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STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: Tuesday, March 31, 2015  
Time: 9:00 A.M.  
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 169, H.D. 1, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 169, H.D. 1, which helps to alleviate a disparity in the State Tax Law that imposes a lower tax on certain transient accommodations operators and not others.

H.B. 169, H.D. 1 raises the Transient Accommodations Tax (TAT) rate imposed on timeshares under Hawaii Revised Statutes (HRS) section 237D-2(c) from 7.25% to 8.25% for the period beginning July 1, 2015 and ending June 30, 2016, and then from 8.25% to 9.25% beginning July 1, 2016 and thereafter. H.D. 1 has a defective effective date of July 1, 2020.

Under current TAT law, timeshares are afforded a lower tax burden compared to hotels and other non-timeshare transient accommodation rental operations. While hotels are taxed at a rate of 9.25% of their gross rental income received in exchange for furnishing transient accommodations, timeshares are afforded a discounted tax imposition in two ways.

First, timeshares are subject to a 7.25% tax rate, rather than the 9.25% tax rate. Second, the rate is imposed on one-half of the daily maintenance fee paid by the owner of the unit, rather than on the full fair market value of the room. One-half of daily maintenance fees in most cases is significantly below the true market value of any accommodation. These two factors result in timeshare TAT liability being significantly lower than the liability imposed on comparable hotel accommodations.

If the intent of this measure is to impose the tax on the different transient accommodation business models in a consistent manner, the Department suggests that the base amount on which the TAT is imposed be equal to one hundred percent of the daily maintenance fees. In addition,

the Department suggests that the last sentence of the definition of "fair market rental value" not be deleted, as this provision allows the Department to impose the TAT fairly when timeshare business models do not charge a daily maintenance fee that appropriately reflects the market value of the accommodation being furnished. Accordingly, the Department suggests that the definition of "fair market rental value", as set forth in section 237D-1, HRS, be amended to read as follows:

"Fair market rental value" means an amount equal to [~~one-half~~] the gross daily maintenance fees that are paid by the owner, are attributable to the time share unit, and include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, and other costs including payments required for reserves or sinking funds. The taxpayer shall use gross daily maintenance fees, unless the taxpayer proves or the director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods.

The annual revenue gain is estimated at \$4.0 million in FY 2016 and thereafter.

Thank you for the opportunity to provide comments.

**wam3 - Nicolas**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 30, 2015 8:48 AM  
**To:** WAM Testimony  
**Cc:** annie@projectvisionhawaii.org  
**Subject:** \*Submitted testimony for HB1440 on Mar 31, 2015 09:00AM\*

**HB1440**

Submitted on: 3/30/2015

Testimony for WAM on Mar 31, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
ELIZABETH A HILLER VALENTIN	PROJECT VISION HAWAII	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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9002 San Marco Court  
Orlando, Florida 32819  
(407) 418-7271

March 31, 2015

To: Honorable Jill Tokuda, Chair  
Honorable Ron Kouchi, Vice Chair  
Senate Committee on Ways and Means

RE: **HB 169 HD1 – Relating to Taxation – Comments**  
Conference Room 211; 9:00 AM

Chair Tokuda, Vice Chair Kouchi and Members of the Committee:

Starwood Vacation Ownership (“Starwood”) appreciates the opportunity to offer comments on HB 169 HD1, which increases the transient accommodations tax imposed on resort time share vacation units by 1% each year to gradually achieve a rate of 9.25% of the fair market rental value. Starwood does not support an increase in transient accommodations taxes imposed on resort time share vacation units; however, should this measure continue to move forward, the current HD1 which includes an amendment to phase-in the tax increase and redefine “fair market value” is preferred.

Currently, timeshare owners pay general excise taxes, real property taxes, and transient accommodations taxes when rooms are used as traditional transient accommodations. The transient accommodations tax on timeshare units is also known as the “transient occupancy tax,” which is a tax based on a percentage of daily maintenance fees, and paid by time share owners. Starwood does not support the transient occupancy tax, but is aware of the increase in transient accommodations taxes that hotels pay. Therefore, we respectfully ask that should the Committee decide to move forward with this measure, that the language in the HD1 be kept.

Thank you for the opportunity to provide comments on HB 169 HD1.

Robin Suarez  
Vice President/General Counsel  
Starwood Vacation Ownership

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** TRANSIENT ACCOMMODATION, Additional tax on time share units

**BILL NUMBER:** HB 169, HD-1

**INTRODUCED BY:** House Committee on Tourism

**BRIEF SUMMARY:** Amends HRS section 237D-2 to impose tax of 8.25% on the fair market rental of a time share vacation unit between July 1, 2015 and June 30, 2016; and 9.25% on July 1, 2016 and thereafter.

