

# SB 1201

**Measure Title:** RELATING TO TRANSIENT ACCOMMODATIONS TAX.  
**Report Title:** Transient Accommodations Tax  
**Description:** Clarifies fees that are subject to the transient accommodations tax.  
**Companion:** [HB970](#)  
**Package:** Gov  
**Current Referral:** THA/WAM  
**Introducer(s):** KIM (Introduced by request of another party)

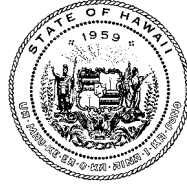
<a href="#">Sort by Date</a>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to THA, WAM.
1/30/2013	S	The committee(s) on THA has scheduled a public hearing on 02-04-13 3:00PM in conference room 224.
2/4/2013	S	The committee(s) on THA deferred the measure until 02-08-13 2:45PM in conference room 224.
2/8/2013	S	The committee on THA deferred the measure.
2/14/2013	S	Re-Referred to THA/WAM.
2/15/2013	S	The committee(s) on THA/WAM has scheduled a public hearing on 02-20-13 9:00AM in conference room 211.

## TESTIMONY LIST

Frederick Pablo	<b>DEPARTMENT OF TAXATION</b>	SUPPORT
Mike McCartney	<b>HAWAII TOURISM ASSOCIATION</b>	OPPOSE
Michael Jakovich	<b>HYATT REGENCY</b>	OPPOSE
Maynard Torchiana	<b>DESTINATION RESORTS HAWAII</b>	OPPOSE
Lisa Paulson	<b>MAUI HOTEL &amp; LODGING</b>	OPPOSE
Keith Vierra	<b>STARWOODS HOTELS</b>	OPPOSE
	<b>TAX FOUNDATION HAWAII</b>	COMMENTS

**NEIL ABERCROMBIE**  
GOVERNOR

**SHAN TSUTSUI**  
LT. GOVERNOR



**FREDERICK D. PABLO**  
DIRECTOR OF TAXATION

**JOSHUA WISCH**  
DEPUTY DIRECTOR

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**DEPARTMENT OF TAXATION**  
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To: The Honorable Brickwood Galuteria, Chair  
and Members of the Senate Committee on Tourism and Hawaiian Affairs

The Honorable David Y. Ige, Chair  
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 20, 2013  
Time: 9:00 A.M.  
Place: Conference Room 211, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: S.B. 1201, Relating to Transient Accommodations Tax

The Department strongly supports S.B. 1201, and offers the following information and comments for your consideration.

S.B. 1201 clarifies that resort fees and other surcharges imposed on guests at a hotel or other transient accommodation are subject to the transient accommodations tax (TAT).

The TAT is imposed on gross rental proceeds derived from furnishing transient accommodations. "Gross rental" or "gross rental proceeds" is defined as the gross receipts, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations and the value proceeding or accruing from the furnishing of such transient accommodations without any deduction.

To the extent mandatory resort fees are paid by a person in exchange for being furnished a transient accommodation, those mandatory resort fees constitute gross rental proceeds and are subject to the TAT. Merely stating mandatory resort fees as a separate line item on a guest's bill is not sufficient to demonstrate that resort fees are not charged in exchange for furnishing of the transient accommodation, or whether they were paid as part of a wholly separate transaction.

In other words, a mandatory resort fee is a fee that the guest cannot opt out of. Mandatory resort fees are subject to TAT because the guest would not be allowed the use of the transient accommodation without paying the mandatory resort fee.

For example, if internet service is part of a mandatory resort fee imposed on guests, the resort fee is subject to TAT. Conversely, if the transient accommodation offers internet service to guests as an optional service for a separate fee, and the guest voluntarily agrees to pay a fee to receive the service, the fee is not subject to the TAT.

The key difference in these two examples is that the first example consists of mandatory resort fees which must be paid in order to use the transient accommodation and the second example is a charge that the guest incurred on the guest's own volition. In other words, the guest would be allowed the use of the transient accommodation regardless of whether they order the internet service or not.

In order to further simplify and clarify that mandatory resort fees are subject to TAT, the Department suggests the following alternate definition of "resort fee" for the committees' consideration:

""Resort fee" means any mandatory charge or surcharge imposed by a transient accommodations operator, owner, plan manager, or representative thereof to a transient or occupant for the use of the transient accommodations property, services or amenities."

Thank you for the opportunity to provide testimony.



Hawai'i Convention Center  
1801 Kalākāua Avenue, Honolulu, Hawai'i 96815  
**kelepona** tel 808 973 2255  
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**Neil Abercrombie**  
Governor

**Mike McCartney**  
President and Chief Executive Officer

Testimony of  
Mike McCartney  
President and Chief Executive Officer  
Hawai'i Tourism Authority  
on  
**S.B. 1201**  
**Relating to Transient Accommodations Tax**  
Senate Committee on Tourism and Hawaiian Affairs  
Senate Committee on Ways and Means  
Wednesday, February 20, 2013  
9:00 a.m.  
Conference Room 211

The Hawai'i Tourism Authority (HTA) opposes S.B. 1201, which proposes to impose the transient accommodations tax (TAT) on resort fees.

