

NEIL ABERCROMBIE  
GOVERNOR

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## HOUSE COMMITTEE ON TOURISM

### TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1163 RELATING TO TIME SHARE TAXATION

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF  
TAXATION (OR DESIGNEE)  
COMMITTEE: TOU  
DATE: JANUARY 31, 2011  
TIME: 9:15AM  
POSITION: SUPPORT

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This measure modifies the definition of "fair market value" for purposes of the transient accommodations tax (TAT) base on timeshare owners.

This measure also temporarily increases the TAT rate on timeshare occupancy to conform to the TAT increase for hotel accommodations that was passed in 2009.

The Department of Taxation (Department) supports this measure.

#### I. MODIFYING THE TIMESHARE TAT TAX BASE.

**AMENDING THE TRANSIENT ACCOMMODATIONS TAX BASE FOR TIMESHARE OWNERS**—The Department supports amending the definition of "fair market rental value" for purposes of taxing timeshare owners.

Under current law, timeshare owners are taxed at a rate of ½ of gross daily maintenance fees that are paid by a timeshare owner. In a recent study conducted by local economists, it was concluded that the transient accommodations tax base for timeshare owners needed to be increased by three-times its current rate to reflect the corresponding tax paid by hotel

occupants. As such, this measure adopts the recommendation of the local economists and increases the tax base from  $\frac{1}{2}$  of gross daily maintenance fees to 150% of gross daily maintenance fees.

The Department supports evaluating the TAT timeshare tax base, especially in light of the study that concludes the tax base is unnecessarily low.

**MODIFY THE "OTHER APPRAISAL" METHOD**—The Department also suggests modifying the "other appraisal method" for timeshare taxation. Under current law, taxpayers are allowed to prove or the Director may determine, based upon appraisals, that the fair market rental value is something other than  $\frac{1}{2}$  of daily maintenance fees. The Department suggests eliminating this provision, which will eliminate disputes with taxpayers and provide certainty for all parties.

## **II. MODIFYING THE TAT RATES ON TIMESHARES.**

**CONFORMING RATES FOR TIMESHARES AND HOTELS**—In 2009, Act 61 increased the TAT by one per cent per year for two consecutive years. Under Act 61, the current rate of TAT is 9.25% on the gross rental proceeds.

This increase; however, only applied to hotels. The increased rates did not apply to timeshare owners. This measure amends the tax rate for timeshare owners to conform to the 2009 rate increases experienced by hotels. The Department supports conforming the TAT to equally tax traditional hotels and timeshare occupancy.

**REVENUE IMPACT**—This measure also dedicates the increase in tax revenues as a result of the rate increase to the general fund. This measure results in the following revenue gains as follows:

- \$26.6 million for FY 2012;
- \$31.2 million for FY 2013;
- \$31.2 million for FY 2014;
- \$31.2 million for FY 2015.



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

January 31, 2011

**TO:** House Committee on Tourism  
Representative Tom Brower, Chair  
Representative James Tokioka, Vice Chair

**FROM:** Daniel Dinell  
Chair  
ARDA-Hawaii

**DATE:** Monday, January 31, 2011  
Conference Room 312  
9:15 a.m.

**RE:** HB 809 RELATING TO THE TRANSIENT ACCOMMODATIONS TAX  
HB 1163 RELATING TO TIMESHARES

Chair Brower and Members of the Committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for thirteen percent of the State's lodging inventory with 10,000 timeshare units. Timeshare has had consistent occupancy rates, even during the current tough economic times. In 2009, timeshare occupancy average approximately 91%, almost 25% higher than hotels. This has made our industry a vital partner and a stable component of the visitor industry in Hawaii.

ARDA-Hawaii strongly opposes HB 809 and HB 1163. HB 809 proposes to increase the transient accommodations tax (TAT) rate for timeshare units **when used by owners** from July 1, 2010, to June 30, 2015, by adding 2 percent points from the current 7.25% rate to 9.25%. In addition, HB 1163 also increases the base maintenance fee calculation from 50% to 150% resulting in a nearly 400% increase in the TAT. There is a sunset provision for the 2 percentage point TAT increase, but no provision to rollback the increase in the maintenance fee calculation.

