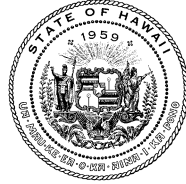


DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
Phone: (808) 587-1540 / Fax: (808) 587-1560
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RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Rona M. Suzuki, Director
Department of Taxation

Re: **S.B. 2083, Relating to Taxation**

Date: Wednesday, January 29, 2020

Time: 10:10 A.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) supports the intent of S.B. 2083 and provides the following comments.

S.B. 2083 increases the base of the transient accommodations tax (TAT) applied to timeshare occupancy by the timeshare owner from one-half of the gross daily maintenance fees to the full amount of the gross daily maintenance fees. The bill becomes effective January 1, 2021.

The Department notes that timeshare occupancy is subject to a lower TAT burden than other transient accommodations. Currently, the base is only 50% of the gross daily maintenance fees rather than the full fair market value of the accommodation. In most cases, 50% percent of the gross daily maintenance fees is significantly lower than the true market value of the accommodation. A 2008 report published by the University of Hawaii Economics Research Organization¹ found that the tax base for timeshares versus other transient accommodations was approximately one-third of fair market value. Therefore, measure will help to level the imposition of tax on the different transient accommodation business models.

Thank you for the opportunity to provide comments.

¹ "Taxing Timeshare Occupancy" by Sally Kwak & James Mak (December 8, 2008)
https://uhero.hawaii.edu/assets/UHERO_WP2008-02.pdf



January 26, 2020

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Aragan, Vice Chair
Senate Ways and Means Committee
Hawaii State Legislature

Testimony in Opposition to SB2083

Dear Chair Dela Cruz, Vice Chair Keith-Aragan and Members of the Senate Ways and Means Committee:

Thank you for the opportunity to offer this testimony regarding SB2083, which proposes to amend the formula for the amount of transient accommodations tax (TAT) to be collected from time shares by increasing the base on which time share occupancy is taxed from ½ of the gross daily maintenance fees paid by the owner and attributable to the time share unit, to an amount equal to all of those fees. The Kohala Coast Resort Association opposes this bill.

Timeshare units are a special class of accommodations, because their owners also pay property taxes to the counties. In the past, the TAT was only applied to ½ of the gross daily maintenance fees paid by the owner, as this equates to the amount of use by the owner for the typical hotel and resort amenities. The remaining ½ of the gross daily maintenance fees supports the capital improvements and real property taxes that are specific to owned timeshare units. From the hospitality industry's perspective, the TAT was never intended to be applied to the maintenance fees at all, but a compromise was already established by applying the TAT to ½ of those fees.

This additional application of the TAT would further burden the state's highest-taxed industry, and greatest economic contributor. Hotel, resort, and timeshare guests presently are being taxed at a whopping 10.25 percent, with an additional 4.5 percent general excise tax. Legislators promised that the TAT would revert back to 7.75 percent in 2015, but that promise was not kept. In fiscal year 2013, the general fund allocation from the TAT was 41.9 percent, and in 2019 it grew to 56.6 percent, a development far removed from the original intent of the TAT, which was to fund tourism marketing, the convention center, and county services that support tourism.

The visitor industry is the economic driver for our economy. According to the Hawaii Tourism Authority, it generates more than 200,000 jobs, and now raises more than \$600 million through the TAT alone. Meanwhile, the hospitality industry continues to experience the increasing costs of doing business in terms of employee payroll and benefits, utilities, construction and maintenance, and higher county property taxes. Those escalating costs are paid with the remaining ½ of the maintenance fees, and should not be subject to the TAT.

KCRA is a collection of master-planned resorts and hotels situated north of KOA which represents more than 3,500 hotel and timeshare accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the island. KCRA members annually pay more than \$20 million in TAT, \$20 million in GET and \$11 million in property taxes.

We encourage your opposition to this measure.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho, Administrative Director

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Increase Transient Occupancy Tax

BILL NUMBER: SB 2083

EXECUTIVE SUMMARY: Increases tax on timeshare units by increasing the tax base from half of the gross daily maintenance fee to an unspecified percentage. The definition of the taxable base was adjusted four years ago, and at that time the legislature declined to change the percentage against the Department of Taxation's recommendation. There is still no hard data that has been presented in the testimony to date. Justification for increasing the percentage now is questionable at best.

SYNOPSIS: Amends section 237D-1, HRS, by changing the definition of "fair market rental value" on which timeshares are taxed from half the gross daily maintenance fees to all of the gross daily maintenance fees.

EFFECTIVE DATE: July 1, 2021.

STAFF COMMENTS: Section 1 of the bill recites that the tax formula for levying taxes on timeshare units has not been adjusted since the state began taxing timeshares in 1998, and that the existing tax formula for timeshares significantly underestimates the fair market value of many timeshare units.

The premises behind the bill, as recited above, appear to be questionable.

Section 237D-1, HRS, contains the definition of "fair market rental value" against which the TAT rate for timeshare units is applied. The definition ends with the sentence, "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." If the Department indeed had determined that gross daily maintenance fee grossly understated fair market value, why didn't the Department do something about it as contemplated by the last sentence of the definition in section 237D-1, HRS?

