TAX FAIRNESS OREGON

HB 2879 A Capital Gain Tax Break for Low Income Housing?

Testimony for House Revenue – Jody Wiser – 4.12.2017

However, Tax Fairness Oregon opposes this capital gains tax break. Despite the fact that the bill tried to support low income housing, there is no definition or provision in the bill requiring a below market value sale that matches the capital gains savings for the seller. Tax Fairness Oregon (TFO) cannot think of any practical mechanism to add that would work in protecting the public purse.

With this mechanism the public benefit, even if a reduction of a 10% price reduction were written into the law, it's unclear that it would pencil out as a good public investment. As written, a sale at market value could result in a huge capital gains benefit to the seller with no public benefit.

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.

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 bill after bill this year, **with our budget gap, it is irresponsible to reduce revenue. This is a time to make budget spending decisions, not tax code spending decisions.**

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]

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[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