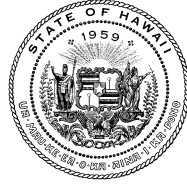


DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: March 29, 2016  
Time: 9:15 A.M.  
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1850, H.D. 1, S.D. 1, Relating to Taxation.

The Department of Taxation (Department) supports the intent of H.B. 1850, H.D. 1, S.D. 1, and provides the following comments for your consideration.

H.B. 1850, H.D. 1, S.D. 1, permits a transient accommodations broker to register as a tax collection agent on behalf of its operators and plan managers. As a tax collection agent, the broker will be required to report, collect, and pay general excise tax and transient accommodations tax on behalf of all of its operators and plan managers for transient accommodations booked directly through the broker. The tax collection agent will assume all obligations, rights, and responsibilities imposed on operators and plan managers for business activities conducted directly through the tax collection agent and will be personally liable for all taxes due and collected. The bill is effective upon approval, applies to taxable years beginning after December 31, 2016, and requires the Department to make registration forms available within 90 days of the effective date.

By permitting brokers to act as tax collection agents, similar to how multi-level marketing organizations may act as tax collection agents on behalf of their direct sellers, pursuant to section 237-9(e), Hawaii Revised Statutes (HRS), this bill will ease the burden of reporting and remitting taxes for operators and plan managers, and will facilitate collection at the source for the Department.

The Department appreciates that its proposed amendments were adopted by the House Committee on Finance, including amendments that allow the Department to promulgate rules to set forth minimum criteria for a broker to become a registered collection agent, allow the Department to cancel a broker's registration for any cause, not just one authorized under existing law, and disallow brokers from transferring their registration to another entity.

The Department also notes that the House Committee on Finance amended Section 10 by making the bill applicable to taxable years beginning after December 31, 2016 with the intent to provide the Department additional time to create and adopt necessary forms and rules. Section 7, however, provides that the Department must make forms available within 90 days after the *effective date*, which is upon approval. Accordingly, in order to provide the Department sufficient time to promulgate rules and create forms, the Department requests that Section 7 be amended to state that the Department shall make forms available by January 1, 2017.

Thank you for the opportunity to provide comments.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



GEORGE I. ATTA, FAICP  
DIRECTOR

ARTHUR D. CHALLACOMBE  
DEPUTY DIRECTOR

March 29, 2016

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways  
and Means  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Tokuda and Committee Members:

Subject: House Bill No.1850, HD 1, SD 1  
Relating to Taxation

The Department of Planning and Permitting (DPP) **supports, with recommended amendments**, House Bill No. 1850, HD 1, SD 1, which would allow a transient accommodation broker to serve as a collection agent for the general excise tax (GET) and transient accommodation tax (TAT).

The DPP's major concern with this measure is the provision contained in Section 2, Paragraph (j), (1) and (2), which requires the operator or plan manager of the property being used for transient accommodations to attest to compliance with applicable land use laws. As written, the problem is that the operator or plan manager is left to basically be "self certified" with no provisions for verification. Our recommendation is that the operator or plan manager obtains proof of compliance in the form of a certification document issued by the county's land use regulator. The certification can be in the form of a certificate or simply a letter of verification with a seal of the appropriate county agency.

Secondly, as in our previous testimony on this measure, we request that the registered transient accommodation agent be required to disclose to the Department of Taxation the names or addresses of any of its operators and plan managers in connection with the return. This requirement will help manage the accountability of the operators and verification of which locations are actually conducting transient accommodation.

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways  
and Means  
Hawaii State Senate  
Re: House Bill No. 1850, HD 1, SD 1  
March 29, 2016  
Page 2

For the State Department of Taxation to manage its enforcement efforts against the rise in the number of illegal vacation rental units, it is imperative to establish requirements such as a mandatory TAT reporting. Such reporting will help identify which vacation rental operators have paid taxes, how much, and which ones have not paid the required taxes. For the counties, the general knowledge that a TAT license exists is an indicator that transient accommodation rental operations are being conducted. This information can be used to contribute to the preponderance of evidence that the use, legal or illegal, is ongoing.

Thank you for this opportunity to testify on House Bill No. 1850, HD 1, SD 1.

Very truly yours,



George I. Atta, FAICP  
Director



To: Senator Jill Tokuda, Chair  
Senator Donovan Dela Cruz, Vice Chair  
and Members of the Senate Committee on Ways and Means

Date: March 29, 2016

Time: 9:15 a.m.

Place: Conference Room 211, State Capitol

Re: **HB 1850, HD1**, Relating to Voluntary Collection and Remittance by a  
Transient Accommodations Broker

By: Cynthia Wang, Public Policy Manager, and Beth Adair, Global Head  
of Tax

Honorable Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

We write **in support of HB 1850, HD1, SD1**, which would enable Airbnb and similar platforms to collect and remit Transient Accommodations Tax (TAT) and General Excise Tax (GET) on behalf of our community.

