Hee

Resident of Volcano, Hawaii 96785

HB-2778
Submitted on: 1/31/2024 9:56:42 AM
Testimony for TOU on 2/1/2024 10:30:00 AM

Submitted By	Organization	Testifier Position	Testify
J Smith	Individual	Oppose	Written Testimony Only

Comments:

HB2778 is a clearly discriminatory bill designed to overtax vacation rental operators and provide an advantage to hotels. There are existing mechanisms to control objectionable rentals located in neighborhoods, which is the specified objective of this bill, and therefore this bill is redundant and unnecessary. Many many condos built as vacation rentals are located in resort areas but are not necessarily resort zoned. This bill is not logical and will not achieve the stated objective. Please reject this bill.

GRASSROOT INSTITUTE OF HAWAII

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Honolulu, HI 96813
808-864-1776
info@grassrootinstitute.org

Removing barriers to Hawaii's prosperity

Feb. 1, 2024, 10:30 a.m.
Hawaii State Capitol
Conference Room 423 and Videoconference

To: House Committee on Tourism
Rep. Sean Quinlan, Chair
Rep. Natalia Hussey-Burdick, Vice Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

RE: TESTIMONY IN OPPOSITION TO HB2778 — RELATING TO TAXATION

Aloha Chair Quinlan, Vice-Chair Hussey-Burdick and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments in opposition to HB2778, which would add a surcharge to the state transient accommodations tax for transient vacation rental units located outside of resort-zoned areas.

According to the bill, "transient vacation rental" means "short-term rental home," "short-term vacation rental," "transient vacation rental" or "transient vacation use," as defined by county ordinance.

Also according to the bill, the surcharge is being proposed because "the Legislature finds that the operation of transient vacation rentals in areas that are not zoned as resort areas creates adverse impacts in the affected areas," and that "additional funds are necessary to mitigate these adverse impacts."

The bill presents no evidence to justify its allegation that TVRs cause "adverse impacts" in areas not zoned as resort areas.

It also fails to address how those adverse impacts would be mitigated. For example, would the state be in charge of spending this mitigation money, or would it be disbursed to the counties responsible for the maintenance, policing and infrastructure in those areas? The bill doesn't say.

Nor does the bill provide any estimate as to how much those alleged adverse impacts might actually cost.

Nevertheless, it proposes that the surcharge on such rentals should be equal to the greater of $25 per day, 5% of the gross rental proceeds from the transient vacation rental unit, or 5% of the fair market rental value of a resort timeshare vacation unit.

From one perspective, this bill seems like just another way to raise taxes while using a popular scapegoat — TVRs, short-term rentals, or whatever one might wish to call them — as the convenient justification.

However, whether the stated rationale for this surcharge is legitimate or not, this bill is also problematic for a very different reason, which is that it poses a threat to Hawaii's broader economy.

For example, a 2020 study commissioned by the Hawaii Tourism Authority found that STRs added $6 billion to the state's economy and sustained 46,000 jobs.[1]

The survey also found that "30% respondents reported that if there was not a home and vacation rental option during their recent stay in Hawaii, they would not have made the trip."[2]

The idea that a tax such as the one proposed in this bill will fall more heavily — or even exclusively — on tourists can be attractive, but a large body of research demonstrates that increasing taxes on tourists can affect both the competitiveness of Hawaii's tourism industry and the health of local businesses that depend upon tourist dollars.

A 2017 European Union study on the impact of taxation on tourism in Europe found that high tourism taxes, passed on to tourists through higher prices, affected the competitiveness of particular destinations.[3] Coastal and leisure destinations in particular were most adversely affected by increases in tourism taxes, especially compared to locations that were more focused on business travelers.

In addition, occupancy taxes were singled out as inequitable and especially frustrating to tourists. The EU study recommended that countries that depend heavily on tourism should reduce their tourism taxes in order to increase competitiveness.

Even unique destinations are not immune from the effect of taxation on international arrivals. A study of the Maldives, a country that earns as much of 70% of its revenue from tourism taxes, found that a 10% increase in tourism taxes reduces demand by 5.4%.[4]

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[1] "Hawaii's Home and Vacation Rental Market: Impact and Outlook," prepared for the Hawaii Tourism Authority by JLL's Hotels & Hospitality Group, April 20, 2020, p. 4.
[2] Ibid, p. 10.
[3] PricewaterhouseCoopers LLP, "The Impact of Taxes on the Competitiveness of European Tourism," European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, October 2017.
[4] Festus Fatai Adedoyin, Neelu Seetaram and George Filis, "The Effect of Tourism Taxation on International Arrivals to a Small, Tourism-Dependent Economy," Journal of Travel Research, Vol. 62, Iss. 1, pp. 135-153.

To put it plainly, increasing tourism taxes decreases the number of visitors. Moreover, policymakers cannot assume that tourism taxes will not have an additional effect on visitor spending. It is only common sense to assume that tourists will compensate for higher tourism taxes by adjusting their budgets and spending less on dining, activities or shopping.

This is borne out by a study of the effect of an air passenger duty on the budget allocations of United Kingdom tourists. The study found that tourists compensated for the higher taxes by decreasing destination expenditures on items such as accommodations and food.[5]

Thus, increasing tourism taxes will ultimately hurt Hawaii's restaurants, stores and hotels, as tourists decrease their expenditures to compensate for the state's higher taxes.

This is on top of the fact that Hawaii already has some of the world's highest tourism taxes,[6] making any additional hike a threat to the continued health of the industry and the businesses that depend on it.

Tourism is such a critical part of the state's economy that even industries that are not directly linked to tourism are linked to businesses that are.

Adding a surcharge to the state's TAT as it applies to an unpopular segment of the transient accommodations sector might seem like a good idea superficially, but it would come with great risks to our economy as a whole. For that reason, the Grassroot Institute recommends that this committee reject HB2778.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

[5] Haiyan Song, Neelu Seetaraum and Sunh Ye, "The effect of tourism taxation on tourists' budget allocation," Journal of Destination Marketing and Management, March 2019, pp. 32-39.
[6] Alison Fox, "These Cities — Including 3 in the U.S. — Have the Most Expensive Tourist Taxes in the World, Study Shows," Travel + Leisure, Aug. 12, 2022.

Dear Chair Quinlan,
Honored Members of the State House

Subject: Urgent Appeal to Oppose HB 2778

Regarding Proposed Transient Accommodation Tax Increase

I am writing to express my deep concern about the proposed 5% increase in transient accommodation taxes (TA tax) in the City and County of Honolulu, specifically affecting properties in the Kuilima Estates West area.

Kuilima Estates West is legally designated as a Resort District but is zoned residential A-1. This dual classification places a significant financial burden on property owners, particularly those engaged in licensed short-term rentals. Despite already paying TAT, OTAT, GET taxes, and annual license fees, the proposed 5% increase would raise immediate taxes to 23.2%, excluding other taxes and fees.

It's important to note that short-term rental units contribute significantly to the local economy, paying approximately four times more in property taxes than residents. Many of these property owners are over 55 years old and are vital contributors to both tourism and property tax revenue on Oahu.

I urge you to consider excluding properties within the resort or resort-adjacent areas from this additional TA tax. The current proposal, if implemented, could have severe repercussions, potentially forcing many businesses to close and negatively impacting the local community.

I appreciate your attention to this matter and trust that you will carefully consider the implications of the proposed tax increase on both property owners and the broader economic landscape.
Sincerely,

Helena von Sydow