In 2015, the Department similarly asserted that "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." Department of Taxation, Testimony Before Senate Ways and Means Committee on HB 169 (Mar. 31, 2015). The Department then recommended that "fair market rental value" be adjusted to 100%, rather than 50%, of average daily maintenance fee.

As a result, the definition of fair market value of a timeshare unit was indeed adjusted four years ago, by Act 93, SLH 2015, but the percentage was *not* adjusted. At that time the Conference Committee explained:

Your Committee on Conference finds that a change to the definition of “fair market rental value” is in order because the Department of Taxation has not exercised its discretion to take into account comparable transient accommodation rentals or other appraisal methods. However, the Department of Taxation believes that the scope of the gross daily maintenance fees should be clarified so that there is little question as to what is included and what is not included. The tax is based on the maintenance fees of the time share plan and does not include charges for optional goods or services such as food and beverage service. The purpose of this change is not intended to expand or reduce the scope of fees included in the gross daily maintenance fees, and as such, fees such as food and beverage, or other recreational rentals, as well as time share units’ condominium association assessments should not be included.

Conf. Comm. Rep. No. 75 (on HB 169) (2015).

The Department at that time didn’t bother to support its assertion, the Conference Committee apparently didn’t believe the Department for that reason, and the formula in the definition was not adjusted.

Testimony to date is still devoid of any data demonstrating that the current statutory formula is inadequate. If the legislature’s decision in 2015 is now to be overturned, it should be based on hard evidence, not on wild hand-waving and unsupported assertions.

Digested 1/27/2020



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: January 27, 2020

TO: Senator Donovan Dela Cruz
Chair, Committee on Ways and Means
Submitted Via Capitol Website

RE: **S.B. 2083 – Relating to Taxation**
Hearing Date: Wednesday, January 29, 2020 at 10:10a.m.
Conference Room: 211

Dear Chair Dela Cruz and Members of the Committee on Ways and Means:

We submit this testimony on behalf of Wyndham Vacation Ownership, Inc. 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, Inc. has a substantial presence in Hawaii through its Wyndham Vacation Resorts, WorldMark by Wyndham and Shell Vacations brands.

Wyndham opposes S.B. 2083, which would modify the transient occupancy tax (“TOT”) formula assessed on timeshare unit occupants. Hawaii is the only state in the nation that imposes a tax on the timeshare owners for the use and occupancy of property that they already own. The current TOT formula of one-half of the fair-market rental value of the timeshare unit recognizes that timeshare owners have already paid real property taxes, conveyance taxes and applicable general excise taxes on the purchase of their property.

This measure would raise the price of timeshare ownership in Hawaii and could negatively impact an industry that contributes significant revenue to our state. The timeshare industry is a strong and consistent source of economic growth for the state that brings stability to the visitor industry by providing reliable and consistent occupancy. Timeshare owners, which include kama’aina, are loyal and repeat visitors who have made long-term commitments to vacation in the islands. As our economy faces future uncertainties, efforts should be made to continue to promote tourism and attract visitors, including timeshare owners, to Hawaii.

For these reasons, we respectfully oppose this bill and ask that it be held. Thank you very much for the opportunity to submit testimony.

CC: Frank Goeckel, SVP – Strategy, Integration and Acquisitions, Wyndham Destinations



Imanaka Asato
A LIMITED LIABILITY LAW COMPANY

January 28, 2020

Senator Donovan Dela Cruz, Chair
Senator Gil Keith-Agaran, Vice-Chair
Members of the Senate Committee on Ways and Means
Thirtieth Legislature
Regular Session, 2020

RE: **SENATE BILL 2083 RELATING TO TRANSIENT ACCOMMODATIONS TAX;
TIME SHARE; TAX BASE - OPPOSITION**
Hearing Date: January 29, 2020 at 10:10 a.m.

We are writing on behalf of Marriott Vacations Worldwide Corporation to express our strong **opposition** to this bill which proposes to change the transient occupancy tax (TOT) formula from one-half (or 50%) of the “fair market value” to the entire value thereby **doubling the tax** paid by timeshare unit occupants.

When this tax was first imposed several decades ago, it was a compromise with the industry to be set at one-half of the fair-market value. This was because it was a unique tax imposed on owners who have already paid real property tax, conveyance taxes and applicable general excise taxes on purchasing the property. Hawaii remains the only state to impose a tax on timeshare unit owners for using and occupying property that they already own.

According to the Hawaii Tourism Authority, in 2018 “participating timeshare properties reported paying \$101.2 million in state and county taxes, with real property taxes accounting for 48.2% of the total.” This calculates to about \$52.3 million in general excise (GET), transient accommodation (TAT), conveyance taxes and TOT.