Hawaii has a vibrant Airbnb community of responsible hosts and guests. Home sharing is an increasingly popular accommodations option, and the significant benefits it provides to both local businesses and thousands of local residents by generating supplemental income and supporting local businesses highlight the importance of this emerging economic sector. Airbnb's mission is to democratize travel by allowing anyone to belong anywhere. We make this happen through our people-to-people platform that connects hosts and guests in 191 countries and 34,000 cities around the world.

Currently, Airbnb and similar platforms are neither allowed nor legally obligated to collect and remit these taxes on behalf of their hosts in Hawaii. Airbnb voluntarily stepped forward to propose this legislation.

HB 1850, HD1, SD1 would enable Airbnb to ensure full tax compliance and maximum tax revenue collection on all bookings conducted through our platform. It would also simplify administration for both the Department of Taxation and our host community, and reduce the State of Hawaii's enforcement burden in ensuring individual tax compliance. Airbnb first began collecting and remitting hotel and tourist taxes from guests on behalf of hosts in San Francisco and Portland. Since then, we have successfully been collecting and remitting taxes in jurisdictions across the world, including Amsterdam, Chicago, Malibu, North Carolina, Oakland, Washington D.C., Oregon, Palo Alto, Paris, Philadelphia, Phoenix, Rhode Island, San Diego, San Jose, Florida, and Washington (State).

We would also like to respond to concerns raised by opposition in recent weeks. Some have alleged that the bill does not ensure proper accountability. The Department of Taxation (“DOTAX”) disagrees: “Auditing [under the bill] is actually made simpler as there is only one source to request documentation to initiate an audit.” ([article link](#)) Under HB 1850, HD1, SD1, Airbnb would register as the single taxpayer, assuming full responsibility and liability with respect to applicable taxes on its platform and using its tax ID number to meet Act 204’s posting requirement. Airbnb would remain subject to DOTAX’s full audit authority. As such, if DOTAX requires the names or addresses of a platform’s users, the platform would provide the data with either the consent of its users or under an administrative subpoena from DOTAX (Sections 2 and 3, paragraph(g)). We believe this strikes the appropriate balance to allow DOTAX to monitor and ensure proper payment through its enforcement powers, while maintaining the security of the personal information of hosts.

Others have alleged this bill would somehow shield users from county land use enforcement, thus interfering with the intent of Act 204. This is patently false. HB1850, HD1, SD1 is a tax bill designed to allow Airbnb to help its community pay its fair share of taxes. The legislative history of Act 204 also demonstrates that its purpose was to ensure tax assessment and payment, not DOTAX’s enforcement of county land use laws.<sup>1</sup> Tax payment does not provide immunity from county land use liability. Moreover, taxpayer information is already confidential under state law. DOTAX thus does not share individual information of taxpayers with counties for local land use enforcement, and HB1850, HD1, SD1 does not affect this policy.

To further address claims that payment of tax would somehow interfere with county land use enforcement, HB1850, HD1, SD1 now requires registered transient accommodations brokers to notify operators and plan managers that the subject property must comply with applicable land use laws prior to retaining its services, and the operator or plan manager must attest the property is compliant.

As we move forward, we will continue our work with leaders on common sense rules for home sharing. We are confident that we can work together on sensible and modern regulations that reflect the new economy, facilitate compliance, and make local communities stronger.

Regards,

*Beth Adair*

Beth Adair  
Global Head of Tax



Cynthia Wang  
Public Policy Manager

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<sup>1</sup> See Senate Stand. Comm. Rpt. No. 479 on SB519 (which became Act 204). Senate SCRs 785, House SCR 976, 1216 and 1571, and Conference Committee Rpt. No. 128, similarly make no mention of DoTAX’s enforcement of county land use laws, but reinforce the bill’s intent: ensuring full payment of taxes.



The Senate  
The Twenty-Eighth Legislature  
Regular Session of 2016

To: Sen. Jill Tokuda, Chair  
Sen. Donovan Dela Cruz, Vice Chair

Date: March 29, 2016

Time: 9:15 a.m.

Place: Conference Room 211  
Hawaii State Capitol

**RE: House Bill 1850, HD1, SD1 Relating to Taxation**

Chair Tokuda, Vice Chair Dela Cruz and Members of the Committees:

*Rental By Owner Awareness Association (RBOAA) is a Hawaii non-profit corporation whose mission is to provide Hawaii property owners with information to help them comply with the applicable State and County regulations, support the Hawaii economy by offering visitors choice in accommodation, and to advocate for the rights of Hawaii vacation property owners. RBOAA members provide transient vacation rentals in full compliance with existing tax and county regulations. RBOAA fully supports full enforcement of existing regulations.*

RBOAA recognizes the resource constraint in the Department of Taxation which affects the ability to pursue tax collection, and supports proposals which assist in the collection of taxes without undue burden on the taxpayer or the state.