First, let me make clear, timeshare units when rented on a transient basis by non-Owners or used for marketing purposes by developers are **already subject to the exact same TAT rates as hotel units.**

Second, Timeshare owners are Hawaii property owners who have made a long-term commitment to Hawaii by owning Hawaii real estate. They and their guests are dependable, consistent, and stable visitors who bring substantial tax dollars to Hawaii and continue to come even during economic downturns. 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 the TAT on timeshare owners in the United States.

I have been in communication with the ARDA Resort Owner's Coalition, a grassroots organization run by and for the hundred of thousands of timeshare owners in the United States, and have been informed that this tax may be subject to a constitutional challenge.

In 2009 timeshare owners paid over \$40 million in taxes to the state through the GET and TAT. You also may be interested to know that there are over 6,000 Hawaii residents who own and use their timeshare units in Hawaii and would also be directly impacted by this bill.

As drafted, this bill will unfairly impact a very specific portion of Hawaii property owners who choose to visit our state on an annual basis and contribute to Hawaii's economy.

We believe this legislation is detrimental to timeshare owners as well as Hawaii's visitor and construction industries. Developers have plans to build more timeshare units in Hawaii, but a tax like this will have a chilling effect on decisions to invest in the State since there will be concerns that sales will slow as maintenance fees dramatically increase. Instead of creating disincentives to spend discretionary dollars in Hawaii, let's look for ways to help and strengthen this very important segment of our visitor industry. We respectfully ask you to hold this measure.

Thank you for allowing me to present testimony on this important matter.

TIMESHARE WITH ALOHA

# GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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## MEMORANDUM

**TO:** Representative Tom Brower  
Chair, Committee on Tourism  
Via Email: [TOUTestimony@Capitol.hawaii.gov](mailto:TOUTestimony@Capitol.hawaii.gov)

**FROM:** Mihoko E. Ito

**DATE:** January 30, 2011

**RE:** **H.B. 1163 – Relating to Time Share Taxation**  
**Hearing: Monday, January 31, 2011 at 9:15 a.m., Room 312**

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Dear Chair Brower and Members of the Committee on Tourism:

I am Mihoko Ito, testifying on behalf of Wyndham Worldwide. Wyndham Worldwide offers individual consumers and business-to-business customers a broad suite of hospitality products and services across various accommodation alternatives and price ranges through its portfolio of world-renowned brands. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its resorts on the Islands of Kona, Kauai, Oahu, such as the Wyndham at Waikiki Beach Walk.

Wyndham Worldwide **opposes** H.B. 1163, which modifies the transient accommodations tax provisions regarding time share units. Specifically, this measure increases the tax base (i.e., fair market rental value based upon maintenance fees) for the transient accommodations tax on timeshare owners by 200%.

While we appreciate that the state is facing budget difficulties, we respectfully submit that increasing the transient accommodations tax on timeshares is an ill-advised solution. Timeshares have significantly helped to buffer the impact of the ailing visitor industry, providing an over 90% occupancy rate in 2009. Because timeshare accommodations are pre-paid, timeshare owners who travel to Hawaii spend more discretionary income on their visits. Timeshare visitors are also property owners, many of whom also reside and

January 30, 2011

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own in Hawaii – they pay both real property taxes and maintenance fees. In short, timeshare owners bring substantial tax dollars to Hawaii.

Increasing the price of owning a timeshare in Hawaii may ultimately contribute to a visitor decline. If taxes on timeshare owners continue to rise, timeshare owners may ultimately decide to vacation elsewhere. Rather than contribute to the visitor decline, efforts should be made to continue to promote tourism and attract visitors, including timeshare owners, to Hawaii.

Finally, we note that there might be issues regarding the overall legality of imposing the transient accommodations tax upon timeshare owners.

