STARWOOD

HOTELS & RESORTS WORLDWIDE, INC

LATE TESTIMONY

January 31, 2011

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

LATE

FR: Keith Vieira, Senior Vice President of Operations
Starwood Hotels and Resorts, Hawaii and French Polynesia

RE: <u>HB 976 – Relating to Taxation</u>
Hawai'i State Capitol, Conference Room 312 – 9:15 AM

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

My name is Keith Vieira, senior vice president of operations for Starwood Hotels and Resorts in Hawai'i and in French Polynesia.

Thank you for the opportunity to speak on HB 976 – Relating to Taxation. This bill would levy a transient accommodation tax to be assessed and collected at a minimum rate of $8 per day on all hotel rooms.

Our hotels in Hawai'i compete with vacation destinations worldwide, complementary and budget-priced rooms are marketed for various reasons from promotions to reach travel writers and visitor industry marketers to providing affordable "stay-cations" for our kama'āina, and for local business travelers.

Complementary rooms are used by the hospitality industry to attract meeting planners to bring events to the state, to educate and encourage travel opportunities for book Hawai'i vacations for clients, and to give travel writers the opportunity to publish and produce stories about Hawai'i as a meeting and vacation destination. Complementary rooms are also often used by the state to attract film crews to the islands.

Our concern is that the imposition of any new taxes and fees on the visitor industry would not result in the generation of more revenues for the state as intended and may have perverse consequences by causing a visitor to choose another less costly destination than Hawai'i.

An $8/day minimum TAT will disproportionately impact our kama'āina, rates and would increase costs to hotels and to the state for complementary rooms.

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

WESTIN Sheraton FourPoints St. Regis Luxury Collection W HOTELS

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L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: TRANSIENT ACCOMMODATION, Minimum rate

LATE

BILL NUMBER: HB 976

INTRODUCED BY: Yamashita

BRIEF SUMMARY: Amends HRS section 237D-2 to provide that the transient accommodations tax (TAT) shall be imposed at the greater of the TAT tax rate or a minimum tax of $8 per day beginning on July 1, 2011.

The amendments made by this Act shall not be repealed when that section is reenacted on June 30, 2015, pursuant to section 4 of Act 61, SLH 2009.

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.

While this measure would establish a minimum TAT of $8 per day and provide that under the TAT rate of 8.25%, transient accommodations of $96 per day and below would be subject to the proposed minimum tax or at the 9.25% TAT rate transient accommodations of $86 per day and below would be subject to the minimum tax, the adoption of this measure would result in a TAT rate higher than 8.25% or 9.25% on the affected transient accommodations.

Based on prior discussion, it appears that lawmakers believe that where accommodations are complimentary or accommodations are traded in a vacation club where no funds exchange hands, hotels should pay the TAT regardless of the fact that there is no revenue received. In many cases complimentary rooms are provided for familiarization tours of "fams" extended to travel agents, travel writers, VIP's, and meeting planners so that the hotel can sell its property to those who will be selling travel to their clients or who will be writing about a vacation in Hawaii. For these properties, such accommodations and amenities are charged against the hotel's marketing budget as it represents a cost of publicizing the property. Thus, no income is received from a source outside the hotel and, therefore, there is no gross income against which the TAT can properly be charged. Thus, this proposal makes little sense for those types of occupancies.

In the case of exchanges within a hotel's vacation club, many properties already pay the tax on those amounts where there may be a differential between what was paid as TAT on the maintenance charges and the rate that would otherwise have been charge to a non-member renting the same accommodation. Before lawmakers take action on what is unfounded perceptions, more research is needed to truly understand how the hospitality industry operates. This measure reflects a non understanding of industry practice.

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.

Rec'd after the Hearing.

January 30, 2011

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

Re: **HB 976 – Relating to 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.

HB 976 would levy a transient accommodation tax to be assessed and collected at a minimum rate of $8 per day on all hotel rooms.

Our hotels in Hawai'i compete with worldwide vacation destinations. We provide complimentary and discount priced rooms to market our visitor industry for various reasons including promotions for travel agents, travel writers, meeting planners and other visitor industry marketers. In addition, we provide discounted room rates to provide our kama'āina with venues for in state travel, whether it be a vacation, an off island family visit, a needed medical visit, or business travel.

Complimentary rooms are used by the hospitality industry to attract meeting planners and group organizers (including film crews) to bring events to the state which results in positive economic results for the state. In addition, it educates the travel industry who in turn encourages their customers to travel to Hawai'i for their vacations. When hosting travel writers, we provide them the opportunity to publish and produce stories about Hawai'i as a meeting and vacation destination. Complimentary rooms are also often used as in kind donations for fundraising for our island non profits who serve the community with scholarships and services.

Our concern is that the imposition of any new taxes and fees on the visitor industry would not result in the generation of more revenues for the state as intended and may have perverse consequences by causing a visitor to choose another less costly destination than Hawai'i.

An $8/day minimum TAT will disproportionately impact our kama'āina, rates and would increase costs to hotels and to the state for complimentary rooms.

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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