

LATE

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

To: The Honorable Rosalyn H. Baker, Chair,
and Members of the Senate Committee on Commerce and Consumer Protection

Date: Wednesday, March 28, 2012
Time: 9:30 a.m.
Place: Conference Room 229, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 1706, H.D. 1, Relating to Condominiums

The Department of Taxation (Department) supports H.B.1706, HD1.

H.B. 1706, H.D. 1 requires owners of residential apartments or residential units who reside out-of-state or on a different island and who lease their units to provide the resident manager with contact information of a rental agent located in the state who is responsible for management of the unit or apartment on an annual basis.

The Department recommends that the owner of the residential unit also provide any General Excise Tax (GET) or Transient Accommodation Tax (TAT) identification number issued or used by the owner for the purpose of reporting taxes owed on the rental of the residential unit. Updated contact information would make it easier for the Department to ensure that the appropriate tax and amount due is remitted to the State of Hawaii.

The Department would also like to clarify misinterpretations of the Department's 2009-2010 Annual Report. Opponents of H.B. 1706 HD1 have mischaracterized the Department's annual reporting of its cases on appeal or in litigation, inferring that the list is a complete list of the Department's appeals and litigation cases, and therefore, the parties named in the cases are less compliant than others. This is an inaccurate assumption to make. It is also equally inaccurate to assume that based on the taxpayer's name in the case – for example, management companies – it automatically means the taxpayer has not paid their requisite transient accommodations tax.

In fact, a review of the case description in the Annual Report reveals that most of these cases involve the applicability of the general excise and/or income tax. For the most part, the

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CPN HB1706 HD1
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issue at hand is whether the GET applies to the gross receipts received by the management company for an interval ownership (time share) project, or whether a GET exemption available to condominium associations is applicable. These are clearly different facts and circumstances from the issues at hand.

Finally, the Department notes that our Annual Report is a summary of the prior fiscal year's activities. Many issues, especially those where there is a dispute as to the statutory interpretation and applicability, can take years to resolve and may appear in more than one of our annual reports. As a result, appearance in our summary of appeals and litigated cases is not a reflection of how compliant certain taxpayers are.

Thank you for the opportunity to submit comments.

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Dear Hawaii State Legislators,

We are deeply concerned with the wording of this Bill and request that the language be changed to reflect a " designated local contact" in lieu of a rental agent.

If the Legislature is inclined to pass this Bill, we request that the resident owners also be required to comply as there does not seem to be an inherent justification for only burdening nonresident owners with all of the requirements in this Bill. As the Attorney General suggested, "... under the Commerce Clause, the Equal Protection Clause, and/or the Privileges and Immunities Clause of the United States Constitution. Each of these clauses generally prohibit discrimination against nonresidents or discrimination in favor of "in state" residents". We would therefore request that all who provide transient accommodations be subject to the same laws.

Sincerely,
Rick & Patty Cassidy
Maui Homeowners and HI Taxpayers
500 Bay Dr
Lahaina, HI 96761

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Oppose Bill HB1706 Relating to Transient Accommodations

I am writing this to express my feelings of opposition to above mentioned bill HB1706. As an out of state property owner, I choose to use a realtor to handle the renting, and upkeep of my condominium, as I don't have the time necessary to do so myself. This is my choice and I am strongly opposed to this being mandatory. I have had a bad experience with a realtor and now have a competent and dependable realtor who handles my business for me. My point being that having a realtor does not necessarily mean they will do the job they have been hired to do. Not all realtors operate with integrity and a strong code of ethics. Property owners should continue to have the right to manage their property as they so choose.

In my opinion, passing this bill will hurt the vacation rental business.

Please don't pass this bill.

Thank You, Charles and Rosalind Wood,

Address at Waikoloa 68-3840 Lua Kula, E 207, Waikoloa, HI 96738

Mainland Address: PO Box 147, Mendon, UT 84352

Phone: 435-770-8457

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Th Whom It May Concern,

We are writing in strong opposition to HB 1706 relating to transient accommodation tax.

After buying our first condo ion the Big Island, HI in 1995, we employed a realtor/ manger to handle transactions with renters, collect fees and oversee maintenance. Taking 25% of the gross income, they did a terrible job,. Our bookings were unsatisfactorily handled, the property was dirty, maintenance was poor and services were over-charged. When we bought our second home on the Big Island, we decided to handle our few bookings ourselves, and the experience has been worth the effort in terms of quality of guests,taxes collected, maintenance of the property, and satisfaction of the guests.

We occupy our condo most of the time ourselves since retiring, but we do want to have the experience of handling renting and bookings of our property ourselves. If this bill passes, we shall simply stop renting. It seems that the local economy would be negatively impacted if more owners act as we shall.

Please reconsider your proposal, as we can't see any real good likely to come from it.

Mahalo,

Martha and Jim Blackburn

68-3840 Lua Kula St.

Waikaloa,HI 96738

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My husband and I own a condo in Kauai. We have had several Real Estate Agents represent us in the past and we are not able to make ends meet when paying the large commissions that they charge and we do not have the occupancy of our unit at a high level when they were managing.

