

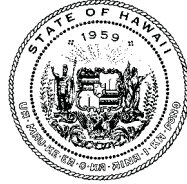
# SB 1201

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.

NEIL ABERCROMBIE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



FREDERICK D. PABLO  
DIRECTOR OF TAXATION

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STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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

Date: Monday, February 4, 2013  
Time: 3:00 P.M.  
Place: Conference Room 224, 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 accommodations without any deductions.

To the extent resort fees are paid by a person in exchange for being furnished a transient accommodation, resort fees constitute gross rental proceeds and are subject to the TAT. Merely stating resort fees as a separate line item on a bill is not sufficient to demonstrate that resort fees are not charged in exchange for the furnishing of the transient accommodation.

More specifically, if resort fees are a mandatory part of the guest's bill, they clearly constitute gross rental proceeds subject to TAT. Where the resort fees are not mandatory, a determination of whether those fees constitute gross rental proceeds subject to TAT depends on whether they are paid in exchange for the furnishing of the transient accommodation, or whether they were paid as part of a wholly separate transaction.

Thank you for the opportunity to provide testimony.



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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  
Monday, February 4, 2013  
3:00 p.m.  
Conference Room 224

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...", 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.

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.



**HAWAII LODGING & TOURISM**

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**TESTIMONY OF GEORGE SZIGETI  
PRESIDENT & CEO**

**HAWAII LODGING & TOURISM ASSOCIATION**

**February 4, 2013**

**RE: SB 1201 Relating to the Transient Accommodations Tax**

Good afternoon Chairperson Galuteria and members of the Senate Committee on Tourism & Hawaiian Affairs. I am George Szigeti, President & CEO of the Hawai`i Lodging & Tourism Association.

The Hawai`i Lodging & Tourism Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 150 lodging properties representing over 48,000 rooms. Our lodging members range from the 3,499 rooms of the Hilton Hawaiian Village Waikiki Beach Resort to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

The Hawaii Lodging & Tourism Association strongly **opposes** SB 1201 Relating to Transient Accommodation Tax. This measure would impose the Transient Accommodation Tax onto resort fees. The resort fee is not part of the guest room accommodation. The resort fees are for ancillary benefits like the use of the gym and spa facilities, WiFi, and shuttle services to name a few. These tax increases make a Hawaiian vacation more expensive and target the visitor industry at time when increased visitor arrivals are our best opportunity to increase revenue flowing to our state and to have more people working.

I appreciate this opportunity to testify.



THE SENATE  
27<sup>th</sup> LEGISLATURE  
REGULAR SESSION of 2013

COMMITTEE ON TOURISM & HAWAIIAN CULTURE  
Senator Brickwood Galuteria, Chair

2/4/2013  
Rm 224, 3:00 PM

SB SB 1201  
Relating to TRANSIENT ACCOMODATIONS TAX

Chair Galuteria and Members of this Committee, my name is **Max Sword**, here on behalf of Outrigger Hotels Hawaii in opposition to this bill.

We are in **opposition** to this bill, because the proposed language defining a “resort fee” is extremely broad and we believe that it would cover services provided by the hotel (either itself or on a resale basis from third party vendors) that should NOT properly be considered provisioning transient accommodations.

For instance, at the OHANA East hotel, we do not have a resort fee, however under the definition in the bill, “any charge or surcharge imposed by a transient accommodations operator .....to a transient or occupant for the use of the transient accommodations property, services or both.” In other words, when a customer sends out their laundry or orders food from Roundtable Pizza downstairs and is charged to the room, these items must be charged with a TAT.

We urge your UNfavorable disposition of this bill and thank you for allowing me to testify.

# TAXBILLSERVICE

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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