<https://www.hawaiitourismauthority.org/media/3482/hawaii-timeshare-quarterly-survey-year-end-2018.pdf>

Timeshare units, when rented on a transient basis by NON-owners, or used for marketing purposes by developers, are already subject to the TAT. The TOT applies when timeshare owners, many of whom are Hawaii property owners under the law, use their property interest and stay at the Hawaii timeshare unit. They pay a yearly maintenance fee including real property taxes, GET and other fees. No other owner of real property in Hawaii is required to pay an occupancy tax to stay in real property that they already own. In fact, Hawaii is the only state to assess a TOT on timeshare owners in the United States.

Moreover, the tax rate for timeshare owners has already been increased three times in the last three years by approximately 40%. In 2015, Act 93 Session Laws of Hawaii, increased the TOT by two percent (2%). The rate was increased from 7.25% to 8.25% in 2016, then by another one percent to 9.25% in 2017. In addition, Act 1 of the Special Session of 2017, increased the rate to 10.25% for the next 12 years.

Senator Donovan Dela Cruz, Chair
Senator Gil Keith-Agaran, Vice-Chair
Members of the Senate Committee on Ways and Means
January 28, 2020
Page 2

Our concern lies in the potential negative impact any increase could have on our currently healthy tourism economy. The proposed increases in the TOT are ultimately borne by visitors potentially creating a drag on our healthy, but always competitive, visitor market. Visitors, especially for our industry where there is a trend to have vacation clubs with choices of destinations, have a multitude of choices for their travel. While the “Hawaii-brand” is always attractive, this must still be balanced and tempered by the associated costs to come and stay here.

Increases to the tax rate will send a potentially negative message to visitors, and especially timeshare owners, that they are being targeted to bear the burden of the increases. Several counties have already increased or are considering increasing their real property tax rates for hotels and timeshare. Thus, our members already pay their fair share of taxes – TOT, real property, and general excise tax – and any such additional increases create another burden on our visitors on top of the taxes that they already pay.

Therefore, we respectfully oppose this bill. Thank you.

Mahalo,

Imanaka Asato, LLLC

Kimberley W. Yoshimoto, on behalf of
Marriott Vacations Worldwide Corporation



TO: Senator Donovan Dela Cruz, Chair
Senator Gil Keith-Agaran, Vice-Chair
Ways and Means Committee Members

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) –HAWAII
via Blake Oshiro, Executive Director

RE: SB2083 **Opposition**

The American Resort Development Association – Hawaii (ARDA-Hawaii) is the trade association representing the vacation ownership and resort development industries (timeshares) here in Hawaii. We are writing to express our strong **opposition** to this bill which proposes to change the transient occupancy tax (TOT) formula from one-half (or 50%) of the “fair market value” to the entire value thereby **doubling the tax** paid by timeshare unit occupants.

When this tax was first imposed several decades ago, it was a compromise with the industry to be set at one-half of the fair-market value. This was because it was a unique tax imposed on owners who have already paid real property tax, conveyance taxes and applicable general excise taxes on purchasing the property. Hawaii still remains the only state to impose a tax on the timeshare unit owners for using and occupying property that they already own.

According to the Hawaii Tourism Authority, in “During 2018, participating timeshare properties reported paying \$101.2 million in state and county taxes, with real property taxes accounting for 48.2% of the total.” This calculates to about \$52.3 million in general excise (GET), transient accommodation (TAT), conveyance taxes and TOT. <https://www.hawaiitourismauthority.org/media/3482/hawaii-timeshare-quarterly-survey-year-end-2018.pdf>

Timeshare units, when rented on a transient basis by NON-owners, or used for marketing purposes by developers are already subject to the TAT. The TOT applies when timeshare owners, many of whom are Hawaii property owners under the law, use their property interest and stay at the Hawaii timeshare unit. They pay a yearly maintenance fee including real property taxes, GET and other fees. No other owner of real property in Hawaii is required to pay an occupancy tax to stay in real property that they already own. In fact, Hawaii is the only state to assess a TOT on timeshare owners in the United States.

Moreover, the tax rate for timeshare owners has already been increased three times in the last three years by approximately 40% already. In 2015, Act 93 Session Laws of Hawaii, increased the TOT by two percent (2%). The rate was increased from 7.25% to 8.25% in 2016, then another one percent to 9.25% in 2017. In addition, Act 1 of the Special Session of 2017, increased the rate to 10.25% for the next 12 years.

Our concern lies in the potential negative impact any increase could have on our currently healthy tourism economy. The proposed increases in the TOT are ultimately borne by visitors that could potentially create a drag on our healthy, but always competitive, visitor market. Visitors, especially for our industry where there is a trend to have vacation clubs with choices of destinations, have a multitude of choices for their travel. While the "Hawaii-brand" is always attractive, this must still be balanced and tempered by the associated costs to come and stay here.

Increases to the tax rate will send a potentially negative message to visitors, and especially timeshare owners, that they are being targeted to bear the burden of the increases. Several counties have already increased, or are considering increasing their real property tax rates for hotels and timeshare. Thus, our members already pay their fair share of taxes – TOT, real property, and general excise tax – and any such additional increases create another burden on our visitors here on top of the taxes that they already pay.

Therefore, we respectfully oppose this bill. Thank you.