



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1471, H.D. 3, RELATING TO TAXATION.

**BEFORE THE:**

SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY AND ON  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

**DATE:** Wednesday, March 22, 2017      **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 414

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Mary Bahng Yokota, Deputy Attorney General

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Chairs Wakai and Nishihara and Members of the Committees:

The Department of the Attorney General appreciates the intent of this bill and provides the following comments.

This bill, in part, (i) provides that the Director of Taxation shall require large transient accommodations brokers and may allow all other transient accommodations brokers to register as tax collection agents on behalf of all of their operators and plan managers for general excise tax and transient accommodations tax purposes and that the tax collection agents shall assume all obligations, rights, and responsibilities of their operators and plan managers with respect to their business activities conducted directly through the agents and (ii) imposes a surcharge on each transient accommodations broker.

1. The Due Process Clause provides “nor shall any State deprive any person of life, liberty, or property, without due process.” U.S. Const. amend. XIV. The Due Process Clause requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax and that the income attributed to the state for tax purposes must be rationally related to values connected with the taxing State. Quill Corp. v. North Dakota, 504 U.S. 298, 306, 112 S. Ct. 1904, 1909-10 (1992). The due process nexus analysis asks whether an individual’s connections with a state are substantial enough to legitimate the state’s exercise of power over the individual.

Id. at 312, 112 S. Ct. at 1913. The Commerce Clause provides that Congress shall have the power to “regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. Under the Commerce Clause, a tax must be applied “to an activity with a substantial nexus with the taxing State.” Tax Appeal of Baker & Taylor, Inc. v. Kawafuchi, 103 Haw. 359, 367, 82 P.3d 804, 812 (2004). The crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales. Id. at 368, 82 P.3d at 813 *citing* Tyler Pipe Indus., Inc. v. Washington State Dep't. of Revenue, 483 U.S. 232, 250, 107 S. Ct. 2810, 2821 (1987). This bill makes the registration of large transient accommodations brokers as tax collections agent mandatory and imposes a surcharge on each transient accommodations broker. These provisions may be subject to challenge under the Due Process Clause and/or Commerce Clause in that it may be argued that not all transient accommodations brokers have a nexus with this State. These provisions may be unenforceable against them if there is no nexus.

2. Section 7 of the bill on pages 24-25 provides that a transient accommodations broker shall remain subject to the conditions of Act 204, Session Laws of Hawaii 2015 (Act 204), unless the transient accommodations broker enters into a tax collection agreement with the Director of Taxation.

a. Section 230(c)(1) of the federal Communications Decency Act, 47 U.S.C. § 230 (CDA), states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>1</sup> Section 230(e)(3) of the CDA also states in relevant part that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” Act 204, in part, provides for citations and monetary fines against any person, including transient

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<sup>1</sup> Section 230(f)(2) of the CDA defines the term “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer service, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.”

Section 230(f)(3) of the CDA defines the term “information content provider” as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.”

accommodations brokers, for failure to comply with requirements to “conspicuously provide” certain information in any advertisement, including an online advertisement. To the extent that section 7 of this bill may create liability for the transient accommodations broker if it posts on an interactive computer service information obtained from an operator or plan manager that turns out to be false, this section may be subject to challenge as being preempted by the CDA. We recommend that the bill be clarified to expressly reflect that a transient accommodations broker shall remain subject to the conditions of Act 204 to the extent it is consistent with the CDA. For example, section 7 of the bill on pages 24, line 19, through page 25, line 2, may be amended as follows:

SECTION 7. A transient accommodations broker shall remain subject to the conditions of Act 204, Session Laws of Hawaii 2015 (to the extent it is consistent with title 47 United States Code section 230), unless the transient accommodations broker enters into a tax collection agreement with the director of taxation as provided for in sections 2 and 3 of this Act.

b. Act 204 also amended section 237D-4, Hawaii Revised Statutes (HRS), to provide that the Department of Taxation may issue a citation, which includes a monetary fine, to any person who fails to conspicuously display the registration or notice stating where the registration may be inspected or examined, or the local contact’s name, phone number, or electronic mail address at the place for which the registration is issued. Section 18-237D-4-02, Hawaii Administrative Rules, provides that each operator or plan manager is required to conspicuously display the certificate of registration or notice stating where it may be inspected or referring the tenant or occupant to the Department of Taxation. Under this bill, the registered transient accommodations broker tax collection agent “shall assume all obligations, rights, and responsibilities imposed by this chapter [237D, HRS,] upon its operators and plan managers.” Page 13, lines 13-20. Therefore, the registered transient accommodations broker tax collection agent, arguably, must display the required information at each of the places for which the registration is issued. If this is not the intent of this bill, we recommend that the bill be clarified. We add that this requirement under the bill as

currently drafted may be unenforceable against transient accommodations brokers who may successfully argue that they do not have nexus with the State.