Since I took over this project my success level is much higher. I am able to screen guests, and I respectfully do pay my TAT and GE tax. We bought our real estate at the very high end and it immediately took a dive when the economy got bad. I take this responsibility very serious. We also pay very high property tax. We feel that we are helping the Hawaii economy by bringing in more guests that spend money on the Islands. Please change the wording in this bill to DESIGNATED LOCAL CONTACT

We do not feel comfortable with the word of Rental Agent. That could easily be changed to Real Estate Agent or Real Estate Broker.

I do have a wonderful local girl that cares for my unit and maintains anything that might come up for a guest. We do not have any problems and I am loosing sleep over the fact that the government of Hawaii might soon be making our life even harder. We should be working together to help each other and then the Hawaii Islands will get their economy back and the real estate prices will come back. Putting restrictions on managing our personal property will only hurt everyone in the long run.

Respectfully submitted,

Yvonne Gilbert
Michael Gilbert

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urgent

f a c s i m i l e

To: State of Hawaii Commerce & Consumer Protection

Fax Number: 808 5866071

From: The Levine Family

Fax Number: 1 310 939 7771

Business Phone:

Home Phone:

Pages: 1

Date/Time: 3/27/2012 5:39:00 PM

Subject: HB1706 HD1

To Whom it May Concern:

I would like to vehemently oppose this bill, and have my views known at the hearing tomorrow morning. This bill is unconstitutional, as it discriminates against non-resident vacation rental owners who manage their own property such as myself. I do not find it necessary to hire a local management company to eat away at my meager profits, when I have been doing a fine job of it by myself. If this is another way of trying to get the deferred SB2089 bill enacted through the back door, it is a pretty poor way of doing so. I have a local contact person on Maui where my vacation rental is located for emergencies, questions, and help if necessary. I do not need a management company to do the job that we have been doing well for years.

Your Attention to defeating this bill is expected.

Sincerely

Larry B. Levine

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jennifer Mills
Organization: Individual
E-mail: onegr8gem2@aol.com
Submitted on: 3/27/2012

Comments:

For over seven years now, I have owned a cottage in a condominium association in Ka'anapali, Maui and I am blessed to have a wonderful, conscientious representative on-island. I can't say that all out-of-state owners are so lucky. My representative is not a managing agent, she is my housekeeper/concierge. I have desperately tried to hire a rental agent during the course of the past two years. At that time, my last rental agent got out of the real estate business altogether. She sold the vacation rental properties she owned, stopped selling real estate and stopped managing other people's vacation rentals, too. Since then, no one on Maui will take my cottage because they already have too large of an inventory of "similar" properties. They feel that adding more properties would diminish the already dismal amount of bookings per property. Other companies have said that they only take "high end" properties.

These agents charge around 25-30% to handle your property. I am currently renting my place for an average per night fee of around \$125/night, plus State of Hawaii tax. Horrible! Just a few years ago I was charging a fair market rate of over \$200/night! My friends and family rate was \$165/night which was break even for me on a nightly basis. I have NEVER made a dime on my cottage in 7 years! I was only starting to see the light of day when the rental rate pushed over \$200/night. I have dumped over \$100,000 into my place between repairs & upgrades and making ends meet on the monthly bills. I also put \$240,000 down on it when I bought it. I am into that place for at least \$340,000, plus the \$250,000 remaining on the mortgage.

After busting my butt to keep it rented and only being able to stay out of foreclosure by the skin of my teeth, I don't think I am willing to put my cottage's destiny in the hands of anyone else. The only reason I have been able to keep it rented 70% of the year is because I am doing it myself. No one, and I mean no one, would put in so much effort to maintain a completely and utterly negative cash flow situation like this cottage is. If this bill passes, I am out-of-business. I cannot afford to let someone else be in control of renting my place. I am very quick to respond to inquiries. I am always adjusting the price with the current market conditions (time of year, amount of interest). No one will do this stuff. No one will care as much as I do. I spend hours every day working at keeping my cottage and my reward is to pay money out of my pocket to keep this place going.

With an agent in charge, they would want to raise the nightly rate to cover their percentage, so there would be a lot less bookings. On top of that, I would have to pay them 30% for their services. Even if my bookings somehow managed to stay at the same rate of 70%, where am I going to get an additional say \$10,000 to pay

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the agent for their services? I am already in the hole probably \$500/month. I would have to charge over \$200/night to break even with the added cost of a real estate agent. That is without any repairs or upgrades getting done.

Hawaii is already hurting because so many less tourists are spending the money to travel so far from home. The tourists who do come spend most of their money on airfare, accommodations and car rental. There is very little money left for them to spend on trinkets, meals out and costly tourist attractions. I know that the amount of money spent in Hawaii per tourist per day has sharply decreased over the past 4 years. They aren't eating lovely fresh fish dinners at ocean-side tables anymore. They buy peanut butter, jelly and bread and have a cheap picnic on the beach. Now is not the right economic time to pass a bill like this one. Thank you for your consideration.

