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WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON HOUSING
ON
SENATE BILL NO. 1033

February 4, 2025
1:00 p.m.
Room 225 and Videoconference

RELATING TO TAXATION

The Department of Budget and Finance offers comments on this bill.

Senate Bill (S.B.) No. 1033 establishes a new excise tax on certain taxpayers who fail to sell their excess single-family residences; establishes the Housing Downpayment Trust Fund (HDTF) to be administered by the Hawai'i Housing Finance and Development Corporation for the purpose of establishing new programs or supplementing existing programs that provide downpayment assistance to families purchasing homes within the State; and provides that all revenues from the new tax shall be deposited into the HDTF.

Pursuant to Section 37-62, HRS, a trust fund is defined as a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise, or bequest that limits the use of the fund to designated objects or purposes. As proposed, the HDTF appears to function more similarly to a special fund which provides a nexus between its sources of revenue and program beneficiaries. Regardless of the type of fund, it is difficult to determine whether the proposed HDTF would be self-sustaining and thus feasible.

Thank you for your consideration of our comments.

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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 1033, Relating to Taxation.

BEFORE THE:

Senate Committee on Housing

DATE: Tuesday, February 4, 2025

TIME: 1:00 p.m.

LOCATION: State Capitol, Room 225

Chair Chang, Vice-Chair Hashimoto, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments regarding S.B. 1033 for your consideration.

S.B. 1033 adds a new chapter to Title 14 of the Hawaii Revised Statutes (HRS), establishing an excise tax on “applicable taxpayers” (including partnerships, corporations, and trusts) that manage funds pooled from investors and hold large real estate portfolios. It imposes an excise tax on the acquisition of newly acquired single-family residences (SFRs) and additional penalties for holding excess properties. Funds collected from this new tax will be allocated to a newly established fund to be administered by the Hawai‘i Housing Finance and Development Corporation.

S.B. 1033 defines several key terms as follows:

- “Applicable taxpayer”: An entity managing pooled funds and with \$50 million or more in assets, except for tax-exempt organizations described in Internal Revenue Code section 501(c)(3) organizations and organizations primarily engaged in the construction or rehabilitation of SFRs.
- “Disqualified sale”: A sale of a SFR to a business or individual who already owns a SFR.

- “Single-family residence”: A residential property with 1-4 dwelling units, excluding certain foreclosures, a principal residence of a person with an ownership interest in the applicable taxpayer, or federally funded.

This measure imposes a 50% excise tax on any SFR acquired by applicable taxpayers.

In addition, this measure imposes a \$50,000 per SFR tax on taxpayers owning more than the maximum permissible number of units at the end of a taxable year. The maximum permissible units is based on the number of SFRs owned by an applicable taxpayer on the applicable date of the measure. The limit decreases over a ten-year period starting at 90% of the SFRs owned at the applicable date and finishing at zero.

Taxpayers must report the acquisition dates of properties and certify if buyers of their properties own other residences. A \$20,000 penalty applies for failure to comply with reporting requirements. Furthermore, buyers of single-family residences must certify that the sale is not a disqualified sale.

This bill is set to take effect on January 1, 2026.

This measure creates a new tax type, distinct from existing income, general excise, property, and conveyance taxes. DOTAX is required to publish a new form for calculating the tax owed “not later than [180] days after the effective date of the” measure.

DOTAX faces significant challenges in verifying key components of this new tax. First, identifying applicable taxpayers with available existing data and filings is not possible. Current income and conveyance tax filings do not require taxpayers to disclose whether they manage funds pooled from investors, or are one of the specified “asset classes” mentioned on page 2 of the bill. DOTAX would need to impose new information reporting requirements and make extensive changes to its systems to administer the proposed tax.

Second, the measure would necessitate new reporting requirements for every SFR real estate transaction in the state. As written, all SFR buyers would need to provide multiple certifications or representations, which presumably would be submitted and processed by DOTAX. To ensure compliance, DOTAX would essentially need to track sales and ownership of SFRs to specific taxpayers. This would be a significant departure from DOTAX’s current data priorities, which focus on the reporting of income and gross receipts, not ownership of property.

Third, the measure would also require DOTAX to track companies' net asset values throughout the year since applicable taxpayers are those who have more than \$50,000,000 or more in net value or assets under management on any day during the taxable year.

The complexities above would require significant new processes and data system changes. Thus, if passed, DOTAX requests the bill be amended to apply to taxable years beginning after December 31, 2026, to provide sufficient time to develop necessary systems, forms, and processes to implement the measure.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

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SUBJECT: MISCELLANEOUS; New Excise Tax, Housing Downpayment Trust Fund

BILL NUMBER: SB 1033

INTRODUCED BY: LEE, C.

EXECUTIVE SUMMARY: Establishes an excise tax on certain taxpayers who own excess single-family residences for failure to sell those residences. Establishes and allocates excise tax revenues to the Housing Downpayment Trust Fund.

SYNOPSIS: Adds a new chapter to title 14, HRS, to impose an excise tax on certain taxpayers failing to sell excess single-family residences.

The chapter defines an “applicable taxpayer,” at which the tax is directed, as a taxpayer that:

- (1) Manages funds pooled from investors and is a fiduciary with respect to those investors;
- (2) Is an asset manager in any of the following asset classes:
 - (A) Public equity or fixed-income securities;
 - (B) A hedge fund;
 - (C) A fund of hedge funds;
 - (D) Private equity (including venture capital);
 - (E) A fund of private equity funds;
 - (F) A real estate investment fund;
 - (G) A fund of real estate funds; or
 - (H) Any other asset class for which an applicable fiduciary-controlled entity engages external asset managers; and
- (3) That has \$50,000,000 or more in net value or assets under management on any day during the taxable year.

The following taxes are imposed: (a) 50% of the fair market value of any single-family residence newly acquired by an applicable taxpayer, and (b) \$50,000 per applicable single-family residence over the permitted limit, which decreases over time.

Taxes are deposited into the Housing Downpayment Trust Fund newly established by the bill.

Adds a new section to chapter 201H, HRS, to establish the Housing Downpayment Trust Fund. The money is to be used to establish new or supplement existing programs that provide

downpayment assistance to families purchasing homes within the State. The corporation shall give priority to families seeking assistance to purchase any single-family residence that is sold or transferred by an applicable taxpayer

EFFECTIVE DATE: January 1, 2026.

STAFF COMMENTS: Essentially, this bill, after being phased in, bans an applicable taxpayer from buying or retaining single-family residences upon pain of paying a punitive excise tax. We question whether it is consistent with Article I, section 2 of the Hawaii Constitution which states, "All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property."

Although the bill by its terms applies to entities and not necessarily individuals, it should be borne in mind that individuals, as owners, managers, employees, or investors, are behind each entity.

We also note that the new special fund proposed to be established by this bill does not appear to be self-sustaining, and thus does not meet the criteria established for special funds in section 37-52.3, HRS.

Digested: 1/31/2025