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

January 28, 2011

**TO:** Tourism Committee  
Representative Tom Brower, Chair  
Representative James Tokioka, Vice Chair

**FROM:** Mitchell A. Imanaka *Imanaka Kudo + Fujimoto*

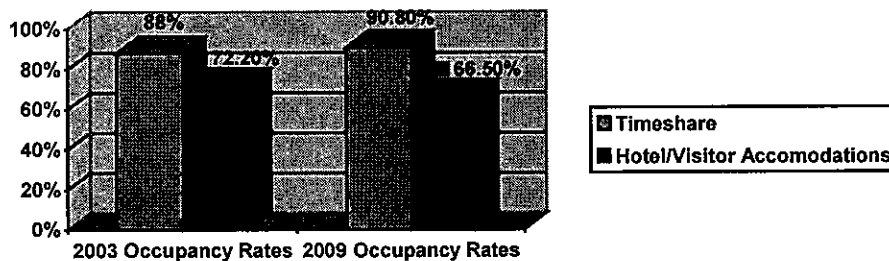
**DATE:** Monday, January 31, 2011  
Conference Room 312  
9:15 a.m.

**RE:** **HB1163, Relating to Taxation on Timesharing**

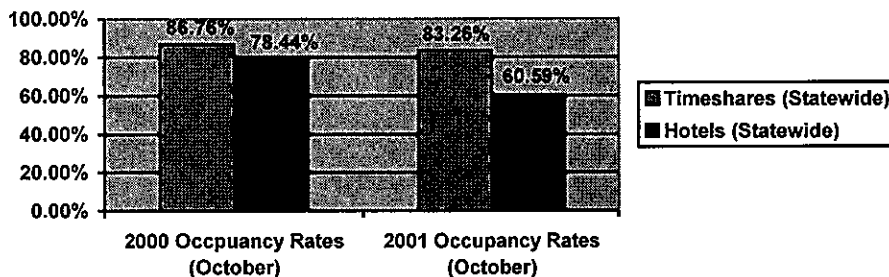
Chair Brower, Vice Chair Tokioka and Members of the Committee:

I strongly oppose HB1163, which increases the rate of the transient accommodations tax beginning on January 1, 2012, and revises the definition of “fair market rental value” in calculating the transient accommodations tax for a resort time share vacation unit. Increasing the transient accommodations tax in Hawaii will cripple the *secure economic base* that the Hawaii timeshare industry has developed in Hawaii.

The Hawaii timeshare industry has *consistently posted higher occupancy rates* than hotels and other visitor accommodations throughout the years.<sup>1</sup>



The timeshare industry has already displayed that it is a resilient and consistent industry post 9/11 posting only a 3.5% decrease in the occupancy rate, while hotel occupancy rates decreased by 17.85%.<sup>2</sup>



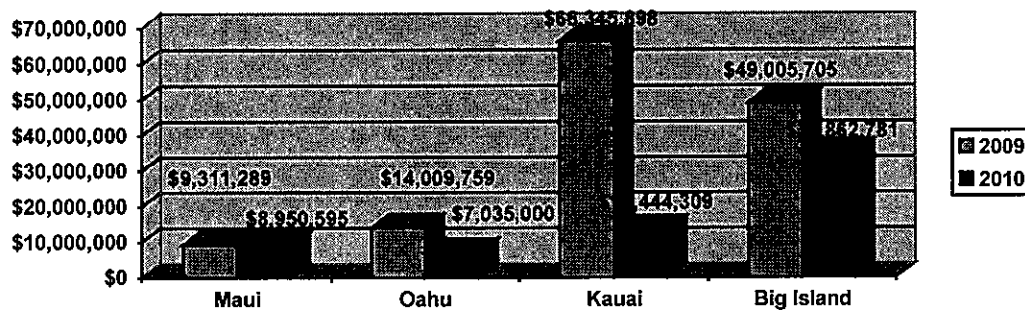
<sup>1</sup> 2004 Hawaii Timeshare Industry Overview and Economic Impact Analysis prepared by KPMG LLP and SMS Research dated July 2004 and 2009 Timeshare Industry Analysis.

