Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB1292 SD2 HD3, without my approval and with the statement of objections relating to the measure.

SB1292 SD2 HD3 RELATING TO TRANSIENT ACCOMMODATIONS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i
STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1292

Honorable Members
Thirtieth Legislature
State of Hawai‘i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai‘i, I am returning herewith, without my approval, Senate Bill No. 1292, entitled "A Bill for an Act Relating to Transient Accommodations."

The purpose of this bill is to require hosting platforms that collect fees for booking services to register as tax collection agents and to collect general excise and transient accommodation taxes for transient accommodation bookings from operators and plan managers.

This bill is objectionable because the State’s taxation of transient accommodations through hosting platforms should complement the counties’ regulation of transient accommodations. While requiring the hosting platforms to collect and pay the taxes on illegal transient accommodation uses would not legalize these operations, there is concern that it could be viewed as legitimizing these operations. To ensure effective regulation, state statutes and county ordinances must be coordinated.

Both the federal Internal Revenue Service and the State Department of Tax (DOTAX) are obligated to collect taxes on business activity, whether legal or illegal, as affirmed by the U.S. Constitution (16th Amendment) and a hundred years of court decisions. However, the passage of Bill 89 (2018) by the Honolulu City Council - which Mayor Kirk Caldwell recently signed into law and is an example of a county’s enactment of specific enforcement provisions governing transient accommodations and hosting platforms - highlights the concern that a state law not impede or adversely affect county efforts to regulate land use. This bill raises significant issues, including for DOTAX, that were not fully contemplated by the Legislature or DOTAX when the bill was debated and then passed.
Importantly, the State is exercising its enforcement powers to ensure tax compliance by transient accommodations operators and managers. For example, on June 28, 2019, the State filed an application to issue a subpoena to Airbnb. The State looks forward to working with companies such as Airbnb to ensure tax compliance.

For the foregoing reasons, I am returning Senate Bill No. 1292 without my approval.

Respectfully,

[Signature]

DAVID Y. IGE
Governor of Hawai‘i
A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that, under certain circumstances, allowing a private person to act as a tax collection agent is likely to ease the burden of collecting taxes. The legislature further finds that in the transient accommodations industry there are entities that are well-placed to act as tax collection agents and ease the burden of collecting taxes.

The legislature further finds that requiring a hosting platform to collect and remit taxes on behalf of any transient accommodations operators or plan managers operating through the hosting platform will increase compliance with the transient accommodations and general excise taxes.

The legislature also finds that the penalties for doing business in violation of chapter 237D, Hawaii Revised Statutes, should be converted to monetary civil fines rather than criminal fines.
The purpose of this Act is to:
(1) Amend the definition of "transient accommodations" to include other forms of transient accommodations and other terms that the counties may have defined;
(2) Make any person who fails to register prior to engaging or continuing in the business of furnishing transient accommodations, which includes posting any advertisement for furnishing a transient accommodation, subject to a citation process and monetary fines, rather than a misdemeanor;
(3) Make any person who enters into an agreement to furnish transient accommodations without registering subject to a citation process and monetary fines; and
(4) Require a hosting platform that collects fees for booking services to register as a tax collection agent on behalf of its operators and plan managers for purposes of general excise taxes and transient accommodations taxes.

This Act is not intended to preempt or otherwise limit the authority of counties to adopt, monitor, and enforce local land use regulations, and this Act is not intended to transfer the
authority to monitor and enforce such regulations away from the counties.

PART II

SECTION 2. Section 237D-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Booking service" means any reservation or payment service provided by a person or entity that facilitates a transient accommodation transaction between an operator and a prospective transient or occupant, and for which the person or entity collects or receives, directly or indirectly, through an agent or intermediary, a fee in connection with the reservation or payment services provided for the transient accommodation transaction.

"Hosting platform" means a person or entity that participates in the transient accommodations business by providing, and collecting or receiving a fee for, booking services through which an operator may offer a transient accommodation. Hosting platforms usually, though not necessarily, provide booking services through an online platform.
that allows an operator to advertise the transient accommodations through a website provided by the hosting platform and the hosting platform conducts a transaction by which potential renters arrange, use, or pay, whether the renter pays rent directly to the operator or to the hosting platform."

2. By amending the definition of "transient accommodations" to read:

"Transient accommodations" means the furnishing of a room, apartment, suite, single family dwelling, or the like to a transient for less than one hundred eighty consecutive days for each letting in a hotel, apartment hotel, motel, condominium or unit as defined in chapter 514B, cooperative apartment, dwelling unit, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients. "Transient accommodations" includes "transient accommodations units", "transient vacation rentals", "transient vacation units", "transient vacation use", or any similar term that may be defined by county ordinance to mean a room, apartment, house, condominium, beach house, hotel room, suite, or similar living accommodation rented to a transient person for less than one
one hundred eighty consecutive days in exchange for payment in cash, goods, or services."