3. Under this bill, the term “large transient accommodations brokers” is defined as “a transient accommodations broker that offers, lists, advertises, or accepts reservations or collects whole or partial payment for at least three thousand transient accommodations or resort time share vacation interests, units, or plans within the State” (emphasis added). Page 19, lines 1-5. It is, however, unclear whether transient accommodations brokers have to offer, list, advertise, or accept reservations or collect whole or partial payment for “at least three thousand transient accommodations or resort time share vacation interests, units, or plans within the State” during any set period of time or at any time to be a “large transient accommodations broker.” For example, it is unclear whether a broker who does not meet this requirement in one given year but meets the requirement over a five-year period is or is not a “large transient accommodations broker.” We recommend that the definition be clarified to reflect the intent of the bill.

4. The bill provides that the Director of Taxation may cancel the tax collection agent’s registration for any cause authorized by law and that the tax collection agent may cancel its registration, arguably, for any reason. Page 7, line 17, to page 8, line 11, and page 15, line 20, to page 16, line 14. The bill also provides that the Director of Taxation may deny an application for registration as a tax collection agent under this section for any cause authorized by law, including any violation of chapters 237 and 237D or rules adopted pursuant thereto, violations of any prior tax collection agreement, or failure to meet minimum criteria under rules. Page 2, line 18, to page 3, line 3, and page 11, lines 1-7. With respect to large transient accommodations brokers, other than when the broker ceases to do business in the State, this appears to be inconsistent with the wording of this bill that makes registration of large transient accommodations brokers mandatory.

5. Taxpayers subject to general excise tax are required to apply for and obtain a “license.” HRS § 237-9. Operators and plan managers are required to “register” with the Director of Taxation the name and address of each place of business



in the State subject to the transient accommodations tax. HRS § 237D-4. Under this bill, a transient accommodations broker “registers” as a tax collection agent. If the intent of this bill is that the Director of Taxation may require a transient accommodations broker to furnish the information specified in subsection (g) of the new statutory section in sections 2 (relating to general excise tax) and 3 (relating to transient accommodations tax) of the bill as a condition of “registering” as a tax collection agent (as opposed to “obtaining a license”), we recommend that those sections be clarified. For example, the second paragraph to subsection (g) of the new statutory section in sections 2 and 3 of the bill on page 7, lines 3-6, and page 15, lines 6-9, may be amended as follows:

The director may require the a transient accommodations broker ~~tax collection agent~~, as a condition of ~~obtaining a license~~ registering as a tax collection agent, to furnish with an annual return, a list including the federal tax identification number . . . .

6. If this bill is intended (i) to require the large transient accommodations broker to register as opposed to having the Director of Taxation require the broker to register and (ii) to permit all other transient accommodations brokers to register as opposed to giving the discretion to the Director of Taxation, we recommend that subsection (a) of the new statutory section in sections 2 and 3 be clarified. For example, subsection (a) of the new statutory section in section 2 of the bill on page 2, lines 11-15, may be amended as follows:

~~The director of taxation shall require a~~ A large transient accommodations broker, ~~shall and may allow~~ all other transient accommodations brokers, ~~to~~ may register as a tax collection agent on behalf of all of its operators and plan managers by . . . .

and subsection (a) of the new statutory section in section 3 of the bill on page 10, lines 14-17, may be amended as follows:

~~The director shall require a~~ A large transient accommodations broker, ~~shall and may allow~~ all other transient accommodations brokers, ~~to~~ may register as a tax collection agent on behalf of all of its operators and plan managers by . . . .

7. This bill provides that the transient accommodations broker tax collection agent shall provide the names or addresses of any of its operators and plan managers

to the Director of Taxation “when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager” (emphasis added). Page 7, lines 12-16, and page 15, lines 15-19. It is unclear what is meant by “lawful and valid administrative process.” We recommend clarification.

