



Hilton Grand Vacations Club®
at Hilton Hawaiian Village®

January 31, 2011

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

FROM: Henry Perez 
General Manager
Hilton Grand Vacations Company

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

RE: HB 1163 RELATING TO TIMESHARES

Chair Brower and Members of the Committee:

Hilton Grand Vacations strongly opposes HB 1163. HB 1163 increases the base maintenance fee calculation from 50% to 150% resulting in a nearly 400% increase in the TAT. Our owners currently pay real estate tax like any other owner in Hawaii. Hilton Grand Vacations has several thousand owners that own timeshare in Hawaii and also live in Hawaii. The law will tax these owners to use their second home which is not fair. The maintenance fees that are collected from these units stay right here in Hawaii. These fees are used to pay for the labor to maintain these units in perfect condition. Timeshare also renovates their property every 5 to 7 years which continues to produce construction jobs in Hawaii.

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.

I 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. I respectfully ask you to hold this measure.

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

STARWOOD

VACATION OWNERSHIP

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

LATE TESTIMONY

January 31, 2011

TO: Honorable Tom Brower, Chair
Honorable James Kunane Tokioka, Vice Chair
House Committee on Tourism

FR: Robin Suarez, Vice President/Associate General Counsel, Starwood Vacation Ownership

RE: HB 1163 – TIME SHARE TAXATION – OPPOSE
Hawai'i State Capitol, Conference Room 312 – 9:15 AM

Aloha Chair Brower, Vice Chair Tokioka 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 opposition to HB 1163, Relating to Timeshare Taxation.

This bill increases the "Fair Market Rental Value" from one-half of the gross daily maintenance fees paid by the owner and adds an additional 2% increase to the rate of the transient accommodations tax beginning on July 1, 2011, to June 30, 2015. It requires the revenues collected from the increase to be deposited into several special funds and the general fund.

One might assume these are small changes that have an incremental affect on timeshare owners. However, the effect would be nearly a three-fold increase. Under the current statutory rate, a timeshare owner with a \$1000 maintenance fee payment will pay a TOT of \$36.25. Under the proposed increase, the TOT payment for the same owner will increase to \$138.75, a 283% increase. For an owner with a \$2,000 maintenance fee payment, their TOT will increase from \$72.50 to \$277.50, a 285% increase.

Timeshare owners are unique from the average hotel guest. The average timeshare owner stays longer and returns year after year. Owning a timeshare is like owning a condo where the owner must pay real estate taxes and maintenance and management fees. In addition they pay conveyance taxes and general excise taxes.

Timeshare resorts experience high and consistent rates of occupancy and customer satisfaction. In addition to providing traditional resort operations jobs similar to hotel projects, timeshare resorts add high skilled and high compensated sales and marketing jobs. As such, timeshare resorts represent a valuable and diverse component of Hawai'i's important tourism market.

In this difficult economic recovery period, timeshare owners should not be penalized by increased tax burdens. This bill makes travel to Hawai'i more expensive at a time when the state should be encouraging more travel. With destination resort markets competing worldwide, owners have a choice and will move where the market is less burdensome.

For these reasons, we respectfully request you to defer action on this bill.

HOUSE COMMITTEE ON
TOURISM

LATE

January 31, 2011

House Bill 809 Relating to the Transient Accommodations Tax
House Bill 1163 Relating to Time Share Taxation
HB 976 Relating to Taxation

Chair Brower and members of the House Committee on Tourism, I am Rick Tsujimura, representing Marriott Vacation Club International (Marriott).

Marriott OPPOSES Bill 809 Relating to the Transient Accommodations Tax, House Bill 1163 Relating to Time Share Taxation, and HB 976 Relating to Taxation.

The Statute improperly taxes a fictional transaction.

The history behind the taxation of timeshare interests deserves discussion, since it has a bearing on the amendments being proposed. Unlike hotel charges which have a specified value, the use of a timeshare owner of his/her interval has no such "cash" charge. If an owner uses their interest there is no "charge" for that use, since they are using the interval they own; it is, by definition, not a transient occupancy. In order to tax such use, the Law created a "fictional charge" premised upon an implied fair market value of the interest by using the maintenance costs and fees. Hawaii Revised Statutes 237D-1 states:

"Fair market rental value" means an amount equal to **one-half the gross daily maintenance fees that are paid by the owner, are attributable to the time share unit, and include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, and other costs including payments required for reserves or sinking funds.** 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.

The statute must do this because there is no payment or other transfer of cash for the use of the room and therefore no taxable event.

The Law improperly discriminates among owner of similar properties.