PART III

SECTION 3. Section 237D-4, Hawaii Revised Statutes, is amended to read as follows:

"§237D-4 Certificate of registration. (a) Each operator or plan manager 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. The operator or plan manager shall make a one-time payment as follows:

(1) $5 for each registration for transient accommodations consisting of one to five units;

(2) $15 for each registration for transient accommodations consisting of six or more units; and

(3) $15 for each resort time share vacation plan within the State;

upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting
that the registration has been made. The registration shall not be transferable and shall be valid only for the operator or plan manager in whose name it is issued and for the transaction of business at the place designated therein. Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.

(b) The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued. The name, phone number, and electronic mail address of the local contact shall at all times be conspicuously displayed in the same place as the registration or the same place as the notice stating where the registration may be inspected and examined. Failure to meet the requirements of this subsection shall be unlawful. The department may issue citations to any person who fails to conspicuously display the registration or notice, or the local contact's name, phone number, or electronic mail address as required by this subsection. A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation
interest, plan, or unit in violation of this subsection shall include a monetary fine of not less than:

1. $500 per day, for a first violation for which a citation is issued;
2. $1,000 per day, for a second violation for which a citation is issued; and
3. $5,000 per day, for a third and any subsequent violation for which a citation is issued.

(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

1. The registration identification number or an electronic link to the registration identification number of the operator or plan manager issued pursuant to this section; and
2. The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit.
(d) Failure to meet the requirements of subsection (c) shall be unlawful. The department may issue citations to any person, including operators, plan managers, and transient accommodations brokers, who violates subsection (c). A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of subsection (c) shall include a monetary fine of not less than:

1. $500 per day, for a first violation for which a citation is issued;
2. $1,000 per day, for a second violation for which a citation is issued; and
3. $5,000 per day, for a third and any subsequent violation for which a citation is issued.

(e) The registration provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any license issued under this chapter for cause as provided by rule under chapter 91.
(f) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

[(g) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or as a plan manager subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall}
be the same as that prescribed by section 231-35 for
individuals, corporations, or officers of corporations, as the
case may be, for violation of that section.

(g) Any monetary fine assessed under this section
shall be due and payable thirty days after issuance of the
citation, subject to appeal rights provided under this
subsection. Citations may be appealed to the director of
taxation or the director's designee.

(h) Any person who is required by this section to register
as a condition precedent to engaging or continuing in the
business of furnishing transient accommodations or as a plan
manager subject to taxation under this chapter, who engages or
continues in the business without registering in conformity with
this section, shall be subject to the citation process and
monetary fines under subsection (d).

(i) For purposes of this section, "engaging or continuing
in the business of furnishing transient accommodations" includes
posting any advertisement for the furnishing of a transient
accommodation."

SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is
amended to read as follows:
§237D-4.5 Certificate of registration for transient accommodations broker, travel agency, and tour packager. (a) Each transient accommodations broker, travel agency, or tour packager, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The transient accommodations broker, travel agency, or tour packager shall make a one-time payment of $15 for each registration, upon receipt of which the director shall issue a certificate of registration in a form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the transient accommodations broker, travel agency, or tour packager in whose name it is issued.

The registration shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new application for registration and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any registration issued under this section for cause as provided by rule under chapter 91.
(b) Any person who enters into an agreement to furnish transient accommodations without registering in conformity with this section shall be subject to the citation process and monetary fines under section 237D-4(d)."

PART IV

SECTION 5. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Hosting platforms as tax collection agent; operator and plan manager. (a) A hosting platform that collects fees for booking services shall register as a tax collection agent on behalf of all of its operators and plan managers.

A tax collection agent shall be issued a separate license under this chapter with respect to taxes due under this chapter on behalf of its operators and plan managers in its capacity as a tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities.

(b) In addition to its own responsibilities under this chapter, a tax collection agent shall report, collect, and pay
over the taxes due under this chapter on behalf of all of its operators and plan managers to or for whom booking services are provided; provided that the tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State for which booking services were provided by the tax collection agent. For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(c) If a tax collection agent fails to pay the tax as required under subsection (b), the tax collection agent shall be liable to pay to the State any unpaid portion of the amount of tax that was required to be paid under subsection (b).