8. The second paragraph of section 1 provides that the “purpose of this Act is to require a transient accommodations broker to register as a tax collection agent ...” Page 1, lines 14-15. While this may have been the purpose of the prior draft of the bill, the bill in its current draft only requires large transient accommodations brokers to register as a tax collection agents (the Director of Taxation may allow all other transient accommodations brokers to register). We recommend that this apparent inconsistency, which appears to have been inadvertent, be made consistent to reflect the intent of the bill.

We thank the Committees for the opportunity to provide comments. If we can assist in any way with implementation of our comments, please do not hesitate to contact us.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



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To: The Honorable Glenn Wakai, Chair  
and Members of the Senate Committee on Economic Development, Tourism, and  
Technology

The Honorable, Clarence K. Nishihara, Chair  
and Members of the Senate Committee on Public Safety, Intergovernmental, and  
Military Affairs

Date: Monday, March 22, 2017  
Time: 2:45 P.M.  
Place: Conference Room 414, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1471, H.D. 3, Proposed S.D. 1, Relating to Taxation

The Department of Taxation (Department) provides the following comments on H.B. 1471, H.D. 3, and H.B. 1471, H.D. 3, Proposed S.D. 1, for your consideration.

### **Summary of H.B. 1471, H.D. 3**

H.B. 1471, H.D. 3 requires a large transient accommodations broker to register as a tax collection agent on behalf of its operators and plan managers. The bill has a defective effective date of July 1, 2117, applies to taxable years beginning after December 31, 2017, and sunsets on December 31, 2022. The following is a summary of key provisions of H.B. 1471, H.D. 3:

#### **Duties as Tax Collection Agent**

- All large transient accommodations brokers, defined as brokers that advertise, accept reservations, or collect payment for at least 3,000 transient accommodations or resort time share vacation interests within the State, will be required to register as tax collection agents.
- The Department may allow all other transient accommodations brokers to register as tax collection agents.
- The registered agent 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 registered agent.
- The registered agent's operators and plan managers will be deemed to be licensed under

chapters 237 and 237D, Hawaii Revised Statutes (HRS), for business activities conducted directly through the broker.

- The registered agent will assume all obligations, rights, and responsibilities imposed on operators and plan managers for business activities conducted directly through the registered agent and will be personally liable for all taxes due and collected.

#### Reporting

- The Director of Taxation may require the registered agent to provide, with the annual return, a list of the federal tax identification numbers of all operators to whom the registered agent provided information returns under the Internal Revenue Code.
- The registered agent shall provide the names or addresses of its operators to the Director of Taxation when requested through an administrative subpoena or upon waiver by the operator.
- The registered agent shall report annually to the Director of Taxation, on an aggregate basis, the total number of operators and plan managers by county on whose behalf the registered agent collected and remitted taxes and the total taxes by county collected and remitted.

#### Disclosure

- All returns and return information shall be confidential, except that the names and addresses provided by a registered agent shall be disclosed to a county tax official for the limited purpose of real property tax administration.

#### Compliance with Land Use Laws

- Prior to advertising a property, the registered agent shall (1) notify the operator that the property is required to be in compliance with applicable land use laws and (2) require the operator to attest that the property is in compliance with applicable land use laws.

#### Surcharge on the transient accommodations tax (TAT)

- A surcharge will be imposed on transient accommodation brokers at an unspecified rate.

#### Allocation of Revenue

- Section 237D-6.5, HRS, is amended by allocating \$4,000,000 to the counties for compliance and enforcement of county ordinances relating to transient vacation rentals.

#### Act 204, Session Laws of Hawaii 2014

- Section 7 of the bill provides that a transient accommodation broker shall remain subject to the conditions of Act 204, Session Laws of Hawaii 2015, which subjects brokers to fines for failing to include an operator's registration identification number in any advertisement, unless it enters into a tax collection agreement.

### **Summary of H.B. 1471, H.D. 3, Proposed S.D. 1**

H.B. 1471, H.D. 3, Proposed S.D. 1, which is effective upon approval and applies to taxable years beginning after December 31, 2017, permits a transient accommodations broker to register as a tax collection agent on behalf of its operators and plan managers. The following is a summary of key provisions of H.B. 1471, H.D. 3, Proposed S.D. 1:

#### **Duties as Tax Collection Agent**

- The registered agent 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 registered agent.
- Operators and plan managers will be required to obtain licenses under chapter 237 and will remain subject to the requirements of title 14.
- The registered agent will assume all obligations, rights, and responsibilities imposed on operators and plan managers for business activities conducted directly through the registered agent and will be personally liable for all taxes due and collected.

