

October 7, 2010

South Carolina Taxation Realignment Commission
Local Accommodations and Hospitality Tax Subcommittee
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Dear Commissioner Members:

Good afternoon Mr. Chairman and Members. My name is Jason Gamel and I am the Vice President of State Government Affairs for the American Resort Development Association (ARDA). As noted during my earlier appearance before the full Commission, ARDA membership includes more than 1,100 members ranging from privately held firms and family owned resorts to publicly traded hospitality companies with expertise in the shared ownership industry as well as timeshare owner associations, resort management companies, and more than 1,000,000 timeshare owners through the ARDA Resort Owners Coalition (ARDA-ROC). In South Carolina, we are proud to represent 109 timeshare resorts which generate over two million visitors each year. Several of those South Carolina owners are here today to share their perspective on the proposals before you, as well as representatives from (list companies who are able to send representatives to the meeting).

In previous testimony before the full Commission, ARDA has expressed its support for retaining the current sales tax exemption for the sale, resale and exchange of timeshare interests in South Carolina law. We have provided that written testimony along with today's testimony in order to reemphasize the reasons for our initial opposition to TRAC's recommendations. Today, we respectfully request the Commission reject any proposal to impose new taxes on timeshares properties including the proposal currently before you to impose a transient occupancy tax on timeshare maintenance fees.

Timeshare Interests involve the Purchase and Sale of Real Estate

The first thing that needs to be established when talking about this proposed tax is the fundamental nature of timeshare. Like other forms of common interest real property, the purchase of a timeshare is the purchase of real property subject to all of the same rights and responsibilities. Virtually all timeshare properties in South Carolina are sold as interests in real property, governed by both the South Carolina's Horizontal Property Act and the South Carolina Vacation Time Sharing Plan Act. Just like owners of second homes in South Carolina, timeshare owners, by virtue of their purchase, become members of a non-profit owners association, pay property taxes on their interest and an annual maintenance fee that goes to pay for the upkeep and management of the property. In the event major repairs need to be made, timeshare owners may be subject to special assessments and if an owner fails to pay his or her maintenance fee or mortgage payment, they can be foreclosed upon in the same manner as other owners of real property.

The proposal before you seeks to place a tax on timeshare property owners' maintenance fees. The first question we ask of this Commission is what is the basis for levying a transient occupancy tax on a condominium maintenance fee? There is nothing transient about an owner of real property paying for the maintenance and repair of their purchase. As we have mentioned before in prior testimony, when a timeshare owner rents their timeshare interest, sales tax and transient occupancy taxes are paid on that stay. However, as has been true in the past, a timeshare owner should not have to pay a transient fee just like any owner of a second home in South Carolina would not be expected to pay such a tax.

While we would oppose such a tax if proposed against all similar vacation or second home properties, we believe it is particularly inappropriate to single out timeshare owners in this manner. As a fundamental matter of fairness, owners of similar property deserve similar treatment under the law. The only thing which separates a second home owner from a timeshare owner is that the timeshare owner co-owns the unit with several other owners. Both own real property and neither uses it as a primary residence. Each owner is responsible for submitting accommodations tax when the unit is rented to a true transient guest.

Imposing Such a Tax on Timeshare Owners Would Place South Carolina at a Competitive Disadvantage

Much like the imposition of a tax on timeshare exchange, a tax on maintenance fees would put South Carolina owners and resorts at a significant competitive disadvantage compared to states such as Maryland, Virginia, Tennessee, North Carolina, Georgia and Florida. None of those states, or any other state in the continental United States, levy a tax on timeshare exchange or on a timeshare maintenance fee. As a matter of fact, last year the State of Florida passed specific legislation to make it abundantly clear that the State had no power to levy a sale tax or transient accommodations tax on timeshare exchange. Why would the State of South Carolina believe that this measure would be good for the State or for the tourism industry in general?

While some people may consider the decline of the timeshare industry in the State a positive development, studies have consistently shown that the timeshare industry has been a consistent driver of jobs, visitor spending and tax revenue. New taxes would certainly damage that visitor base and the new revenue would at best replace the revenue lost. In addition, increased taxes would discourage exchange visitors, potential buyers and new development. South Carolina would be implementing a series of new taxes which do not exist in any comparable destination and would place the state at a competitive disadvantage.

This New Tax will Penalize South Carolina Residents and Lead to the Economic Decline of Many Timeshare Associations

Finally, we hope to dispel any notion that these taxes will be borne by large corporations or just out of state visitors. This proposal and the others considered by the Commission will directly impact individual timeshare owners, at least 15,000 of whom reside in South Carolina and who own timeshare in this state. Owners who purchased timeshare as a more affordable and, in some cases more flexible, vacation home option would be subject to increased costs simply because they own one fifty-second of a condominium rather than an entire unit. We feel that this treatment would be both inappropriate and inequitable.

It is also shortsighted thinking to believe that a 13% increase in a maintenance fee payment, even during good economic times, which these are certainly not, will not have a detrimental effect on the health of timeshare associations. As you will hear from others here today, and will read in their written testimony,

an increase in maintenance fees such as this will inevitably create problems with owners meeting their financial obligations, which will then lead to more foreclosures, and possible bankruptcies. And what about those who are fixed incomes and do not have the means to pay for such an increase? These are all questions that I hope this subcommittee is prepared to answer and to justify to the voting public when it makes its recommendations to the legislature.

Conclusion

We believe the Legislature has chosen to treat timeshare properties appropriately due to the nature of the product and for all of the reasons stated in this and prior testimony. We urge this subcommittee not to vote for the inclusion of any new taxes to be applied against the timeshare industry. Thank you for allowing me the chance to testify.

Sincerely,

Jason Gamel
Vice President, State Government Affairs