ARDA
American Resort Development Association

Members of the South Carolina Tax Realignment Commission:

We respectfully submit this testimony on behalf of the American Resort Development Association (ARDA), the professional trade association representing the time share, vacation ownership and resort development industries in support of retaining the sales tax exemption found in the South Carolina Code Section 12-36-2120(31) relating to vacation time sharing plans.

Established in 1969, ARDA today has 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. Our membership also includes time share owner associations, resort management companies, and more than 1,000,000 time share owners through the ARDA Resort Owners Coalition (ARDA-ROC). In South Carolina, we are proud to represent the 109 time share resorts located in the state which generate over two million visitors each year.

Current Statutory Exemption for the Sale of Time Share and Time Share Exchange

Our testimony will focus on the following current statutory exemption:

117-307.5. Certain Exchanges of Accommodations Exempt from the Tax.

Code Section 12-36-2120(31) exempts from the sales tax on accommodations the gross proceeds accruing or proceeding from "vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32 of Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration."

This section contains two separate exemptions that are the subject matter of our testimony: 1) a sales tax exemption from the gross proceeds from the sale of vacation time sharing plans and 2) a sales tax exemption related to the exchange of accommodations in vacation time sharing plans.

We believe that the Commission should recommend the retention of this exemption for three basic reasons. The first, the sale of time share is almost exclusively the sale of real property and therefore should be exempt from sales tax, two, no other state in the United States has enacted a tax on time share exchange, and three, a time share exchange tax would discourage visitors to come to South Carolina and negatively impact future time share sales as well as current time share owners.

1201 15th Street, NW • Suite 400 • Washington, DC 20005 • 202-371-6700 • Fax 202-289-8544 • www.arda.org
STATE AFFAIRS OFFICE
200 E. Robinson Street • Suite 1170 • Orlando, FL 32801 • 407-245-7601 • fax 407-872-0771

General Information about the Time Share Industry

Before we discuss the specifics related to each sale tax exemption, we would like to provide the Commission with some general information regarding the time share industry. Time share is considered to be a fractional ownership product with a wide variety of purchase and use options. Today's time share owner typically has a variety of options available in length of interval, type and size of unit, time of year and location thanks to innovations such as points systems and exchange programs. While providing an improved vacation experience for time share users, this flexibility and variety can make understanding the product difficult. With that in mind, the use of a time share unit can be attributed to one of three categories for the purposes of this discussion:

Ownership, including personal use by an owner and use by a guest of the owner;

Rental, which includes units made available to the general public by a time share developer and units rented by time share owners; and

Exchange, through which time share owners trade the use of their interval, directly or through a third party, for the use of another time share owner's interval in a different location or at a different time.

Exemption from the Sale of an Interest in a Vacation Time Sharing Plan

Time share in South Carolina, in almost all cases, is developed and sold as real property and ARDA is unaware of any current time share developments that are not offering a real property interest to potential purchasers. As we are sure the Commission is aware, the sale of real property, including second homes and vacation properties, is not subject to sales tax. Since time share involves the sale of real property and to avoid any confusion with respect to the status of the taxability of the sale of vacation time sharing plans, the industry believes that it should continue to enjoy the same tax status as it currently does and respectfully requests that the Tax Realignment Commission recommend the tax exemption be retained.

Exemption for the Exchange of an Interest in a Vacation Time Sharing Plan

Since its origin in the 1970's, time share exchange has been one of the key factors in the growth of the time share industry. Exchange allows owners to enjoy the vacation experience beyond their home resort to locations around the world through networks of resorts affiliated with an exchange company. Buying a week in a time share resort on the Grand Strand opens opportunities to ski in Colorado or surf in Hawaii. The reverse is true as well. A week in the Arizona desert or in Las Vegas can be exchanged for a week at the beach and on the golf course in Myrtle Beach.

In South Carolina we know, based on information supplied by the industries two major exchange companies RCI and Interval International, the number of time share exchanges into South Carolina grew at a triple digit rate between 1998 and 2008. We also know, according to the last survey done by the ARDA International Foundation, that there were 506,300 total trips made by time share owners into South Carolina in 2008. The same study found that 17% of those trips were made by families who exchanged their time share interest for one in South Carolina, meaning that 86,071 families visited South Carolina as part of a time share exchange (a more recent study conducted by Ernst and Young found that the 17% figure had increased to 21%, but for purposes of this document we will use 17% as the most applicable rate). Given that each family spends, on average, $1,450 per trip not including the service fee for the exchange, time share exchangers generated over $124,802,950 in spending in South Carolina in 2007. Spending that was largely, if not totally, subject to sales tax. Assuming it was all subject to sales tax, that spending would have generated approximately $7.5 million in sales tax revenue.

Neither South Carolina, nor any other state, has ever collected sales tax on time share exchange use. In 1998 the South Carolina Legislature made the policy decision to codify this practice in statutory form by passing legislation that clearly delineated that time share exchange is not subject to sales tax. In doing so, the legislature recognized that the time share product itself, like any other deeded interest in real property, does not have the attributes of a product that is subject to the sales tax. This year, a little more than decade after the law was passed in South Carolina, Florida followed South Carolina's lead and enacted legislation exempting time share exchange from sales tax and transient occupancy tax, formalizing what had been common practice in that state as well. Today, South Carolina, Florida and California, together representing 39% of time share resorts in the United States, all have statutory tax exemptions for time share exchange.