#### **Reporting**

- The Director of Taxation may require the registered agent to provide, with any return or filing, the names and addresses of all operators and plan managers the registered agent acts as agent for.
- The registered agent shall report annually to the Director on an aggregate basis the total number of operators and plan managers by county on whose behalf the registered agent collected and remitted taxes and the total taxes by county collected and remitted.

#### **Compliance with Land Use Laws**

- Prior to advertising a property, the registered agent shall notify the operator that the property is required to be in compliance with applicable land use laws.
- The registered agent must require the operator or plan manager to display or make available its transient accommodations tax registration number and other required information in any advertisement.
- The registered agent must require the operator or plan manager to provide a written verification of compliance with county land use laws from the appropriate county.
- The registered agent must remove any advertisement for noncompliance with the above requirements or if the agent receives a written notice from a state or local government that the operator or plan manager is noncompliant with land use, zoning, or tax requirements.

### **Significant differences between H.D. 3 and Proposed S.D. 1**

- The H.D. 3 version requires registration of large brokers as tax collection agents.
- The Proposed S.D. 1 only permits brokers to register as tax collection agents.
- The H.D. 3 version imposes a surcharge on transient accommodations brokers.

- The Proposed S.D. 1 does not impose a surcharge on transient accommodations brokers.

First, the Department notes that, in general, permitting transient accommodations 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), HRS, eases the burden of reporting and remitting taxes for taxpayers and promotes efficient tax collection by easing the burden of processing, auditing, and collecting from individual taxpayers.

Second, the Department notes that there may be enforcement issues with requiring transient accommodations brokers to register as tax collection agents as the H.D. 3 version of this bill does. Even if a broker advertises or books transient accommodations in the State, the broker cannot be required to collect and remit taxes if the broker does not have nexus with the State, as required by the Commerce Clause of the U.S. Constitution. Similarly, the surcharge imposed in Section 3 of H.D. 3 version cannot be imposed or enforced against brokers who do not have nexus with the State.

The Proposed S.D. 1 does not require all large transient accommodations brokers to register but only permits any transient accommodations broker to register. The Proposed S.D. 1 also does not impose a surcharge on transient accommodations brokers.

Third, the Department notes that the H.D. 3 version of this bill allows a broker to cancel a registration for any reason. Except in cases where a broker ceases doing business in the State, this provision is contrary to the provision which requires certain brokers to register. The Proposed S.D. 1 avoids this inconsistency because it does not require registration.

Fourth, in Section 2 of the Proposed H.D. 1, section 237-\_\_\_(a) requires registered agents to file periodic returns in accordance with section 237D-6 and -7, in the transient accommodations tax chapter, though this section of the bill is describing the general excise tax requirements. The Department suggests that the last sentence of section 237-\_\_\_(a) of the Proposed S.D. 1 be amended to read as follows:

A registered transient accommodations broker tax collection agent shall file [~~periodic~~] returns in accordance with section [~~237D-6 and annual returns in accordance with section 237D-7~~] 237-30. The reporting information shall include but not be limited to the name, address, and transient accommodations tax number of each operator and plan manager during the applicable period.

Fifth, in Section 2 of H.D. 3 version of this bill, section 237-\_\_\_(f)(2) allows return information provided by registered agents to be disclosed to county tax officials. However, an exception to allow for such disclosure is not set forth in current section 237-34, HRS; without the

exception, it is a class C felony for an officer or employee of the State to disclose tax return information to any person not listed in subsection (b). The Department, therefore suggests that if the H.D. 3 version of this bill is moved forward section 237-34(b), HRS, be amended by adding a new paragraph (14) as follows:

(14) With respect to returns and the names and addresses provided by a registered transient accommodations broker tax collection agent, a duly authorized county tax official for the limited purpose of real property tax administration.

Similarly, the Department suggests amending section 237D-13(a), HRS, by adding a new paragraph (13) as follows:

(13) With respect to returns and the names and addresses provided by a registered transient accommodations broker tax collection agent, a duly authorized county tax official for the limited purpose of real property tax administration.

Sixth, the Department recommends a technical amendment in subsection (g) of Sections 2 and 3 of the H.D. 3 version of the bill as follows:

The director may require [~~the~~] a transient accommodations broker [~~tax collection agent~~], as a condition of [~~obtaining a license,~~] registering as a tax collection agent, to furnish with an annual return, a list including the federal tax identification number of all operators and plan managers for the taxable year to whom the transient accommodations broker tax collection agent has provided information returns required under the Internal Revenue Code, and any other information that is relevant to ensure proper payment of taxes under title 14.