The bill defines "resort fees" as "...any charge or surcharge imposed by a transient accommodations operator, owner, plan manager, or representative thereof to a transient or occupant for the use of the transient accommodation's property, services or both...", and defines "gross rental" to include "...resort fees or any other type of surcharge charged to a guest for the furnishing of a transient accommodation." Section 237D-1, however, defines "transient accommodations" as "***the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient...***" and section 237D-2 assesses the tax on the "***proceeds derived from furnishing transient accommodations.***" A resort fee is not for an accommodation that is occupied. It is for a service or product purchased by the guest and is not derived from the furnishing of transient accommodations.

Hawaii is a leisure destination, where the visitor's spending is discretionary. As such, our visitor market is price-sensitive, and any increase could drive a traveler to a competing destination. An additional charge, such as imposing the TAT on resort fees will only diminish Hawaii's ability to compete in a price-sensitive market. This could cause us to lose momentum in the significant gains in visitor arrivals and spending experienced over the past three years. We need to ensure the continued success of our industry for the state's economy to be sustainable.

Instead of imposing the TAT on resort fees, we believe that by investing in opportunities to maintain market share and diversify our tourism profile in the leisure and meetings, conventions and incentive (MCI) markets, enhancing access and neighbor island

distribution, and building on the experiential assets of our people, place and culture, we can generate greater revenue that will benefit the entire state.

For these reasons we oppose S.B. 1201, and request that it be held.

Mahalo for the opportunity to offer these comments.



Michael Jokovich  
General Manager

Hyatt Regency Maui Resort and Spa  
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**Testimony of  
Michael Jokovich  
General Manager  
Hyatt Regency Maui Resort and Spa  
on  
SB1201  
Relating to Transient Accommodations Tax**

**COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS  
COMMITTEE ON WAYS AND MEANS  
Wednesday, February 20, 2013, 9:00 am  
Room 211**

As General Manager of the Hyatt Regency Maui Resort and Spa, I am opposed to SB1201 which clarifies fees that are subject to the transient accommodations tax.

The bill defines "resort fees" as "...any charge or surcharge imposed by a transient accommodations operator, owner, plan manager, or representative thereof to a transient or occupant for the use of the transient accommodation's property...", and defines "gross rental" to include "...resort fees or any other type of surcharge charged to a guest for the furnishing of a transient accommodation." Section 237D-1, however, defines "transient accommodations" as "the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient..." A resort fee is not for an accommodation that is occupied. It is for a service or product purchased by the guest.

The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island – directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

In 2009, the state government raised the TAT with a 1% increase effective July 1, 2009, and an additional 1% in 2010. Based on the average cost of a hotel room on Maui, the current TAT rate of 9.25%, plus the GET, results in a tax bill of 13.41%, or more than \$32 a night, our guests must pay. An additional charge, such as imposing the TAT on resort fees, will only diminish Maui's ability to compete in a price-sensitive market. This could cause us to lose momentum in the significant gains in visitor arrivals and spending experienced over the past three years. We need to ensure the continued success of our industry for the state's economy to be sustainable.

I urge you to oppose SB1201.

Thank you for the opportunity to testify.

**SB1201**

Submitted on: 2/18/2013

Testimony for THAWAM on Feb 20, 2013 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Maynard Torchiana	Destination Resorts Hawaii Inc.	Oppose	No

Comments: As an employer of over 120 people and a principal of a resort transient condominium rental and management company I am opposed to this TAT increase. Our guests are already paying too much in taxes and fees and we will begin to lose our momentum with more expense. We all need to realize that our recent growth can, in part, be attributed to better pricing and the drop in tourism to Mexico. Since we depend so much on tourism for our economy we should be more sensitive to keeping it viable and competitive. Not keep taxing it. Mahalo Maynard Torchiana Executive Vice President Destination Resorts Hawaii Inc.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



*Maui Hotel & Lodging*  
ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

**SB1201**

**Relating To Transient Accommodations Tax**

COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

COMMITTEE ON WAYS AND MEANS

**Wednesday, February 20, 2013, 9:00am**

**Room 211**

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 140 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA’s membership employs over 20,000 local residents.

MHLA opposes SB1201 which clarifies fees that are subject to the transient accommodations tax.