The law taxes timeshare owner for costs which are not taxed on condominium owners, even though some of those units may be in the same complex or campus. In addition to paying real property taxes and general excise tax payments they make to the county and the state, just like wholly-owned condominiums, the Law has conjured up an additional "fictional charge" on owners of fractionalized interests. Nowhere has the state attempted to impose the same tax structure on condominium owners, whether they be out

of state users or local residents who maintain a vacation house on another island or on another part of the island in which they reside. In addition this tax is not equally applied to all owners of property including those who own single family vacation homes or second homes. On its face, it is improperly discriminatory without a rational basis for doing so.

The legal contortions are Unconstitutional.

The legislature has found that:

The legislature finds that resort time share vacation owners are not similarly situated to condominium apartment owners....When occupying their units, resort time share vacation purchasers are neither residents nor domiciliaries....Unlike resort time share vacation owners, the overwhelming majority of condominium apartment owners are residents of the State of Hawaii, occupying condominium apartments as their primary residence or domicile.

The assessment of out of state owners is violative of the commerce clause.

Increases to the Fictional Tax will undermine Hawaii's Tourism Industry.

Hawaii is the only State in the United States that creates a fictional use tax charged to the owners of timeshare interests. The earlier pass of this improper tax has been largely unchallenged because of its moderate rate. However, the proposals under consideration will increase the use tax charged for ownership by two-hundred and eighty three percent (283%) against the average Marriott or Ritz-Carlton owner and will have similar impacts throughout the industry. At a time when economic recovery remains uncertain and customers are forced to make choices based on price, Hawaii should avoid taking this extraordinary step. Potential visitors and purchasers will inevitably choose to select other jurisdictions for their vacation preferences and, more worrisome, defaults for failure to pay maintenance fees by current owners may increase.

Each of these threatens the future viability of the industry, the concomitant jobs for Hawaii residents and, more importantly, the recovery of Hawaii's important tourism industry.

Marriott strongly urges this committee to hold this measure due to these substantial legal issues, or in the alternative it suggests that instead the measure be amended to repeal this unjust and unconstitutional law.

Thank you for the opportunity to present this testimony.

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In this difficult economic recovery period, timeshare owners should not be penalized by increased tax burdens. This bill makes travel to Hawai'i more expensive at a time when the state should be encouraging more travel. With destination resort markets competing worldwide, owners have a choice and will move where the market is less burdensome.

For these reasons, we respectfully request you to defer action on this bill.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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MEMORANDUM

LATE

TO: Representative Tom Brower
Chair, Committee on Tourism
Via Email: 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

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 Kauai, Oahu, and Hawaii, 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.

GOODSILL ANDERSON QUINN & STIFEL

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

Emailed 12:43pm

1/31/11

January 31, 2011

To: Honorable Tom Brower, Chair
Honorable James Kunane Tokioka, Vice Chair
House Committee on Tourism

Re: **HB 1163 – Relating to Time Share Taxation**

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

My name is Denise Wardlow and I am the General Manager for The Westin Princeville Ocean Resort Villas on the beautiful island of Kaua'i. I am testifying in opposition to HB 1163. HB 1163 adds an additional 2% to the transient accommodations tax.

The effect of this increase would be nearly a three-fold increase. Under the current statutory rate, a timeshare owner with a \$1000 maintenance fee payment will pay a TOT of \$36.25. Under the proposed increase, the TOT payment for the same owner will increase to \$138.75, a 283% increase. For an owner with a \$2,000 maintenance fee payment, their TOT will increase from \$72.50 to \$277.50, a 285% increase.

Our timeshare owners have been an integral part of our industry. These owners tend to have a longer length of stay and continue to return year after year. During the economic downturn, these owners continued to travel to Hawai'i. They support our island communities by continuing to shop in our stores, participate in activities and spend money within the community including supporting many of our non profit organizations. If not for the timeshare owners, Hawai'i would have suffered even more than it has with the down economy.

In addition, like condo owners, these owners pay real estate taxes, conveyance taxes and general excise taxes on their maintenance and management fees along with the current TAT tax. An increase in the current TAT tax percentage will add an inequitable and significant tax burden on what are our loyal Hawai'i owners.

As the General Manager of a timeshare resort, I can speak first hand of the consistent rate of occupancy we were able to have, even during the economic downturn. We were able to provide consistent employment opportunities for many of our local workers and helped keep the high unemployment rate from increasing even more. While other resorts were looking at scaling back services and laying off employees, we were looking at increasing services and adding positions of employment.

Timeshare resorts represent a valuable and diverse component of Hawai'i's important visitor industry. In this difficult economic recovery period, timeshare owners should not be penalized by increased tax burdens. This bill would make travel to Hawai'i more expensive and discourage our owners to return at a time when Hawai'i should be encouraging more travel. These owners have a choice of many different worldwide destinations and will make choices where they make it less expensive to stay.

For these reasons, I respectfully request that you do not pass this bill.

Mahalo,



Denise Wardlow
General Manager

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