Seventh, the Department notes that the definition of "large transient accommodations broker" in Section 4 of H.D. 3 version of the bill is ambiguous, as it does not specify a timeframe to determine when a broker will qualify as a large transient accommodations broker. For example, a broker may have advertised 3,000 units in the State over the course of five years, but only advertised 1,000 in the last year.

Eighth, Section 7 of the H.D. 3 version of the bill provides that a transient accommodations broker shall remain subject to the conditions of Act 204, Session Laws of Hawaii 2015 (Act 204), unless it enters into a tax collection agreement. Act 204 subjects brokers to fines for failing to include an operator's registration identification number in any advertisement and may violate the federal Communications Decency Act of 1996. The Department defers to the Department of the Attorney General on this issue.

Finally, the Department notes that the H.D. 3 version of the bill will require form, instruction, and computer system changes, and therefore requests that the effective date be amended to apply to tax years beginning after December 31, 2018. However, the Department notes that it will be able to implement the changes in the Proposed S.D. 1 for tax years beginning after December 31, 2017.

Thank you for the opportunity to provide comments.



**Bernard P. Carvalho, Jr.**  
Mayor



**Michael A. Dahilig**  
Director of Planning

**Wallace G. Rezentes, Jr.**  
Managing Director

**Ka'aina S. Hull**  
Deputy Director of Planning

**PLANNING DEPARTMENT**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite A-473, Lihu'e, Hawai'i 96766

**Testimony before the Senate Committees on Economic Development, Tourism and  
Technology and Public Safety, Intergovernmental and Military Affairs**  
**HOUSE BILL HB1471 HD2 Relating to Taxation**

March 20, 2017 at 1:15 pm Conference Room 414

By Michael A. Dahilig - Director of Planning, County of Kaua'i

Honorable Chairs Wakai and Nishihara and Members of the Committee:

On behalf of the County of Kaua'i, I offer testimony with **CONCERNS** and would **STRONGLY OPPOSE** the measure if the bill remains in its current form.

We understand the need to more efficiently and tightly capture taxes from those who fail to pay them. However, this bill, if passed as is, would potentially further companies like VRBO.com and AirBnB to help to facilitate illegal usage contrary to county zoning laws rather than holding them responsible as business partner.

The County of Kaua'i has very strict zoning laws related to transient usage given the wholesale gentrification caused by the "vacation renting" of homes meant for only residential use. Many of these rentals are also on agricultural lands, and operating contrary to Chapter 205, Hawaii Revised Statutes relating to State Land Use policy. As our Department has attempted to enforce these county and state laws to preserve our rural residential communities, a common defense posed by these operators is, "I'm legal because I have paid TAT."

Having these private operators help collect taxes but not be held responsible for their role in perpetuating violations of county zoning laws, yet receive a financial windfall would only lead to further proliferation of resort usage in communities meant for Hawai'i's residents. Contrary to what has been pitched by many who wish to short-term rent out a room or a unit, this activity has actually created the reverse effect by upping residential home values and pushing affordable long-term renters out of the market.

**The current house draft has watered down the responsibility of these entities to confirm compliance with state and county land use laws, simply by requiring they "attest" to compliance. What this equates to is an advertiser easily checking a box online saying yes they are in compliance with the law. Therefore, in section "i", we request the following paragraphs be added:**

*(3) Transmit all information on the operator or plan manager, including the individual person responsible and not a corporate entity, their contact information and the tax map key of the property to all relevant state and county land use regulatory agencies seven (7) days before posting the advertisement.*

*(4) The agent shall remove the advertisement of an operator and plan manager within seven (7) days from notification by a relevant state or county land use regulatory agency that a property is not in compliance with pertinent land use laws, or shall be subject to the same penalties as if the agent is the operator or plan manager.*

**The cost of enforcement is extremely high for the counties given the required contested case process required to be compliant with constitutional due process protocols. We believe these amendments will aid in reducing these enforcement costs and place fair responsibility on the agent to insure facilitating legal operation.**

Alone, the County of Kauai is averaging close to \$25,000 in hearings officer costs per contested case (excluding corporation counsel costs and investigator time), per violation, and has only resolved a handful of administrative litigation cases compared to the hundreds of open violations for illegal vacation rentals currently on the Planning Department's radar.