**EFFECTIVE DATE:** July 1, 2020

**STAFF COMMENTS:** The legislature by Act 61, SLH 2009, increased the transient accommodations tax (TAT) from 7.25% to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15. The legislature by Act 161, SLH 2013, made the increase in the TAT permanent at 9.25%.

Currently resort time share units are taxed at 7.25% of their fair market rental value. The tax is imposed on occupancy, so this part of the tax is sometimes called the transient occupancy tax or TOT. This measure would increase the TOT rate by 1% each year until it reaches 9.25% on July 1, 2016.

This bill is a tax increase. The reason offered for the increase is that the TAT and TOT rate are not the same, thus there is a “significantly lower tax burden on timeshares than other transient accommodation rental operators,” as the TIA committee report states. However, it isn’t that simple: TAT and TOT are not comparable.

- The TAT is imposed on revenue. The TOT is imposed on occupancy.
- The TAT is 9.25% of revenue. The TOT is 7.25% of half the daily maintenance fee.
- The TAT is paid by people who are renting out units. The TOT is paid by people who are occupying the units they own.

Digested 3/30/15



March 31, 2015

TO: COMMITTEE ON WAYS AND MEANS  
Senator Jill N. Tokuda, Chair  
Senator Ronald D. Kouchi, Vice Chair

FR: Henry Perez, Chair ARDA-Hawaii via Blake Oshiro, Executive Director

RE: H.B. 169 HD1 Relating to Taxation  
**Position: Not Support**

Dear Chair Tokuda and Vice Chair Kouchi and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, **does not support HB 169 HD1**, a bill Relating to Taxation. This bill would raise the taxes paid by timeshare owners for what is more commonly called a “transient occupancy tax” (TOT) by increasing the tax rate from 7.25 percent to 8.25 percent one year, then permanently to 9.25 percent thereafter (7.25% to 8.25% to 9.25%).

Timeshare owners already pay their share of general excise taxes, of real property taxes, and even transient accommodation taxes (TAT) when the rooms are held out like traditional transient accommodations. Hawaii’s TOT uniquely assesses time share owners for occupancy of property that they already own, based on a calculation of a daily maintenance fee factoring in maintenance costs, operational costs, insurance, and other related expenses.

However, ARDA acknowledges that hotels have been paying an increased TAT since 2009. Under 2009’s Act 61, the hotels' tax rate was *temporarily* increased from 7.25% to 8.25% for one year, and then increased to 9.25% for 2010 - 2015. The increase was later made *permanent* in 2013's Act 161. Therefore, even if we do not support this bill, should it continue to move forward, ARDA respectfully requests that the Committee pass the bill in the House Draft 1 form:

1. Increase the rate from 7.25% to 8.25% for one year; then increase to 9.25% the following year to provide the same phase-in and gradual increase that was provided to the TAT rate; and
2. Redefine “fair market value” under Haw. Rev. Stat. Section 237D-1, to delete the language where the Department of Taxation (DoTAX) has the power to determine whether “gross daily maintenance fees do not fairly represent fair

market rental value taking into account comparable transient accommodation rentals.” We understand that the DoTAX has not used this mechanism, and may not have the resources to do so. Moreover, because the TAT is assessed based on “gross rental” and it is not calculated based on a “comparable” rental, ARDA respectfully asks for the same treatment.

Thank you for the opportunity to submit testimony.



**Testimony to the Senate Committee on Ways and Means  
Tuesday, March 31, 2015 at 9:00 A.M.  
Conference Room 211, State Capitol**

**RE: HOUSE BILL 169 HD1 RELATING TO TAXATION**

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 169 HD1, which amends the definition of fair market rental value and increases the transient accommodations tax imposed on resort time share vacation units by 1 per cent each year to gradually achieve a rate of 9.25 per cent of the fair market rental value.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber feels that this increase on the transient accommodations tax for vacation units is overbearing as timeshare owners already pay general excise taxes, real property taxes, and transient accommodation taxes for occupancy of property that they already own. We understand that the transient accommodations taxes for hotels has increased and that this bill seeks to even the playing field. If this bill is to pass, we ask that the language in HD1 be adopted rather than the original language.

Thank you for the opportunity to testify.

**HB169**

Submitted on: 3/27/2015

Testimony for WAM on Mar 31, 2015 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Peter Thoenen	Individual	Oppose	No

Comments:

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