However, this bill, as written, puts both the State and vacation rental owners at risk of abuse and therefore, RBOAA has no choice but to **OPPOSE** the bill and **recommends two amendments.**

1. Add clarifying wording stating:
  - a. “No owner, operator or plan manager shall be required to engage a registered transient accommodations broker.”
  - b. “No transient accommodations broker shall be required to register as a tax collection agent.”

# Keep It Kailua

## *Preserving Kailua's Character*

March 28, 2016

To: The Honorable Senator Jill N. Tokuda, Chair and the Honorable Senator Donovan M. Dela Cruz, Vice Chair

Re: **OPPOSE HB1850 HD1 SD1 (The Airbnb Bill)**

We adamantly oppose HB1850 HD1 SD1 as written. The Committee on Tourism and International Affairs and the Committee on Commerce, Consumer Protection, and Health claimed in their committee report to ensure that all listed properties on the transient accommodations broker's platforms will be in compliance with land use laws by including the following amendments:

- (1) Requiring the transient accommodations broker, prior to placing an advertisement for a property, to notify the operator or plan manager that the subject property is required to be in compliance with applicable land use laws; and*
- (2) Requiring the operator or plan manager to attest that the subject property is in compliance with applicable land use laws.*

Our legal team finds this language meaningless and ambiguous at best! What exactly does "attest" mean? Specifically, how will the Transient Accommodations Broker ensure the subject properties are in compliance with both State and County land-use laws?

Recently, it has come to our attention that Airbnb has started to list Hawaii State Park camping sites as commercial visitor lodging. Clearly, this is in violation of State land-use laws, but Airbnb has allowed these types of listing.



Furthermore, a recent article in the New York Times verified Airbnb purged their New York City listings prior to turning in required reports to the New York Attorney General's office in order to portray a rosier picture to State and City officials ([http://www.nytimes.com/2016/02/12/business/airbnb-purged-new-york-listings-to-create-a-rosier-portrait-report-says.html?\\_r=0](http://www.nytimes.com/2016/02/12/business/airbnb-purged-new-york-listings-to-create-a-rosier-portrait-report-says.html?_r=0)).

Why should we trust companies such as Airbnb to follow State and County laws when they have blatantly disregarded them here in Hawaii and abroad?

We recommend your committee defer this measure.

Thank you for your consideration.

### **Keep it Kailua**

*Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua's family-oriented residential character and quality of life.*

*Keep It Kailua's goals are to:*

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*
- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

Please visit us at [www.keepitkailua.com](http://www.keepitkailua.com)

## 2 | HB 825 RELATING TO TRANSIENT ACCOMODATIONS

- i. Obviously, an owner, operator or plan manager who does not engage a registered transient accommodations broker registered as a tax collection agent would remain responsible for compliance with all provisions of this Chapter.
  - ii. Vacation rental owners have been receiving advertisements for the last 4 years intentionally mis-identifying the qualifications of the “local contact”. We expect to receive similar advertisements from those who stand to financially benefit from intentionally mis-identifying the need to use a tax collection agent, unless this ambiguity is clarified.
  - iii. In Portland, the City Council adopted this same agreement with AirBnB, but now all advertising platforms are required to adopt it even though they never had any input to its design and even though they handle transactions very differently from AirBnB.
2. We recommend removing the wording “*A registered transient accommodations broker tax collection agent shall not be required to disclose to the director the names or addresses of any of its operators and plan managers in connection with any return, reconciliation, payment, or other filing by the registered transient accommodations broker tax collection agent under this chapter*”.
  - a. We recognize the desire on the part of the broker to maintain privacy; however, the DoT has a steadfast and absolute commitment to privacy. So, without adding any value, this clause opens up this proposed process to significant abuse.

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead  
President,  
Rentals by Owner Awareness Association

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, TRANSIENT ACCOMMODATIONS, Transient Accommodations Brokers as Tax Collection Agents

BILL NUMBER: HB 1850, SD-1

INTRODUCED BY: Senate Committees on Tourism and International Affairs and Commerce, Consumer Protection, and Health

EXECUTIVE SUMMARY: Allows a transient accommodations broker to serve as a collection agent for general excise and transient accommodations taxes. This type of arrangement would probably enhance collection of taxes because of the difficulty of policing individual owners.

BRIEF SUMMARY: Adds a new section each to HRS chapter 237 and chapter 237D allowing the director of taxation to permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers. Defines “operator,” “plan manager,” and “transient accommodations broker” the same as in the TAT law.