These operations are highly lucrative for the operator, they have no qualms concerning spending the money to gum up planning commission agendas which consist of largely volunteers. Their strategy is to delay disposition of administrative litigation stemming from violation notices to maintain operation due to the large weekly revenue from rentals that can exceed \$10,000 a week.

Companies like AirBnB should bear some financial and social responsibility to cost-effectively engage in preventative enforcement rather than relying on the government to absorb the cost of due process.

We respectfully request the committees **AMEND** the measure as stated above. Mahalo for your consideration.

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy

**Amu I. Esaki** First Deputy



**Rebecca Vogt Like**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

## OFFICE OF THE PROSECUTING ATTORNEY

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Testimony before the Senate Committees on Economic Development, Tourism  
and Technology and Public Safety, Intergovernmental and Military Affairs  
HOUSE BILL 1471 HD3 Relating to Taxation

March 22, 2017 at 2:45pm, Conference Room 414

Honorable Chairs Wakai and Nishihara and Members of the Committee:

The Office of the Prosecuting Attorney, County of Kaua'i strongly opposes the  
the measure if the bill remains in its current form.

We understand the need to more efficiently and tightly capture taxes from  
those who fail to pay them. However, this bill, if passed as is, would potentially  
further companies like VRBO.com and AirBnB to help to facilitate illegal usage  
contrary to county zoning laws rather than holding them responsible as a  
business partner.

The County of Kaua'i has very strict zoning laws related to transient usage  
given the wholesale gentrification caused by the "vacation renting" of homes  
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and state laws to preserve our rural residential communities, a common  
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financial windfall would only lead to further proliferation of resort usage in  
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by many who wish to short-term rent out a room or a unit, this activity has  
actually created the reverse effect by upping residential home values and  
pushing affordable long-term renters out of the market.

**The current house draft has watered down the responsibility of these entities to confirm compliance with state and county land use laws, simply by requiring they “attest” to compliance. What this equates to is an advertiser easily checking a box online saying yes they are in compliance with the law. Therefore, in section “i”, we request the following paragraphs be added:**

*(3) Transmit all information on the operator or plan manager, including the individual person responsible and not a corporate entity, their contact information and the tax map key of the property to all relevant state and county land use regulatory agencies seven (7) days before posting the advertisement.*

*(4) The agent shall remove the advertisement of an operator and plan manager within seven (7) days from notification by a relevant state or county land use regulatory agency that a property is not in compliance with pertinent land use laws, or shall be subject to the same penalties as if the agent is the operator or plan manager.*

**The cost of enforcement is extremely high for the counties given the required contested case process required to be compliant with constitutional due process protocols. We believe these amendments will aid in reducing these enforcement costs and place fair responsibility on the agent to insure facilitating legal operation.**

Alone, the County of Kauai is averaging close to \$25,000 in hearings officer costs per contested case (excluding corporation counsel costs and investigator time), per violation, and has only resolved a handful of administrative litigation cases compared to the hundreds of open violations for illegal vacation rentals currently on the Planning Department’s radar.

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Companies like AirBnB should bear some financial and social responsibility to cost-effectively engage in preventative enforcement rather than relying on the government to absorb the cost of due process.

The Office of the Prosecuting Attorney, County of Kaua’i respectfully requests the committees **AMEND** the measure as stated above.

Mahalo for your consideration.



# 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 1471, HD-3

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Requires large transient accommodations brokers, and permits others, to serve as collection agents 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. A mandatory arrangement may run afoul of constitutional requirements and may not be desirable in the marketplace, and for those reasons might not produce the desired results. For this program to work, brokers need to have a reason to cooperate with the State, and hosts need to have a reason to sign up with a registered broker.

SYNOPSIS: Adds a new section each to HRS chapter 237 and chapter 237D requiring the director of taxation to register large transient accommodations brokers, and allowing the director to register other transient accommodations brokers, as tax collection agents on behalf of all of their respective 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.

A registered broker shall be issued separate licenses with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. The broker is to file periodic returns reporting income and exemptions as collection agent separately from its own business activity.

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.

Provides that returns filed on behalf of an operator are confidential tax returns, except that they shall be disclosed to a duly authorized county tax official for the limited purpose of real property tax administration.

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 by using the following language: "By accepting the Terms of Service, I agree and attest that I have reviewed all applicable laws and regulations and that my listing is in compliance."

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.

