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HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 976, HD1, PROPOSED HD2 RELATING TO TAXATION

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION
(OR DESIGNEE)

COMMITTEE: FIN

DATE: FEBRUARY 25, 2011

TIME: 5:00PM

POSITION: SUPPORT; CRITICAL TECHNICAL ERROR

This measure modifies the transient accommodations tax (TAT) by adding "resort fees" to the gross rental amounts taxed and by designating a minimum \$4 per night tax.

The Department of Taxation supports this measure as it relates to the taxation of resort fees, however notes a critical error in the drafting. In its current form the bill essentially repeals the current TAT and replaces it with a flat \$4 per night rate starting July 1, 2013. This should be amended to set the \$4 rate as a minimum charge while maintaining the current percentage rates of tax to effectuate the intent of the bill.

The Department estimates a revenue gain of \$1.7 million to the general fund and \$9.5 million to special TAT related funds in FY14 and thereafter.

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SUBJECT: TRANSIENT ACCOMMODATION, Resort fee; change rate

BILL NUMBER: HB 976, Proposed HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 237D-1 to amend the definition of "gross rental" or "gross rental proceeds" to include "resort fees." Defines "resort fee" as any additional fee, charge, surcharge, levy, assessment, or sum collected by an operator to defray the cost of maintaining facilities or amenities used in common or jointly with another operator.

Amends HRS section 237D-2 to provide that beginning July 1, 2013, the transient accommodations tax (TAT) shall be imposed at the rate of \$4 per day. The amendments made by this act shall not be repealed when that section is reenacted on June 30, 2015, pursuant to section 4 of Act 61, SLH 2009.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: It appears that this measure is proposed to extract additional tax revenues from the visitor industry, in this case by the imposition of the transient accommodations tax (TAT) on resort fees. It should be noted that while some resorts and hotels impose such a "resort fee" to provide guests access to certain areas of the resort, including swimming pools, health spas, tennis courts, etc., others may include it in the cost of the room. If the guest has no interest in these recreational "extras," he or she can choose not to pay the resort fee. The point is that renting a hotel accommodation does not require the guest to pay the resort fee, but is an option and is not implicit in the cost of the room rental.

Other than a grab for more revenues, this proposal makes little sense in that it attempts to extend the TAT to services that are not a prerequisite of renting a hotel room. Even when a visitor buys a vacation package from a packager of rooms and activities, the TAT is collected only on the amount that is determined to be for the rental of the hotel room and not on tours, meals, and transportation. This is the start of a slippery slope. For example, as a promotion a hotel offers the guest free breakfast for two. But the daily hotel room rate is the same as that for someone off the street. Will this proposal set a precedent and give the department basis to impute the cost of the breakfast and impose both the general excise tax and the TAT on that imputed amount because it is being offered by the hotel?

The TAT was adopted with the rationale that the tax was supposed to be imposed on the gross income received from the rental of a hotel room and not from any charges that have nothing to do with that rental.

This measure also proposes that beginning on July 1, 2013, the TAT shall be \$4 per day. The legislature by Act 61, SLH 2009, increased the TAT by an additional 1% between 7/1/09 and 6/30/10 and an additional 2% 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. Under the proposed measure, as drafted, it would appear

that the TAT beginning on July 1, 2013, would be imposed at the rate of \$4 plus 2%. Under the existing law, a transient accommodation of \$200 would be subject to TAT of \$18.50 on June 30, 2013. If this measure were adopted, on July 1, 2013, the same transient accommodation of \$200 would be subject to a TAT of \$8. It is questionable whether this is the intent of the proposed measure.

Digested 2/24/11



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HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair

HB 976 Proposed HD 2
Relating to Taxation

Chair Oshiro and Members of both Committees, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii, in opposition to this bill.

To sum up our feelings on this bill in one sentence, “Why are we being nickeled and dimed to death?”

The first part of this bill proposes to apply the Transient Accommodations Tax (TAT) to revenues other than revenues associated directly with furnishing transient accommodations. First off, that deviates from the original intent of the TAT. Secondly, if this tax is applied to resort fees, we could easily do away with resort fees and go back to providing these resort services the old fashion way, piece by piece. In other words, the visitor pays ala carte. No revenue gain there.

The only objective this proposal will achieve is to diminish in the visitor experience, which is counter-productive to encouraging visitors to stay in Hawaii by providing an outstanding visitor experience.

The second part of this bill proposes to add a new fee of \$4 per room starting on July 1, 2013, above the current TAT assessment on occupied rooms, as well as a \$4 fee on non-occupied room or “comp” room. Putting the argument aside on whether it’s appropriate to assess a new \$4 fee in addition to the current TAT assessment, which by the way the Legislature raised by 2% 2 years ago, how can you asses that same \$4 fee on a room we do not derive any revenue from? Like the proposal to assess a TAT on resort fees, the \$4 on “comp” or non-occupied rooms deviates from the intent of the TAT or GET, which says that you pay tax on revenues you receive. We derive no revenue from “comp” or non-occupied rooms.

What this fee sounds like is a property tax and the last time I looked, that was by constitutional amendment the exclusive prevue of the Counties.

Again I ask, why are we being nickeled and dimed to death?

Thank you for allowing me to testify.



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**TESTIMONY OF MUFI HANNEMANN
PRESIDENT
HAWAII HOTEL & LODGING ASSOCIATION**

February 25, 2011

RE: Proposed HB 976 HD2 Relating to Taxation

Good evening Chairman Oshiro and members of the House Committee on Finance. I am Mufi Hannemann, President of the Hawaii Hotel & Lodging Association.

The Hawaii Hotel & Lodging Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 150 hotels representing over 48,000 rooms. Our hotel members range from the 2,680 rooms of the Hilton Hawaiian Village to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

The Hawaii Hotel & Lodging Association strongly opposes the proposed HB 976 HD2 Relating to Taxation. This bill would place a tax on resort fees and increase the tax on hotel rooms to \$4 per night per room whether it is occupied or not.

On resort fees, hotels currently pay the GET, because it is a service not a use of a room. If assessed, hotels could just drop the packaged amenities and therefore there would be no gain in revenue.

The \$4 per room would potentially impact Kama`aina travelers the most since they usually benefit from lower room rates. A measure of this type would be especially inappropriate since hotels often use comp rooms to stimulate future business from meeting planners, travel agents and other industry professionals. More importantly, hotels derive no revenues from non-occupied rooms. We believe therefore, that if there is no revenue received by the hotel for a room, taxes should not apply.

Hawaii needs to remain competitive. This bill would have a large negative impact on our industry. If you may recall, the Transient Accommodations Tax was already raised an additional 2% last year. Although occupancy is rising, we continue to offer rooms at discounted rates to attract visitors to our islands and remain competitive with other destinations. The stronger the tourism industry becomes, the state and counties will be in a better position fiscally to meet the overall challenges of the economy.

We request that you hold this bill. Mahalo again for this opportunity to testify.