<sup>2</sup> PKF Hawaii LLP (2001).

Timeshares already pay more than their fair share in taxes, generating over \$87.3 million in taxes.<sup>3</sup>

Tax	Tax Revenue
Real Property Tax	\$47,100,000
Conveyance Tax	\$400,000
General Excise Tax	\$20,400,000
Transient Accommodations Tax (timeshare)	\$12,200,000
Transient Accommodations Tax (transient)	\$7,300,000
<b>Total Tax Revenue</b>	<b>\$87,300,000</b>

Timeshare developers continue to energize the economy, with capital expenditures by timeshare developers, including new construction, totaled \$138.7 million in 2009, and an additional \$64.3 million was anticipated in 2010.<sup>4</sup> Also, there are more projects on the horizon with an anticipated 3,381 new timeshare units, but this may be jeopardized if taxes are increased.<sup>5</sup>



Also, the timeshare industry employed an estimated 4,459 employees in 2009, including 3,980 full time employees with a total payroll of \$293.4 million.<sup>6</sup> Further, there may be constitutional issues as to the transient accommodations tax.

As evidenced by the foregoing, the Hawaii timeshare industry has proven to be a vital industry to our State's economy, and currently show signs of growth. This industry should be supported and nurtured so that it can continue to grow and support the future economic growth of the State of Hawaii, and avoid budget shortfalls in the future. An increase in the transient accommodations tax would jeopardize this growing and vital industry. As such, we respectfully ask that you hold this measure. Thank you.

<sup>3</sup> State of Hawaii Timeshare Industry 2009 Supplemental Report prepared by Hospitality Advisors LLC dated January 4, 2011 (2009 Supplemental Timeshare Industry Analysis").

<sup>4</sup> Analysis of the State of Hawaii Timeshare Industry prepared by Hospitality Advisors LLC dated August 13, 2010 ("2009 Timeshare Industry Analysis").

<sup>5</sup> 2009 Timeshare Industry Analysis.

<sup>6</sup> 2009 Supplemental Timeshare Industry Analysis.



**Committee on Tourism  
Hearing  
Monday, January 31, 2011, 9:15 a.m.  
Conference Room 312**

**Representative Tom Brower, Chair**

**Testimony on HB 1163, Relating to Time Share Taxation**



Dear Chair Brower and Members of the Committee:

My testimony is NOT IN SUPPORT of HB1163. My name is Lynn McCrory and I am the President of PAHIO Development, Inc. We are a locally owned and operated time share development company on the island of Kauai.

This bill increases the basis (Fair Market Rental Value) for the Transient Accommodations Tax for the time share owner who occupies a unit from 50% of the maintenance fee to 150%. There is no basis for moving a Fair Market Rental Value up by 300%. There is not and has not been 300% pricing increases by anyone in the tourism industry, hotel, time share, condominium rental or hotel, or bed and breakfast. In reality rental prices have decreased across the industry over the last few years.

This bill increases the Transient Accommodations Tax for the timeshare owner who occupies a unit from 7.25% to 9.25% for the period July 1, 2011 to June 30, 2015. This is the same taxing level as a hotel guest, who has not expended a large sum to purchase their use at a resort. The hotel guest only pays for their immediate use. The time share owner has paid for the bricks and mortar (the CIP), and then pays an annual maintenance fee to maintain the unit.

It is clear that the State has serious financial issues that must be resolved. Increasing the tax on the industry that is the only tourism industry that has built resorts in Hawaii in the last five plus years, and more than likely will be the only industry building resorts in the next ten years, does not make sense. Investing in Hawaii means being as sure as possible that your business decision has the least risk for dramatic changes during the period you are going through permitting and construction. Investing in Hawaii means that you have the least risk that you will be able to sell the product. Increasing the TAT rate reduces the possibilities that customers will want to buy in Hawaii. There are many other choices for people to purchase in the world.

I humbly ask for your consideration to NOT SUPPORT HB1163. Mahalo!