Adds a new section to chapter 237D imposing a surcharge tax on transient accommodations brokers equal to \_\_\_% of the gross proceeds derived from the rental or rental proceeds realized by the broker's operators and plan managers for the furnishing of transient accommodations.

Adds a definition of "large transient accommodations broker" as one with at least 3,000 transient accommodations or resort time share vacation interests, units, or plans within the State.

Makes a conforming amendment to HRS section 237D-4(c).

Amends HRS section 237D-6.5 to allocate an additional \$1 million to each county for compliance and enforcement of the tax.

EFFECTIVE DATE: Takes effect on July 1, 2117, and applies to taxable years beginning after December 31, 2017. Repealed on December 31, 2022.

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, 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 bill proposes to require (if a large broker) or permit (if any other broker) 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 like 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.

A measure allowing voluntary registration of brokers, HB 1850 (2016), passed last year but was vetoed by Governor Ige. The principal objection concerns county-level restrictions on property use. Some TVR activity violates county zoning laws. Some counties, as well as neighboring residents, see withholding as described in this bill as enabling 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.

Requiring brokers to act as withholding agents of course raises the issue of whether the State is sticking its nose too deeply in a private industry. In addition, constitutional concerns are raised.

The United States Constitution has been interpreted as providing two limits on the states' powers to tax. These limits come from at least two places: first, the Due Process Clause, requiring a person to have "minimum contacts" with a state before that state is allowed to exercise police powers, including the power to tax, against that person; and second, the Commerce Clause, where the Supreme Court held in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), that if the Congress does not otherwise define the threshold for taxability, state tax may not be imposed upon a person unless there is "substantial nexus" with that person. Substantial nexus is more than minimum contacts, and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), appears to stand for the proposition that some physical presence is needed to establish substantial nexus.

Many transient accommodations brokers can do their work without a physical presence in Hawaii, and may be able to legitimately thumb their noses at the requirements to register, collect and pay over tax, and pay the proposed surcharge tax on brokers. Brokers who have physical presence in Hawaii and are exposed to these requirements will be motivated to get out of the State, for if they don't their operators and plan managers can easily take their business elsewhere to a broker that has no presence. The result will be what we have now, namely operators and plan managers who exhibit varying degrees of tax compliance, and brokers who won't be able to help the State collect taxes that are legitimately owed.

For this program to work, brokers need to have a reason to cooperate with the State, and hosts need to have a reason to sign up with a registered broker.

Digested 3/15/2017





## Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

HB1471 HD3

**Relating To Taxation**

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY  
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

**Monday, March 20, 2017, 1:15pm**

**Conference Room 414**

Dear Chairs Wakai and Taniguchi, Vice Chair Nishihara and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. 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%).

MHLA **supports HB1471 HD3 with comments**, which requires large transient accommodations brokers and permits all other transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services. Ensures that the subject property is in compliance with applicable land use laws. Allocates \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals. Creates a surcharge tax on transient accommodations brokers.

MHLA is in support of establishing a level playing field for all visitor accommodations. There are more than 25,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, with many them likely avoiding the 9.25 percent transient accommodations and general excise taxes. This Bill would simplify administration for both the Department of Tax and the alternative accommodations, and reduce the State's enforcement burden in ensuring individual tax compliance. However, we are not in favor of the added language in HB1471 that creates a surcharge tax. We feel this overrides the overall purpose of the Bill and will discourage smaller brokers from registering as tax collection agents.

MHLA also supports the additional language provided in this bill that would allocate \$4 million from the general TAT coffers to support the counties (\$1 million to each county) in the compliance and enforcement of illegal short term rentals.

Thank you for the opportunity to testify.





THE SENATE  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
Senator Glenn Wakai, Chair

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS  
Senator Clarence K Nishihara, Chair

3/20/2017  
Rm. 414, 1:15 PM

HB 1471, HD 3  
Relating to Taxation

Chair Wakai, Chair Nishihara and Members of both Committee, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii in opposition to HB 1471, HD3

Outrigger Hotels Hawaii does not oppose some reasonable self-collection of taxes authority for the TVU industry. What we do oppose is the industry combining this authority with measures that would legitimize practices making it easier to skirt the law and harder to identify and address illegal activities costing the state and counties millions in lost revenues.

