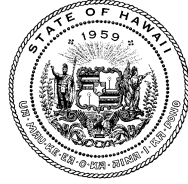


DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Karl Rhoads, Chair;  
The Honorable Jarett Keohokalole, Vice Chair;  
and Members of the Senate Committee on Judiciary

From: Isaac W. Choy, Director  
Department of Taxation

Date: March 16, 2021  
Time: 9:15 A.M.  
Place: Via Video Conference, State Capitol

**Re: H.B. 1043, H.D. 3, Relating to Transient Accommodations Tax**

The Department of Taxation (Department) strongly supports H.B. 1043, H.D. 3, an Administration measure. H.B. 1043, H.D. 3, proposes various amendments to the transient accommodations tax (TAT). The measure replaces the misdemeanor for failing to obtain a TAT registration with a monetary fine. It also adds personal liability for TAT to be consistent with personal liability for general excise tax (GET). H.B. 1043, H.D. 3, also expands the definition of “operator” and expands the imposition of TAT to “persons” to ensure there are no loopholes in the TAT. Lastly, the bill proposes several nonsubstantive cleanup amendments. The Department provides the following comments for your consideration. The bill has a defective effective date of July 1, 2050.

First, the Department notes that the misdemeanor criminal penalty for failure to obtain a TAT license is inconsistent with the fine structure already in place in chapter 237D, Hawaii Revised Statutes (HRS), for other violations. H.B. 1043, H.D. 3, proposes replacing the misdemeanor with the monetary fines already applied to other violations of TAT and GET. This amendment is necessary because it creates parity between the taxes.

Second, the Department notes that section 237D-16, HRS, applies certain GET administrative provisions to TAT, but does not apply the personal liability provision enacted by the Legislature in 2010. It is clear from section 237D-16(a), HRS, that the Legislature intended the GET enforcement provisions to apply to TAT, as that section states that the Director of Taxation, in administering TAT, has all of the rights and powers of chapter 237, HRS. H.B. 1043, H.D. 3, proposes updating the enforcement provisions of TAT to conform with those of GET.

Furthermore, the Department notes that it has made attempts to address this issue before, notably by proposing trust fund liability through H.B. 2343 and S.B. 2893 in 2014. H.B. 1043, H.D. 3, merely extends the limited personal liability that already exists for GET to TAT. This limited personal liability is a useful administrative tool to ensure compliance with the TAT law. There is no distinction between GET and TAT justifying limited personal liability for one tax type but not for the other.

Third, the Department has received numerous inquiries from taxpayers claiming they are not subject to TAT because they are not the “operator” in a transaction, as defined. These inquiries are due to use of the term “operator or plan manager” as the operative imposition language of the TAT and that term’s narrow definition. H.B. 1043, H.D. 3, proposes replacing “operator or plan manager” with “person” or “taxpayer” to ensure there are no technical defenses or loopholes to the proper imposition of TAT.

Fourth, the Department believes that section 237D-4, HRS, should be clarified. The Department intends for all taxpayers subject to TAT to be required to register for TAT, anyone with no TAT liability should not have to register. The Department respectfully requests that the first sentence of section 237D-4(a), HRS, be amended to read as follows:

“(a) [~~Each operator or plan manager~~] Every person subject to taxation under this chapter, as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan, shall register with the director the name and address of each place of business within the State subject to this chapter.”

Finally, the Department notes that it no longer requires taxpayers to file and pay in their home district. Other than taxpayers who are required to file and/or pay electronically, taxpayers may file and pay taxes at any of the Department’s district offices regardless of where they reside or operate their business. As such, this measure, proposes repealing the references to filing of returns and remittance of payments to specific taxation districts.

Thank you for the opportunity to provide testimony in support of this measure.



Hawaii State Legislature  
Senate Committee on Judiciary  
Senator Karl Rhoads, Chair; Senator Jarrett Keohokalole, Vice-Chair

March 16, 2021 9:15AM  
Via Videoconference  
State Capitol  
415 South Beretania Street

**TESTIMONY ON HB1043, HD3 RELATING TO TRANSIENT ACCOMMODATIONS TAX (TAT)**

Dear Chair, Vice-Chair, and Members of the Committee:

Mahalo for the opportunity to comment on HB1043, HD3. For the past several weeks, we've engaged with the Department of Taxation to clarify amendments to HB1043, HD3. We have come to agreement on the following changes and would like to go on record to support the amended language as outlined by the Department of Taxation.

