

SB 1165



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

March 2, 2009

TO: Senate Ways and Means Committee
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

FROM: Ed Thompson
ARDA-Hawaii

DATE: Monday, March 2, 2009
Conference Room 211
9:30 a.m.

RE: **SB 1165, RELATING TO GENERAL EXCISE TAX**

Chair Kim and Members of the Committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for over eight percent of the State's lodging inventory.

ARDA-Hawaii supports SB 1165, which makes the GET exemption amendments for timeshare operators and condominium submanagers permanent and may encourage additional timeshare creation in Hawaii.

Timeshare has had consistent occupancy rates, even during tough economic times. This has made our industry a vital partner and a diverse component of the visitor industry in Hawaii.

Thank you very much for the opportunity to offer testimony in support of this measure.

SENATE COMMITTEE ON WAYS AND MEANS

RE: SB 1165
March 2, 2009, 9:30 AM
State Capitol Room 211

I OPPOSE this proposal to continue a tax subsidy for time-share operators and condo submanagers. It amounts to nothing more than corporate welfare at its worst.

Why should these subgroups get a permanent tax exemption from the GET? In these tough economic times, I cannot fathom why you would make permanent a tax exemption due to expire this year when the state is scrounging for every dollar to balance its budget. There is no justification for giving these segments a free pass on the GET when the rest of the state needs it for important programs facing budget cuts. In practice, this proposal actually violates a constitutional mandate to provide funding to the Department of Hawaiian Home Lands, because it further limits the available tax revenues needed to provide that funding.

This tax exemption is also unconscionable in view of the possible ***defunding of the general fund budget of the DHHL, as proposed by the Lingle Administration***, in violation of Art. XII, sec. 1 of the Hawai'i Constitution. That provision, amended in 1978, was specifically designed to relieve the DHHL of the necessity to general lease its homestead lands to generate the revenue needed to pay for its operational, infrastructure, and program expenses. This latest DHHL budget sets the program back 20 years, when the first general funding belatedly began to flow to the DHHL.

The State of Hawai'i is in existence only because its people and leaders PROMISED as a condition of statehood to faithfully administer the "spirit" of the Hawaiian Homes Commission Act. Nearly 20 years later, the state approved the amendment in Article XII, sec. 1 to clarify that the Legislature must provide the DHHL "sufficient sums" to accomplish its mission, not force it to lease its trust lands for revenue.

It appears that none of you understand the magnitude of this constitutional mandate to adequately fund the DHHL. Each of you swore to uphold the constitution in your oath of office. Unfortunately, the DHHL has ***not*** stepped forward as the principal department which should champion this message.

This issue forced several native Hawaiians to file suit to seek a judicial declaration that the State and the DHHL has breached their trust duties to native Hawaiians by failing to follow and enforce the constitutional provision. As a result of this refusal to follow the law for the past 30 years, the DHHL waiting list has quadrupled, with more than 1700 out of over 23,000 native Hawaiian applicants waiting for over 30 years for their homestead lands. The list grows longer every year, despite what you might presume from the press announcements emanating from the DHHL. Only the \$30 million annual payments to the DHHL have saved it from retrenching further

into a much longer waiting list in the past 14 years since the so-called "\$600 million settlement" under Act 14 [SLH 1994]. However, those payments were NEVER designed to substitute for the state's ongoing obligation to meet the fiscal needs of the DHHL. The need for funding is greater today than ever before and unfortunately grows each year. The proposal to defund the general fund budget of the DHHL is nothing short of abominable in view of the trust obligations this state voluntarily assumed in 1959.

For all of the above reasons, I ask you to KILL this bill.

Alan T. Murakami
Native Hawaiian Legal Corporation
1164 Bishop St. #1205
Honolulu, HI 96813

**SENATE COMMITTEE ON
WAYS AND MEANS**

March 2, 2009

Senate Bill 1165 Relating to General Excise Tax

Chair Kim and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing Marriott Vacation Club International, Inc. (Marriott).

Marriott supports Senate Bill 1165 Relating to General Excise Tax. The legislature passed Act 239 (SLH 2007) which added the following amendments to section 237-24.7:

"§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received by the operator of a hotel from the owner of the hotel or from a timeshare association, and amounts received by the suboperator of a hotel from the owner of the hotel, from a timeshare association, or from the operator of the hotel, in amounts equal to and which are disbursed by the operator or suboperator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of the hotel and employed by the operator[;] or suboperator.

"Hotel" means an operation as defined in section 445-90[;] or a timeshare plan as defined in section 514E-1.

"Operator" means any person who, pursuant to a written contract with the owner of a hotel[;] or timeshare association, operates or manages the hotel for the owner[;] or timeshare association.

"Owner" means the fee owner or lessee under a recorded lease of a hotel[;].

"Suboperator" means any person who, pursuant to a written contract with the operator, operates or manages the hotel as a subcontractor of the operator.

"Timeshare association" means an "association" as that term is defined in section 514E-1;"

These amendments were designed to level the playing field with regards to operators and suboperators of hotels and timeshares. This bill seeks to remove the sunset clause of Act 239, and make these provisions permanent. We ask for your support for the removal of the sunset date.

Thank you for the opportunity to present this testimony.

STARWOOD

VACATION OWNERSHIP

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

March 2, 2009

To: Honorable Donna Mercado Kim, Chair
Honorable Shan S. Tsutsui, Vice Chair
Senate Committee on Ways and Means

Fr: Robin Suarez, Vice President & Associate General Counsel for Starwood Vacation
Ownership

Re: **SB 1165– RELATING TO GENERAL EXCISE TAX – SUPPORT**
Hawai`i State Capitol, Conference Room 211, 9:30 AM

Aloha Chair Kim, Vice Chair Tsutsui and members of the Committee:

My name is Robin Suarez, Vice President & Associate General Counsel for Starwood Vacation Ownership, ("SVO"). I am testifying on behalf of SVO in support of SB 1165, Relating to General Excise Tax.

This bill makes the GET exemption amendments for timeshare operators and condominium sub-managers permanent which will encourage additional timeshare development and ensure that the cost to maintain existing Hawai`i timeshare projects remains reasonable and on par with other competitive markets.

Timeshare projects with their high and consistent rates of occupancy and customer satisfaction should not be discouraged, but seen as a vital part of Hawai`i's tourism industry. In addition to providing traditional resort operations jobs similar to hotel projects, timeshare projects add high skilled and high compensated sales and marketing jobs. As such, timeshare projects represent a valuable and diverse component of Hawai`i's important tourism market.

For these reasons, we respectfully request your favorable support of SB 1165 in its present form.

As always, I thank you for the opportunity to share our views on this matter.