(d) All returns and other information provided by a tax collection agent shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34. Nothing in this subsection shall prevent public disclosure of information about tax collection agents as provided in section 92F-12(a)(13) or of aggregated information not identifiable to a specific tax collection agent.
(e) A tax collection agent shall file periodic returns in accordance with section 237-30 and annual returns in accordance with section 237-33. Each annual return required under section 237-33 shall be accompanied by a cover sheet, in a form prescribed by the department, that includes the following information for each operator and plan manager on whose behalf the tax collection agent is required to report, collect, and pay over taxes due under this chapter:

(1) Name;

(2) Transaction address where the transient accommodations are located;

(3) Transient accommodations tax identification number;

(4) General excise tax identification number; and

(5) Proportioned amounts of taxes paid for each transient accommodations tax and general excise tax identification number.

(f) Before collecting any fee for booking services, a tax collection agent shall notify each of its operators or plan managers that the reporting and remittance of Hawaii income tax is the responsibility of each operator and plan manager.
(g) Nothing in this section shall be construed to preempt or prohibit the authority of any county or political subdivision of the State, to adopt, monitor, and enforce local land use ordinances, rules, or regulations, nor to transfer the authority to monitor and enforce these ordinances, rules, or regulations away from the counties.

(h) For the purposes of this section:

"Booking service" has the same meaning as in section 237D-1.

"Director" means the director of taxation.

"Hosting platform" has the same meaning as in section 237D-1.

"Operator" has the same meaning as in section 237D-1.

"Plan manager" has the same meaning as in section 237D-1.

"Transient accommodations" has the same meaning as in section 237D-1.

(i) The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(j) The department may require any form or document required under this section to be filed electronically."
SECTION 6. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Hosting platform as tax collection agent; operator and plan manager. (a) A hosting platform that collects fees for booking services shall register as a tax collection agent on behalf of all of its operators and plan managers.

A tax collection agent shall be issued a separate certificate of registration under this chapter with respect to taxes due on behalf of its operators and plan managers in its capacity as a tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities.

(b) In addition to its own responsibilities under this chapter, a tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers or for whom booking services are provided; provided that the tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations.
in the State for which booking services were provided by the tax
collection agent. For purposes of any other business activity,
the operators and plan managers are subject to all requirements
of title 14 as if this section did not exist.

(c) If a tax collection agent fails to pay the tax as
required under subsection (b), the tax collection agent shall be
liable to pay to the State any unpaid portion of the amount of
tax that was required to be paid under subsection (b).

(d) All returns and other information provided by a tax
collection agent shall be confidential, and disclosure thereof
shall be prohibited as provided in section 237D-13. Nothing in
this subsection shall prevent public disclosure of information
about tax collection agents as provided in section 92F-12(a)(13)
or of aggregated information not identifiable to a specific tax
collection agent.

(e) A tax collection agent shall file periodic returns in
accordance with section 237D-6 and annual returns in accordance
with section 237D-7. Each annual return required under section
237D-7 shall be accompanied by a cover sheet, in a form
prescribed by the department, that includes the following
information for each operator and plan manager on whose behalf
the tax collection agent is required to report, collect, and pay
over taxes due under this chapter:

(1) Name;
(2) Address where the transient accommodations are
    located;
(3) Transient accommodations tax identification number;
(4) General excise tax identification number; and
(5) Proportioned amounts of taxes paid for each transient
    accommodations tax and general excise tax
    identification number.

(f) Before collecting any fee for booking services, a tax
    collection agent shall notify each of its operators or plan
    managers that the reporting and remittance of Hawaii income tax
    is the responsibility of each operator and plan manager.

(g) Nothing in this section shall be construed to preempt
    or prohibit the authority of any county or political subdivision
    of the State, to adopt, monitor, and enforce local land use
    ordinances, rules, or regulations, nor to transfer the authority
    to monitor and enforce these ordinances, rules, or regulations
    away from the counties.
(h) The director may adopt rules pursuant to chapter 91
necessary to effectuate the purposes of this section.

(i) The department may require any form or document
required to be submitted under this section to be filed
electronically."

PART V

SECTION 7. If any provision of this Act, or the
application thereof to any person or circumstance, is held
invalid, the invalidity does not affect other provisions or
applications of the Act that can be given effect without the
invalid provision or application, and to this end the provisions
of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

APPROVED this day of , 2019

GOVERNOR OF THE STATE OF HAWAII
S.B. No. 1292, S.D. 2, H.D. 3

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai‘i, Regular Session of 2019.

[Signature]
President of the Senate

[Signature]
Clerk of the Senate
THE HOUSE OF REPRESENTATIVES OF THE

STATE OF HAWAI'I

Date: April 9, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives