TAX FAIRNESS OREGON

HB 4043 A Capital Gain Tax Break for Low Income Housing?

Testimony for House Revenue – Jody Wiser

We support increasing the document recording fee. The $10 increase isn't particularly bold, however. Is it adequate or a missed opportunity?

However, Tax Fairness Oregon opposes the capital gains tax break. Despite the fact that the bill summary says that HB 4043 *"Exempts from taxation amounts received from sale of real property to housing authority at price below fair market value,"* there is no provision in HB 4043 requiring a below market value sale. Nor could Tax Fairness Oregon (TFO) think of a mechanism to add that would work in protecting the public purse.

TFO recommends using General Fund monies after they are received in order to support affordable housing, rather than spending General Fund monies before they are received through a capital gains tax break.

As the attached examples show, with this mechanism the public benefit, even with a .05% or a 5% price reduction written into the law, rarely pencils out as a good public investment. **The proposed capital gains tax break would provide wildly different public rates of return on investment.**

Further, we fear cascading requests for similar tax breaks if the state starts down this road. If you create a special capital gains tax break for low income multi-family housing this year, next session the request could well be for single family residences sold to non-profits, the following session for medical clinics sold to non-profits, then recreation properties. . . .

Finally, TFO wants to emphasize what we have been saying about every one of the 19 direct tax breaks, and the handful of other tax break revenue reducers on the docket this year: **without knowing if IP 28 will pass or not, it is irresponsible to reduce revenue in the face of the PERS deficit. Changes later will require a 3/5 vote. Make budget spending decisions this year, not tax code spending decisions.**

TFO RECOMMENDS that you do not reduce the size of the General Fund by providing a tax break, the cost/benefit ratio of which you cannot control, even with an annual cap. Instead, reduce the size of the General Fund by providing grant funding to be used to purchase options on buildings, to participate in building purchases, or for low interest loans.

Options purchased years ahead might well eliminate realtor fees, a huge savings in itself. When they initiate interest in a property, the Housing Authority (HA) and Community Development Corporations can carefully choose properties that will build healthy, economically-mixed neighborhoods and neighborhood schools. In addition, capital for down payments and/or low interest loans is always in demand.

Sellers still have the option of selling below market value and getting a tax break for the) donated value. Itemized deductions carry their own General Fund cost, but with much more robust returns on the public investment, at least if the transaction is totally above board with realistic values placed on the properties.

Examples with tax breaks for low income housing purchases

Fully depreciated properties with the Capital Gains tax break:

- $10,050,000 property fully depreciated sold to a Housing Authority (HA) for $10,000,000
  $10,000,000 x 9.9% = $990,000 tax break/public investment for $50,000 benefit.

- $10,500,000 property fully depreciated sold to a HA for $10,000,000
  $10,000,000 x 9.9% = $990,000 tax break/General Fund (GF) investment for $500,000 benefit.

Properties with little spread between real market value and sales price with Capital Gains tax break:

- $10,050,000 property with a basis of $8,000,000 sold to a HA for $10,000,000
  $2,000,000 x 9.9% = $198,000 tax break/GF investment for $50,000 benefit.

- $10,500,000 property with a basis of $8,000,000 sold to a HA for $10,000,000
  $2,000,000 x 9.9% = $198,000 tax break/GF investment for $500,000 benefit.

Only the last example works for the public.

Provide General Fund money for grants, to purchase options on buildings or to participate in the purchase, or to provide low interest loans.

- $10,050,000 property fully depreciated sold to a HA for $10,050,000
  $50,000 of GF money helps purchase the building - $50,000 GF investment for $50,000 benefit.

- $10,500,000 property fully depreciated sold to HA for $10,000,000
  $500,000 of GF money helps purchase the building - $500,000 GF investment for $500,000 benefit.

Sellers still have the option of selling below market value and getting a tax break for their donated value.

- $10,000,000 property with zero basis sold to a HA for $7,000,000 = $3,000,000 itemized deduction = $1,370,000 tax break/public investment[1] for $1,600,000 benefit[2] with Oregon's share just $179,000.

- $10,500,000 property fully depreciated sold to a HA for $10,000,000 = $500,000 itemized deduction = $228,000 tax break/public investment[3] for $272,000 net benefit[4]

We read the bills and follow the money

---

[1] Assuming top rates of 39.6% and 9.9%: $3 m itemized deduction = Federal tax savings of $1,188,000 + Oregon tax savings of $179,000 = $1,367,388.

[2] $3,000,000 - $1,367,388

[3] $500,000 itemized deduction = Federal tax savings of $198,000 + Oregon tax savings of $29,898 = for a total tax savings/public investment of $227,898, with Oregon's share $29,898.

[4] $500,000 – $272,102 net benefit