Me ke aloha pumehana  
With warm aloha,

PAHIO DEVELOPMENT, INC.

A handwritten signature in black ink, appearing to read "Lynn P. McCrory".

Lynn P. McCrory, RRP  
President

C: PMCI



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

January 31, 2011

**TO:** House Committee on Tourism  
Representative Tom Brower, Chair  
Representative James Tokioka, Vice Chair

**FROM:** ARDA Resort Owners Coalition

**DATE:** Monday, January 31, 2011  
Conference Room 312  
9:15 a.m.

**RE:** **HB 809 RELATING TO THE TRANSIENT ACCOMMODATIONS TAX**  
**HB 1163 RELATING TO TIMESHARES**

Chair Brower and Members of the Committee:

The Resort Owners' Coalition of the American Resort Development Association (ARDA-ROC) is a non-profit organization comprised of timeshare owners and managers dedicated to preserving and protecting the rights of the consumers who purchase timeshare as well as their governing home owners associations. Unlike other types of condominium ownership, timeshare owners are often not able to vote in the jurisdictions in which they hold a real estate interest. ARDA-ROC was formed to fight unbalanced "tax the visitor not the voter" legislation.

ARDA-ROC strongly opposes HB 809 and HB 1163. HB 809 proposes to increase the transient accommodations tax (TAT) rate for timeshare units from July 1, 2010, to June 30, 2015, by adding 2% from 7.25% to 9.25%. In addition, HB 1163 also increases the base maintenance fee calculation from 50% to 150% resulting in a nearly 400% increase in the TAT.

In 1998 when the original TAT on maintenance fees was enacted, ARDA-ROC opposed the legislation but ultimately accepted the tax to preserve harmony in the visitor industry in Hawaii; however, with an increase as high as being suggested, ARDA ROC has the fiduciary responsibility to all timeshare owners to fight this unprecedented and unfair tax.

This tax, and the proposed increases, are punitive, as timeshare owners already pay more than their fair share of taxes as they are real property owners and pay all associated taxes with that ownership which accounted for more than \$40 million in tax revenue to the state of Hawaii in 2009 (e.g. property tax, conveyance taxes, maintenance fees, and GET). Timeshare resorts and timeshare owners already pay the full TAT on timeshare units when they are rented to non-owners. Additionally, as real property owners, timeshare owners are obligated to pay a maintenance fee, which includes real property taxes (in some cases such as Maui at a much

higher formula than residential or commercial) and the TAT on their maintenance fees is a tax that no other property owner in HI must pay.

At some point enough is enough and timeshare owners will speak with their feet by not coming to Hawaii. Year after year, proposals have been introduced to increase either the TAT rate or the base calculation on the TAT that timeshare owners pay on their maintenance fees. And for years, ARDA-ROC and timeshare owners have had to contend with these increases. Timeshare owners in Hawaii are already burdened with some of the highest taxes on their ownership.

And this year already there are three proposals at the legislature advocating for some type of increases in the TAT, and at a rate that would undoubtedly drive foreclosures up and sales and development activity down for one of the only growth industries in Hawaii. According to our calculations, under the current law, a timeshare owner with a \$1000 maintenance fee payment will pay a TAT of \$36.20. Under the new legislation, the TAT payment for the same owner will increase to \$138.70. For an owner with a \$2,000 maintenance fee payment, their TAT will increase from \$72.50 to \$277.50.

We believe this legislation is detrimental to timeshare owners, especially to the nearly 6,000 Hawaii residents who own timeshare in Hawaii, as well as Hawaii's visitor industry. While ARDA-ROC remains supportive of the hospitality and visitor industry in Hawaii, we believe this law is unfair and levies discriminatory taxes on timeshare owners. The trend at the legislature to continue to look for additional tax dollars from timeshare owners has led us to research all options to defeat these measures, including the need to review our legal options and begin preparations for a lawsuit against the state of Hawaii to have this tax declared unconstitutional.

Thank you for allowing us the opportunity to present testimony on this important matter.