

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Tom Brower, Chair
and Members of the House Committee on Tourism

Date: Wednesday, February 11, 2015
Time: 9:30 A.M.
Place: Conference Room 312, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 169, Relating to Taxation

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

H.B. 169 raises the Transient Accommodations Tax (TAT) rate imposed on timeshares under Hawaii Revised Statutes (HRS) section 237D-2(c) from 7.25% to 9.25%.

Under current TAT law, timeshares are afforded a significantly 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 burden in two ways.

First, timeshares are subject to a 7.25% rate rather than a 9.25% 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 going to be significantly below the true market value of any unit. These two factors result in the TAT liability being significantly lower than comparable hotel accommodations.

If the intent of this measure is to level the imposition of the tax on the different transient accommodation business models, the Department suggests that the base amount on which the TAT is imposed be equal to one hundred percent of the daily maintenance fees. 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.

Thank you for the opportunity to provide comments.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATION, Additional tax on time share units

BILL NUMBER: HB 169

INTRODUCED BY: Luke

BRIEF SUMMARY: Amends HRS section 237D-2 to impose an additional tax of 2% on the fair market rental of a time share vacation unit.

EFFECTIVE DATE: July 1, 2015

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 value. This measure would impose an additional tax of 2% to provide that they shall also be taxed at the rate of 9.25%.

Apparently in their rush to raise additional revenues for the general fund by raising the TAT rate on hotel rentals, lawmakers overlooked timeshare rentals which are taxed under a different section of the TAT law than all other hotel rentals. This measure proposes to bring the taxation of time share rentals into line with all other transient accommodation rentals. Although the rate increase on other hotel rentals was phased in, the rate currently stands at 9.25%. Thus, this proposal would make the two percentage point increase in one fell swoop, rising to 9.25% on time shares as of July 1 of this year.

Although this may appear to be a move to maintain parity, what is most disconcerting is that while the 7.25% TAT rate was supposed to sunset in 2015, it has now become permanent as lawmakers cited immediate and continuing need for the extra funds. Lawmakers need to impose discipline on their spending of all the money they can get their hands on with the realization that this practice is what got the state into the trouble it is now trying to address. Unfortunately, what policy makers have failed to realize is that the more they extract from the economy in taxes and fees, the more economic performance declines. As economic performance declines, so do tax revenues.

Digested 2/10/15



February 10, 2015

TO: COMMITTEE ON TOURISM
Representative Tom Brower, Chair
Representative Takashi Ohno, Vice Chair

FR: Henry Perez, Chair
ARDA-Hawaii

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

Dear Chair Brower and Vice Chair Ohno and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, **does not support HB 169**, 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 9.25 percent (7.25% 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 recognizes 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, should this bill move forward, in recognition of an equitable tax rate, ARDA respectfully requests that the Committee consider amending the bill in the following manner:

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 of
Gary M. Slovin / Mihoko Ito
on behalf of
Wyndham Vacation Ownership**

DATE: February 10, 2015

TO: Representative Tom Brower
Chair, Committee on Tourism
Submitted Via TOUTestimony@capitol.hawaii.gov

RE: **H.B. 169 - Relating to Taxation**
Hearing Date: Wednesday, February 11, 2015 at 9:30 a.m.
Conference Room 312

Dear Chair Brower and Members of the Committee on Tourism,

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham and Shell Vacations brands.

Wyndham submits the following **comments** regarding H.B. 169, which seeks to increase the transient accommodations tax on time share vacation units from 7.25% to 9.25%. The transient accommodations tax on time share vacation units, also known as the “transient occupancy tax” or “TOT,” is a tax on a percentage of property maintenance fees that are paid by a time share owner.

Wyndham does not support an increase in the transient occupancy tax. However, Wyndham recognizes that the transient accommodations tax on hotel rooms (“TAT”) was temporarily increased several years ago from 7.25% to 9.25%, and that the increase was made permanent in 2013. Given these changes, Wyndham would respectfully request that, if the Committee is inclined to move this measure forward, it consider the amendments recommended by ARDA-HI to 1) clarify the definition of “fair market rental value” and 2) phase in the TOT over a period of several years, as was done for the TAT.

Thank you for the opportunity to submit testimony.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

999 Bishop Street, Floor 1400
Honolulu, HI 96813
(808) 539-0840

brower1-Luke

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 07, 2015 3:13 AM
To: TOUtestimony
Cc: nealhalstead@yahoo.ca
Subject: Submitted testimony for HB169 on Feb 11, 2015 09:30AM

Categories: CN

HB169

Submitted on: 2/7/2015

Testimony for TOU on Feb 11, 2015 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Neal Halstead	Individual	Support	No

Comments: I support this bill as it levels the playing field for all participants in the tourist accommodation industry. Mahalo.

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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HAWAII LODGING & TOURISM
A S S O C I A T I O N

Testimony of George Szigeti
President & CEO
HAWAII LODGING & TOURISM ASSOCIATION
Committee on Tourism
Hearing on February 11, 2015, 9:30 A.M.
HB 169 Relating to Taxation

Dear Chair Brower, Vice Chair Ohno, and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating \$14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer comments regarding House Bill 169 relating to taxation, which increases the transient accommodations tax imposed on resort time share vacation units from 7.25% to 9.25% of the fair market rental value.

The Hawai'i Lodging & Tourism Association would like to comment by first stating we would not like to see an increase in transient accommodation taxes imposed on resort time share vacation units. However, if this measure is to be moved forward we would like to suggest amendments be made to the definition of "free market rental value" as defined in section 237D-1, Hawai'i Revised Statutes, by omitting the phrase "...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." as well as phasing in the 2% increase over a course of two years, as previously enacted in ACT 61 (SLH 2009) for hotels and resorts.

Thank you for this opportunity to testify.