The amendment below seeks to clarify that the Certificate of Registration requirement applies only to taxpayers who pay TAT. Persons which do not have TAT collection obligations should not have to register. Per the Department of Taxation, we support the recommendation to amend section 237D-4 as follows:

- “Every person subject to taxation under this Chapter, as a condition precedent to engaging or continuing in the business . . .”

We thank the Department of Taxation for their collaborative spirit and dedication to ensure chapter 237D, relating to transient accommodations tax remains clear for all stakeholders and supports the State of Hawaii's tax collection efforts.

Mahalo,

A handwritten signature in blue ink that reads "Adam Thongsavat".

Adam Thongsavat  
Airbnb Public Policy, Hawaii

CC: Leslie Lao, Airbnb Tax Lead, United States  
Blake Oshiro, Capitol Consultants of Hawaii



March 15, 2021

Senator Honorable Karl Rhoads, Chair  
Senator Jarrett Keohokalole, Vice Chair  
Members of the Senate Committee On Ways & Means

Re: **HB 1043, HD 3 (HSCR 870)**

**Relating to the Transient Accommodations Tax**

Hearing Date: 3/16/2021, 9:15 a.m.

Dear Chair Rhoads & Honorable Committee Members:

I am offering **Comments** regarding my concerns about this bill. Specifically, about the provisions in Section 11 relating to personal liability for unpaid corporate TA taxes. The bill as drafted imports selected language from HRS 237 (the General Excise tax chapter).

This bill as drafted and amended, does not *expressly* provide persons subject to personal liability the right to judicial review, fails to ensure persons assessed have basic information concerning the assessments, and, in the scenario where multiple persons are assessed, does not ensure that basic information about co-obligators and payments is available.

I have included proposed language to address some of the concerns raised in my comments.

1. Persons Being Assessed Liability Should be Entitled To Meaningful Judicial Review

This bill could impose liability for Transient Accommodations (“TA”) tax on a former officer of a bankrupt hotel. It is unlikely that the former officer of a bankrupt hotel would be able to pay an annual TA assessment and make a refund claim. The liability could be hundreds of thousands of dollars and in many cases practically impossible and tremendously unfair due to the size of the debt.

Persons being assessed liability should be entitled to access to our civil justice system. The concept that an officer or responsible employee should have to pay a corporate debt to obtain access to our court system has previously been rejected in other “responsible person” settings.

To prevent any confusion about the legal rights of persons potentially being assigned liability for unpaid or underpaid TA tax, the Legislature should **specifically mention their rights to appeal an assessment**. The specific word “assessment” for personal liability does not appear in Chapter 237’s (237-41.5) provisions relating to personal assessment for unpaid GE taxes.

To address these concerns, I respectfully request that SECTION 11 (current page 14) be amended to incorporate language from HRS 237-42 “Appeals”:

“Any person aggrieved by any assessment ***for personal liability pursuant to this section*** for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114.”

***Added language in bold italics.*** See, §237-42 Appeals.

Inclusion of this language providing an express right to appeal would clarify that persons assessed personal liability for TA taxes have the legal right to an initial appeal to the Tax Court or to the Board of Review without being compelled to pre-pay and file a refund suit.

## 2. Limited Right to Basic Information

A person being assessed as a responsible person should be entitled to review the tax returns and assessments upon which the personal assessment is premised. Former officers or employees may not have access to the entity’s tax return or an assessment that could be the result of audit changes or late-filed returns.

In addition, when more than one entity or person is assessed, all liable legal and natural persons should be entitled to some information concerning the status of collection proceedings and payments by other liable persons.

I suggest that Section 11 have an additional subsection (b) added that states:

“(b) Upon written request, the Department shall provide any person upon whom personal liability is sought to be imposed or has been imposed copies of the legal entity’s tax return(s), or assessment(s), as the case may be, for any periods that are the subject of the potential or actual assessment of personal liability arising under this section. Furthermore, in any instance where more than one person is subject to liability for the same liability, any liable person may request in writing, and the Department shall disclose: the name of any other person determined to be liable and whether the Department has attempted to collect the liability from such other person, the general nature of such collection activities, and the amount collected.”

This language is in part borrowed from the Internal Revenue Code at 26 U.S.C. 6103(e)(9).

The burden of compliance for the Department of Taxation is minimal.

The suggested language resolves potential concerns that the Department of Taxation is not properly crediting payments.

The new language also permits responsible persons sufficient information to determine whether to bring claims against other co-obligors.

Sincerely,

/s/ Richard McClellan