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Brandon Bates
Organization: Individual
E-mail: bdo027@gmail.com
Submitted on: 3/27/2012

Comments:

I am totally OPPOSED TO THIS BILL. Please collect the taxes that are due to the State of Hawaii by enforcing the laws you already have. This is not a way to increase your revenue. All Hawaii vacation property owners that I know collect and pay their taxes. How unfair and unconstitutional to ask off island property owners to hire an agent to rent and collect taxes for these owners. This bill will cause more people to loose their properties which WILL NOT HELP THE STATE. These owners cannot afford to hire these "agents" to handle their affairs. I know many people who refuse to rent from agents and only wish to deal with the owners. Agents are impersonal and there is no proof these agents even know what they are doing. I, for one, would not rent through an agent. Please consider my opposition to this bill.

Brandon Bates
Blaine WA

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mr/Mrs William Harvey
Organization: Individual
E-mail: Hailtec@aol.com
Submitted on: 3/27/2012

Comments:

We do not believe including a rental agent in our advertising will serve any purpose other than for the benefit of the rental agent. It will only confuse the guest when trying to make arrangements to stay at our condo. We include contact information with the instructions sent to the guest once they have reserved the condo. There is always a resident manager on the premises. And contact information is provided upon arrival at the resort. Please vote no on this provision.

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229

Testifier position: Oppose

Testifier will be present: No

Submitted by: Dr Albert W Merrill

Organization: Individual

E-mail: Buzz@mahana308.com

Submitted on: 3/27/2012

Comments:

Extra cost to me, the owner, and no extra income to the state of Hawaii and no advantage to the renter. Did you really think that an agent can take care of my property and my guests better than the owner (since 1978)?

Testimony for CPN 3/28/2012 9:30:00 AM HB1706

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Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ely Dahan
Organization: Individual
E-mail: elydahan@gmail.com
Submitted on: 3/27/2012

Comments:

With respect, this is a bad bill that will not only hurt Hawaii, depress real estate, rescue state revenues, hurt unemployment, and have the opposite of its intended consequences, but will also badly damage the image of our state and the reputations of the legislators who support it.

The only people who will benefit are the private interests (e.g. Monopolistic property managers) who have fooled others into supporting their naked attempt at picking the pockets of off-island investors who ne'er saw this coming. Just wait until the national press and Republicans get a hold of this and start naming names. Better than "The Hunger Games."

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Pamela Gleave
Organization: Individual
E-mail: pgleave@hotmail.com
Submitted on: 3/28/2012

Comments:

My husband, Duane and I have rented condos several times in the Hawaiian Islands. We have rented through rental agencies and through private parties. Each time we went through a rental agency we were disappointed. The agencies seem to have too many units to be personal with each tenant. It was always a take or leave attitude.

We have since been going through private parties, VRBO, ads, recommendations of friends, etc. We have very pleased each time. The owners want to help you and are very concerned with your needs. The units are always clean and well equipped, not always the case with an agency rental. It would be a disservice to the people wanting to come to your beautiful islands to MAKE us go through an agency each time we came to visit. We like the personal contact of working with the owners of the condos we are staying in for a vacation.

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jerald Dunlap
Organization: Individual
E-mail: jvdunlap@verizon.net
Submitted on: 3/28/2012

Comments:

Please do not pass this bill requiring owners to employ a real estate agent in order to rent their property.

I have rented my home for 11 years and paid the TAT and GET taxes every month. The rentals help the State of Hawaii and have enabled me to continue to own my home. Forcing me to employ a real estate agent whom I don't know would be a disaster for me. The details of renting and using my home are involved and an unrelated agent would not be able to advise, direct and negotiate successfully with a client. I am able to rent it out because I am the owner and I deal personally with the clients. I would also have to give a big percentage of the rent to an agent who has done virtually nothing and which I cannot afford.

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229

Testifier position: Oppose

Testifier will be present: No

Submitted by: Ronald D. Benjamin

Organization: Individual

E-mail: colonel@ronbenjamin.net

Submitted on: 3/28/2012

Comments:

Generally support the effort in collecting taxes but suggest changing the wording to "advise local contact" instead of "rental agent." There is no need for owners to incur additional expense of a local rental agent when a local contact will do.

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229

Testifier position: Oppose

Testifier will be present: No

Submitted by: Alicia Hopkins

Organization: Rental By Owner Awareness Association

E-mail: Ahopkins@rboaa.org

Submitted on: 3/27/2012

Comments:

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Testimony for CPN 3/28/2012 9:30:00 AM HB1706

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Catherine Nyborg
Organization: Individual
E-mail: ktlinn@pacific.net
Submitted on: 3/28/2012

Comments:

As a homeowner with my own personal property managers, registered transient tax payer, I am completely opposed to HB1706. We already follow all the rules and have more stringent rules of our own. We built a beautiful home that we share with others, lots of family and friends and then rent it to others when it's available. We pre-screen, as well as, on site manage to make sure that all people in our home follow all the rules. Our neighbors are happy, we are happy, the people we employ (12) are happy. Oahu should also be happy (tax revenue, as well as local business revenue).. We send lots of revenue to local business, give visitors the feeling of home in the islands and leave with the desire to return again soon. It's a win, win! Please vote NO on HB1706