The bill defines “resort fees” as “...any charge or surcharge imposed by a transient accommodations operator, owner, plan manager, or representative thereof to a transient or occupant for the use of the transient accommodation’s property...”, and defines “gross rental” to include “...resort fees or any other type of surcharge charged to a guest for the furnishing of a transient accommodation.” Section 237D-1, however, defines “transient accommodations” as “the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient...” A resort fee is not for an accommodation that is occupied. It is for a service or product purchased by the guest.

The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

In 2009, the state government raised the TAT with a 1% increase effective July 1, 2009, and an additional 1%, 2010. Since the July 1, 2010, guests and locals have paid a TAT of 9.25%. Coupled with the GET, guests pay a 13.41% tax on Maui. Based on the annual average cost of a hotel room and the 13.41% tax rate, the average tax bill is \$32 per night.

An additional charge, such as imposing the TAT on resort fees will only diminish Maui’s ability to compete in a price-sensitive market. This could cause us to lose momentum in the significant gains in visitor arrivals and spending experienced over the past three years. We need to ensure the continued success of our industry for the state’s economy to be sustainable.

We urge you to oppose SB1201.

Thank you for the opportunity to testify.



starwood

Hotels and  
Resorts

2155 kalakaua avenue, suite 300  
honolulu, hi 96815

united states

February 20, 2013

To: Honorable Brickwood Galuteria, Chair  
Senate Committee on Tourism and Hawaiian Affairs

Honorable David Y. Ige, Chair  
Senate Committee on Ways and Means

RE: **SB 1201, Relating to Transient Accommodations Tax - Oppose**  
Conference Room 211, 9:00 AM

Aloha Chair Galuteria, Chair Ige, and Members of the Committees:

My name is Keith Vieira, Senior Vice President of Operations for Starwood Hotels and Resorts ("Starwood") in Hawai'i and in French Polynesia. We appreciate the opportunity to provide testimony in opposition to SB 1201, Relating to Transient Accommodations Tax ("TAT").

Resort fees normally include parking and internet access charges as standard. Our hotels add additional products and services based upon customer feedback. Resort fees began because customers did not like additional ancillary services affixed to their bills. Based upon customer satisfaction surveys and comments, guests see the value in a resort charge.

We object to amending the existing TAT law, to make "gross rental" or "gross rental proceeds" subject to this tax. Resort fees are ancillary services, not part of the guest room accommodation and should not subject to a TAT.

This bill strays away from the original intent of the TAT and sends an unwelcome message to visitors that our state is making a grab for more revenues from the visitor industry, which is in recovery after the Great Recession. Unlike other large markets, Hawai'i is a leisure destination. Because we compete against other leisure markets that offer a greater value, Hawai'i's market is price sensitive since visitor spending here is discretionary.

The imposition of increased taxes and fees on the visitor industry may 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, which competes with other destinations world-wide. Let's not reverse the positive momentum our state is enjoying by passing unnecessary fee and tax increases to our visitor industry.

For these reasons, we urge the Committee to HOLD this bill.

Sincerely,

Keith Vieira  
Senior Vice President of Operations  
Starwood Hotels and Resorts - Hawai'i and French Polynesia

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Resort fee

BILL NUMBER: SB 1201; HB 970 (Identical)

INTRODUCED BY: SB by Kim by request; HB by Souki by request

BRIEF SUMMARY: Amends HRS section 237D-1 to amend the definition of “gross rental” or “gross rental proceeds” to include resort fees or other type of surcharges charged to a guest. Adds a definition of resort fee as any charge or surcharge imposed by a transient accommodation operator, owner, plan manager, or representative thereof to a transient or occupant for the use of the transient accommodation’s property, services or both.

These charges or surcharges are considered a resort fee even when the charges to the transient or occupant are: (1) negotiated in a transaction subsequent to, or separate from, the initial transaction for the stay in the transient accommodation; (2) separately itemized on the transient’s or occupant’s bill or invoice; (3) stated on a separate bill or invoice; (4) charged by the operator, owner, plan manager, or representative thereof to the transient or occupant for property or services rendered by a third party; (5) optional, if the property or service is intrinsic to the furnishing of a transient accommodation; or (6) mandatory, irrespective of whether the transient or occupant uses the property or service in whole or in part. Resort fees do not include charges for property or services sold in transactions unrelated to the furnishing of transient accommodations.

EFFECTIVE DATE: July 1, 2013

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-22 (13). 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 necessarily require the guest to pay the resort fee, but is often 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 is 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.

Should lawmakers insist on imposing the TAT on such charges, the bright line should be whether or not such charges are discretionary as opposed to mandatory. Where the guest has a choice in paying such charges and making use of the services offered, the resort charge should not be imposed as obviously the resort charge does not prevent the rental of the room. On the other hand, if the resort charge is mandatory, then the department might be able to argue that the charge is an implicit part of the room charge and subject to the TAT.

Digested 2/1/13