Upon successful registration as a tax collection agent, the broker shall report, and collect, and pay over the tax due on behalf of all of its operators and plan managers as it relates to activity booked through the broker. Registration does not relieve the broker from any of its own tax obligations, and the operators and plan managers are not protected as to any business activity other than that booked through the broker.

Registration also does not obligate a broker to disclose the names or addresses of its operators and plan managers except in response to a lawful and valid subpoena, or upon consent of the operator or plan manager.

A broker may cancel its registration by delivering a written cancellation notice to the department and its customers; the cancellation will be effective no earlier than 90 days after delivery of the notice. The department may also cancel a registration for any cause, including violations of the tax laws or a breach of the registration agreement.

All brokers shall (1) prior to advertising on behalf of an operator or plan manager, notify the operator or plan manager that the subject property is required to be in compliance with applicable land use laws prior to retaining the services of the broker; and (2) require the operator or plan manager to attest that the subject property is in compliance with applicable land use laws.

Amends HRS section 237-30.5, relating to rental collection agents, and section 237D-8.5, relating to collecting TAT for the same residents, to clarify that those provisions do not apply to registered transient accommodation brokers.

EFFECTIVE DATE: Upon approval, shall apply to taxable years beginning after December 31, 2016.

STAFF COMMENTS: Act 143, SLH 1998, amended HRS section 237-9 to allow multi-level marketing companies to act as agents to collect and pay over GET on behalf of their independent entrepreneurs. At the time, it was considered beneficial for the marketing companies to collect and pay over tax as opposed to having the Department of Taxation chase down a myriad of independent owners with varying degrees of tax compliance among them.

This bill presents an opportunity for the same logic and policy considerations to apply to transient vacation rental (TVR) activity operating through transient accommodation brokers such as AirBnB, Flipkey, Homeaway, and VRBO, except that the stakes may be a little higher because TAT as well as GET is being collected. This bill would appear to be necessary or desirable to enhance the Department's collection ability given the limited resources available for all of state government including the Department.

TVR activity is a business and the dollars earned in that business are subject to Hawaii state taxes. Specifically, our General Excise Tax (GET) and Transient Accommodations Tax (TAT) both apply, so those hosts that are in this business need to register appropriately and pay these taxes. But alas, not everyone does. So the legislative bill proposes to allow the broker to register with the Department of Taxation and to remit the GET and TAT to the State on behalf of the hosts. Once registered, any time a host earns money on the broker's platform, the broker will pay the taxes and will pay over the balance to the host. The concept is similar to withholding, with which those of us who receive a paycheck are quite familiar: we work for an employer, the employer pays us our wages, but the employer deducts some taxes and pays them to the Department of Taxation and IRS.

The issue that has erupted at many of the hearings on this bill concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties see withholding as described in this bill as a way to enable hosts to hide illegal activities from county law enforcement. Some people have gone further. They blame TVR hosts for wrecking the sanctity of neighborhoods with an unending stream of tourists or for yanking housing units off the market in the name of greed, resulting in stratospheric housing prices that are yet another crippling blow to hardworking families struggling to make ends meet. Then, they turn to the brokers and demand that the brokers stop encouraging and facilitating such illegal, anti-societal, and morally depraved activity.

But do we really want a withholding agent to be our brother's keeper? Is it right to ask our employers to call up our banks and credit card companies to see if we are current on our mortgage and paying our bills on time? If we aren't timely or break the law, should we blame our employers for facilitating illegal or immoral activity by paying us our wages (after the tax authorities have, of course, gotten their share) instead of first making sure that those monies are applied to payment of our debts?

At some point, we need to recognize that TVR hosts, like most employees, are adults. They have chosen to go into business, and they are responsible for running their business and all that it entails. They, as the property owners, are answerable to the counties for the use or misuse of those properties. Certainly, the brokers need to be aware of and compliant with laws that pertain

to their business if they are going to be doing business here. But it seems a bit much to ask the brokers to be policemen for the counties when the counties, for whatever reason, can't or won't enforce their own zoning laws.

Ultimate responsibility as to both State tax and county zoning laws rests with the owners of the accommodations, not the broker. This bill requires the broker to inform the owner or plan manager about county level compliance, and requires the owner or plan manager to attest to that compliance. In fact, owners may be in varying degrees of compliance with the zoning laws just as they are in varying degrees of compliance with the tax laws. The broker is not in an efficient position to police the former, but effectively can do something about the latter because money from the transient guests flows through the broker's system. That is all this bill tries to address.

Digested 3/25/16

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [micahalameda@gmail.com](mailto:micahalameda@gmail.com)  
**Subject:** \*Submitted testimony for HB1850 on Mar 29, 2016 09:15AM\*  
**Date:** Friday, March 25, 2016 7:59:16 AM

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**HB1850**

Submitted on: 3/25/2016

Testimony for WAM on Mar 29, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Micah Alameda	Individual	Support	No

Comments:

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.

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