

ATTACHMENT #1

Fractional Ownership/Timeshare and Taxation

OWNERSHIP

- Fractional ownership, more commonly known as timeshare
- “Own” or “Owner can mean many different things
 - Recorded title, fee simple interest
 - Common type of ownership for primary residence
 - Can be restricted or limited in many ways: covenants, HOAs, use, inheritance
 - Can be divided among more than one owner, i.e. joint ownership
 - Beneficial interest
 - Title to property is held in trust for the benefit of the beneficiaries
 - Right to use
 - No actual titled or beneficial ownership
 - Similar to license or easement

Evolution of Timeshare Plans

- Fixed Week
 - Original Fractional Ownership Structure
 - Least flexible
 - Use same unit and same week each year
- Floating Week
 - More flexible
 - Use “floats” among specified units and/or time periods
- Points Based System
 - Most flexible
 - Owner/Member purchases “points” that are used as a kind of currency to reserve accommodations throughout a fractional ownership plan

Timeshare Transactions

- Owner/Member use (not currently taxed)
 - Owner or member uses timeshare interest
 - Usually no payment other than annual maintenance fee
- Exchange (not currently taxed)
 - Owner/Member trades with owner/member of another program
 - Exchanges often facilitated by third party exchange company (Resort Condominiums International (RCI), Interval International (II), etc.)
 - Owner/member deposits their week/points and then books something else of equivalent or lesser value
 - Exchange company charges a fee, owner/member otherwise pays their annual fee
- Cash Transaction (subject to sales/lodging tax)
 - Owner/member sells/leases their interest in private transaction
 - Unsold or unused inventory marketed by timeshare program
 - Owner pays their annual fee, occupant pays market value for lodging

Examples of timeshare

- Steamboat Grand
 - Recorded title in a condominium divided into quarter shares by date, w occupancy rights specific to unit and date (Fixed week)
- Legacy Vacation Club (Pine Grove, Hilltop)
 - Recorded title, undivided interest in specified condominium, w occupancy rights to nonspecific unit and specified season (Floating week/points)
- Wyndham/Worldmark (Village at Steamboat)
 - Worldmark--right to use only, no title or direct interest in property (Points system)
 - Wyndham--recorded title, undivided interest in thirty different units with right to use nonspecific unit and time (Points system)
- Marriott Vacation Club (Sheraton)
 - Beneficial ownership, real property held in trust, Owner/Members have a right to use throughout the MVC system (Points system)

Taxing Powers – Property Tax

- Property Tax
 - Timeshare property/second homes/vacation home rental taxed at same rate as primary residential property
 - Cannot tax timeshare, second home ownership, vacation home rental ownership at different rates than primary residences
 - Uniformity clause, Colorado Constitution
 - There have been legislative proposals to reclassify residential property used for vacation home rental purposes

Taxing Powers – Sales Tax

- Sales Tax
 - Applies to sales of goods and a limited set of services: telecoms and lodging
 - Sale is an exchange of taxable goods/services for money/other things of value
 - Owner of a good/service provides it to another person or entity
- “Sales Price”
 - Determined by value of cash and other valuable property in the exchange
- Jurisdiction
 - Person or entity paying tax must be subject to jurisdiction of City
 - Requires that person or entity is doing business in the City

Taxing Powers – Sales Tax

- Cash Transactions are subject to sales tax
- Exchange Transactions in theory are subject to sales tax
 - At least one taxing jurisdiction has ruled that exchange transactions are taxable
 - City sales tax does not apply very well to exchanges due to difficulty in determining sales price
 - Structure of exchange transactions makes it unclear who is the seller
 - City would have difficulty asserting jurisdiction over exchange companies (RCI, II)
- Sales tax does not apply very well to Owner Use transactions
 - There is not really a “sale” in the sense of a transfer from the owner to someone else
 - There is not really a sales price

Taxing Powers – Transient Occupancy Tax (“TOT”)

- Taxable event is the act of occupying property on a transient basis, i.e. for a short term
 - Tax imposed on the occupant, collected by lodging owner/manager
- State of Hawaii imposes a transient occupancy tax
 - Tax is based on market value in cash transaction
 - Tax is based on maintenance fee for timeshare exchanges and owner use
- U.S Virgin Islands impose a flat fee on transient occupancy

Taxing Powers – TOT -- Scope

- Exchanges
 - Could be addressed through amendment of sales tax
 - Taxing exchange transaction is currently the subject of legislation in several other states
- Owner/Member use
 - Not taxable via sales tax, commercial aspects to use, annual fee
- Titled Owner use
 - Not taxable via sales tax, commercial aspects to use, annual fee
 - Ownership interest is similar in some ways to second home use
- Second homes
 - Transient uses with no payment (i.e. not cash transactions) not commercial in nature
 - Should be evaluated differently than fractional ownership owner uses transactions

Taxing Powers – TOT

- Pros

- Increased revenue to City
- Reduced reliance on sales tax
 - Time share interests are long term obligations
 - Owner/member expenditures are not contingent and may be less responsive to economic conditions

- Equity

- Transient timeshare uses arguably cause the same impacts as traditional hotel/vacation home rental transactions but pay no sales/lodging tax
- Timeshare property is assessed for property tax at residential rates despite commercial nature of the use

Taxing Powers – TOT

- Cons
 - Industry opposition
 - Pre-emption
 - Legal challenges
 - Difficulty estimating market value
 - Difficulty estimating revenue
 - Inconsistency with owner expectations
 - Administrative costs of collection

Recommended action

- Scope to include exchange and owner/member transactions
- Recorded, titled owner transactions not taxed
- Second home uses not taxed
- Transactions subject to sales tax would be exempted, no transaction would be subject to both sales tax and transient occupancy tax
- Flat fee based on bedrooms, pillows, floor area, etc.

Questions?