STARWOOD
VACATION OWNERSHIP

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January 31, 2011

LATE TESTIMONY

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 809 – RELATING TO THE TRANSIENT ACCOMMODATIONS TAX – 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 809, Relating to the Transient Accommodations Tax ("TAT").

This bill increases 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. But they are not. Timeshare owners are unique from the average hotel guest. The average timeshare owner stays longer and returns year after year. Since timeshare owners own their vacation interests, they pay real estate taxes and maintenance and management fees. In addition they pay conveyance taxes and general excise taxes. These taxes are reflected in their maintenance fees. In addition, timeshare owners pay higher maintenance fees when compared to other forms of ownership, like condominiums. These higher maintenance fees support hotel level amenities and staffing. An increase on the TAT percentages imposed on timeshare owners will add an inequitable and significant tax burden to loyal and dedicated Hawai'i owners.

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.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATION, Additional tax on time share units

BILL NUMBER: HB 809

LATE

INTRODUCED BY: Say

BRIEF SUMMARY: Amends HRS section 237D-2 to impose an additional tax of 2% on the fair market rental of a time share vacation unit between July 1, 2011 and June 30, 2015.

Amends HRS section 237D-6.5(b) to provide that the revenues derived from the increase shall be deposited into the general fund.

EFFECTIVE DATE: July 1, 2011

STAFF COMMENTS: The legislature by Act 61, SLH 2009, increased the transient accommodations tax (TAT) from 7.25% to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15 with the proceeds attributable to the increase in the tax rate over 7.25% deposited into the general fund. This measure would impose an additional tax of 2% in addition to the TAT on resort time share units between July 1, 2011 and June 30, 2015 and also provide that the additional revenues derived shall be deposited into the general fund.

Apparently in their rush to raise additional revenues for the general fund by raising the TAT rate on hotel rentals, lawmakers overlooked timeshare rentals which are taxed under a different section of the TAT law than all other hotel rentals. This measure proposes to bring the taxation of time share rentals into line with all other transient accommodation rentals. Although the rate increase on other hotel rentals was phased in, the rate currently stands at 9.25%. Thus, this proposal would make the two percentage point increase in one fell swoop, rising to 9.25% on time shares as of July 1 of this year. It should be noted once again that this rate increase is solely to shore up the state general fund as the proceeds from the rate increase will accrue to the state general fund.

Although this may appear to be a move to maintain parity, what is most disconcerting is that there is the great possibility that lawmakers may become accustomed to the increased revenues as the visitor industry and economy improves. Will lawmakers consider making this rate increase and siphoning of the TAT revenues to the general fund permanent? Consider that as the economy and room rates improve, the general fund will once again become flush with cash. Lawmakers will take this good fortune as a reason to once more spend with abandon. To avoid this, lawmakers need to impose discipline on their spending of all the money they can get their hands on with the realization that this practice is what got the state into the trouble it is now trying to address. Unfortunately what policy makers have failed to realize is that the more they extract from the economy in taxes and fees the more economic performance declines. As economic performance declines so do tax revenues.

Digested 1/31/11

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.

Recd after the Hearing.

KAUA'I Chamber of Commerce

January 31, 2011

Testimony to House of Representatives - Committee on Tourism
January 31, 2011, 9:15 a.m., Hearing: 9:15 a.m., Capitol Conference Room 312
Hawaii State Capitol

Honorable Representatives Chair Tom Brower, Vice-Chair James Kunanae Tokioka and members:

Dear Representatives:

RE: House Bill 809

My name is Randall Francisco and I am President/CEO of the Kauai Chamber of Commerce which comprises of approximately 450 members, 650+ representatives and 6000+ employees from across 119 industry sectors. 89% of the members are small businesses. The Chamber appreciates the efforts being made by members of the Legislature in addressing the budget shortfall during this tough economy.

On behalf of the Chamber, I am writing to express opposition to HB809.

The Chamber understands the difficult decisions which must be made and that 'every penny' counts. However, I ask that while the intent of this legislation is to raise additional revenue as a result of the proposed tax increase, this short-term solution will not provided the long-term benefits desired. Kauai and Hawaii continues to remain at the bottom of the list of places to do business and retains this annual distinction which continues to hamper our economic growth and business perception. The tourism industry and the recent economic data continue to indicate that as the state's number one industry, this sector will continue to help and lead our residents out of this recession. While the airlines continue to provide a much-needed air-economic lift, via additional seats as well as the addition of new airlines into the Hawaii market, the government must continue to take the leadership, boldness and proactive culture to help nuture a positive business climate that benefits both residents, visitors, businesses and the community alike. Small businesses on Kauai are continuing to slowly recover. Time share guests continue to have much longer term impacts in helping to drive and improve our economy due to their increased multiplier effect as a result of their long-term stays. As many Kauai residents know, it was the time share industry that helped to provide the much-needed momentum shortly after the economic hurricanes of 1982/Iwa, 1992/Inki, the first/second Gulf Wars, 1997 Asian financial crisis and other historic events.

Thank you for the opportunity to submit testimony. If you have any questions, please contact me at Kauai Chamber of Commerce, 245-7363. Mahalo Nui Loa and Aloha.

Randall Francisco

Randall Francisco
Kauai Chamber of Commerce

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Emailed 12:01pm
1/31/11

January 31, 2011

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

Re: **HB 809 – Relating to The Transient Accommodations Tax**

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 809. HB 809 would increase the transient accommodations tax for resort time share units to the same rate imposed on gross rentals.

Our timeshare owners have been an integral part of our industry. These owners tend to have a longer length or stay and continue to return year after year. During the economic downturn, these owners continued to travel to our resort. 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, 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 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

Denise Wardlow
General Manager
The Westin Princeville Ocean Resort Villas

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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. 809 – Relating to the Transient Accommodations Tax**
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. 809, which temporarily increases from 07/01/2011 to 06/30/2015 the transient accommodations tax rate on time share units.

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 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.