If South Carolina decides to change the law with respect to time share exchange, it would be the first in the United States to do so.

<u>Taxes and Fees Paid by Time Share Owners</u>

In further support of why a time share owner should not have to pay additional taxes to exchange their time share interest, one must better understand the taxes and fees that are already paid by the owner as an owner of real property in South Carolina. First of all, the owner must pay transfer taxes, recording fees and all other fees paid as part of the purchase of real estate. In addition, if the owner finances the purchase, there is the payment of all taxes and fees associated with such financing. Once the time share interest has been purchased, the owner is responsible for paying a maintenance fee to the time share association, which averages $646 per interval week according to a study conducted in 2008 by the ARDA International Foundation. And, of course, the owner must pay real property taxes. In 2007, according the ARDA International Foundation, time share owners paid more than $39 million in real property and occupancy taxes in the State of South Carolina alone. Just to summarize, a time share owner pays, at a minimum, the following taxes and fees:

1. Transfer Taxes
2. Recording Fees
3. Financing Charges
4. Maintenance Fees
5. Real Property Taxes

One tax that is not directly related to ownership but we would like to address is the payment of sales tax and transient occupancy tax on the rental of time share units. If the time share owner, including a time share developer, decides to rent a time share unit, then the occupant of the unit must pay sales tax and transient occupancy taxes on the rental. This is an extremely important point as the sales tax exemption in question does not provide the time share industry with any favorable treatment or competitive advantage over transient lodging when it is used in similar manner. Simply put, when a time share unit is rented like a hotel room, the occupant pays taxes as if they were in a hotel. There is nothing comparable in the hotel world to a time share exchange as there is no ownership by the occupant of the hotel room itself.

So, as you can see, the owner of a deeded interest in a vacation time sharing plan already pays multiple taxes and fees. Subjecting the sale or exchange of a time share interest to sales tax would place an even greater burden on time share owners and put South Carolina at a competitive disadvantage with respect to competing for time share purchasers and exchangers nationwide.

Who would pay this time share exchange tax?

At first blush, it would appear that this would be a tax paid for by non-South Carolina Residents, thus being a "tax the visitor, not the voter" situation. However, after compiling data from both RCI and Interval International, a different story appears. According to their data, there are over 15,000 residents of South Carolina who own time share located in South Carolina. This means that the implementation of an exchange tax would impose taxes on those families who chose to use their time share to vacation in South Carolina as they always have in the past. In addition, that tax would serve as a major deterrent for those 80,000 plus families a year that decide to exchange into South Carolina and generate approximately $7.5 million in sales tax revenue a year.

What would be the affect on the time share industry by taxing time share exchange?

As we have all become exceedingly aware, the "new normal" of our economy has made cost a more important factor than ever in all spending decisions, especially for discretionary spending like vacations. The competition for tourist dollars has become even more intense than usual as destinations such as Myrtle Beach, Orlando and Las Vegas vie to draw visitors. All of these destinations, and many others, hold a valuable commodity in helping attract these visitors: a strong time share presence. Despite the recession, time share owners continue to travel and stay at time share resorts. Time share occupancy rates have remained above 80% as occupancy rates for other types of lodging have fallen dramatically, showing the recession resistant nature of the time share visitor.

The purchase of a time share is essentially the purchase of a long-term pre-paid vacation making it possible for owners to travel despite tighter family budgets. In addition, the average time share visitor stays nearly three days longer than the average Grand Strand visitor (Source: Comparison of average time share visitor with average visitor as described in the 2008 Myrtle Beach Area Chamber of Commerce In-Market Visitor Profile Study). That is three more days visiting local restaurants, local golf courses and other businesses and attractions. Eliminating the existing sales tax exemption for time share exchange would create a cost for a significant portion of South Carolina's time share visitors that does not exist in comparable destinations across the country and within the region. Exchange companies would be obligated to disclose this cost to potential exchangers and many would likely opt for locations where they would not incur the added expense.

Not only would imposing sales tax on exchange place South Carolina at a competitive disadvantage in drawing exchangers into the state, it would also impact South Carolina time share owners, including the 15,000 residents who own time share in the state. Many residents near popular vacation destinations such as Hilton Head, Branson and Scottsdale purchase to provide both a convenient get away option and a sought after exchange destination. The ability to secure an exchange for a desired time and location is significantly effected by the desirability of the owner's interval and new taxes on exchanges into South Carolina resorts would reduce the attractiveness of those resorts for exchangers. It would also affect the ability of developers to sell new time shares in the state and current owners to resell their existing intervals. In the current economy, financing to expand or build new projects is also already at a premium. Available resources are unlikely to be committed to a location with unsold inventory and a built in sales disadvantage.

All taxes and tax exemptions reflect the policy choices of government bodies. The South Carolina Legislature made a policy choice in 1998 to codify the current practice and recognize the attributes of the time share product that are not appropriate for a sales tax. Additionally, as the state and national economy attempt to recover from the worst recession in decades it would be particularly unwise to impose a new tax that will discourage visitors and business from coming to this state. Time share owners continue to use their time shares and take vacations but they are no less value conscious than anyone else today. Adding costs to a South Carolina vacation that don't exist in other destinations will do nothing but deter visitors to the state and eliminating a certain level of spending that already exists today.

For the reasons set forth above, we respectfully request that this Commission recommend the current sale tax exemption for the sale of vacation time sharing plans as well as the sales tax exemption for time share exchange transactions be maintained.