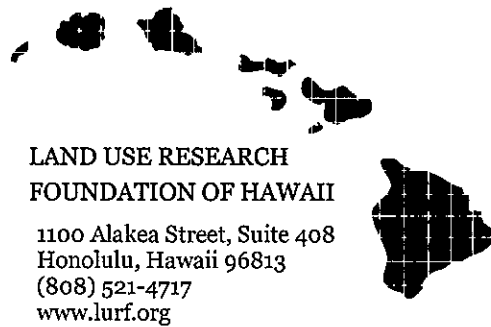
HB 1471 HD 3 still lacks the transparency needed to positively assure that each and every TVU owner is paying its fair share of TAT and other taxes owed to the State of Hawaii for transient accommodations business activity.

Finally, HB 1471 HD 3 would gut the central requirement of HRS 237D-4, enacted just a few years ago, which requires that Transient Accommodations Brokers (TAB) must receive and post online a current TAT number for any unit listed. Instead, only the TAB number would be required. The obvious result of this change would be the continued listing online of suspected significant numbers of TVUs, which have not obtained TAT numbers and are not paying TATs.

The retention of Act 204, which requires individual TAT numbers to be listed on websites, even if AirBnB is the TAB and the requirement that before AirBnB lists or signs up as a TAB, it needs to get from each owner evidence from the county of zoning compliance would satisfy the transparency

These are requirements that we in the hotel industry live by every day, but AirBnB is fighting against these requirements to be included in any TAB bill. Why is AirBnB so afraid of requiring individual owners to prove that they are complying with our tax and zoning laws.

Thank you for allowing me to testify



March 17, 2017

Senator Glenn Wakai, Chair  
Senator Brian T. Taniguchi, Vice Chair  
Senate Committee on Economic Development, Tourism, and Technology

Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

**Comments in Support of HB 1471, H.D. 3, Relating to Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax (GET); Transient Accommodations Tax (TAT).**

**Wednesday, March 22, 2017, 2:45 p.m., in Conference Room 414**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF supports the intent of **HB 1471, H.D. 3**, which proposes to 1) require large transient accommodations brokers and permit all other transient accommodations brokers to register with the State Department of Taxation (DoTax) as tax collection agents to collect and remit general excise and TAT on behalf of operators and plan managers using their services; 2) ensure that the subject property is in compliance with applicable land use laws; and 3) allocate \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals. The measure also proposes to create a surcharge tax on transient accommodations brokers.

**HB 1471, H.D. 3.** This measure proposes to extend the intent, policies and practical benefits underlying Act 143, SLH 1998, which amended Hawaii Revised Statutes [HRS] Section 237-9 to allow multi-level marketing companies to act on behalf of their independent business owners to collect and pay State GET, to DoTax-registered transient accommodations brokers to collect and remit transient accommodations tax (TAT) and GET on behalf of short-term rental lodging operators and owners.

LURF supports the intent of HB 1471, H.D. 3 as the bill would serve as a vehicle to effectively assist the DoTax improve and increase the agency's ability to identify non-compliant operators/owners and to collect such taxes.

**LURF's Position.** Unlike comparable legislation which has been previously introduced in effort to effectuate the same purposes underlying, and policies contained in this bill, the provisions of HB 1471, H.D. 3 attempt to address and alleviate objectionable points contained in those prior iterations, including the strong concern that use of collection agents could operate as a shield to hide or protect illegal, or otherwise non-compliant short-term lodging owners/operators.

Compared to prior similar legislation, HB 1471, H.D. 3 contains more detailed and comprehensive reporting, auditing and enforcement requirements, safeguards, and other provisions, which LURF believes not only better protect the public by ensuring tax compliance and maximum tax revenue from bookings processed through transient accommodations brokers, but will also effectively assist DoTax by relieving it of its duty to enforce tax compliance by individual owner/operators, and reduce its administrative costs.

Opponents of prior similar bills also took the position that the collection agent arrangement would encourage owners/occupants to accommodate short-term lodging renters over local residents requiring affordable rental housing, especially at a time when the lack of affordable rental housing and homelessness is at a crisis point throughout the State.

LURF, which is involved in, understands, and deals with current issues relating to affordable housing and homelessness, questions whether the brokering arrangement proposed by HB 1471, H.D. 3 would in fact have a significant effect on affordable rental housing and homelessness in this State since there are many components, and a number of other significant factors contributing to the State's affordable housing and homeless problems, and there currently is no factual evidence to directly support such an assumption.

LURF strongly cautions, however, that the language of HB 1471, H.D. 3, as currently drafted, may, amongst other things, inadvertently have the undesired effect of authorizing the legalization of non-compliant rentals and pre-empting county laws by broadly deeming all operators (including illegal rentals) licensed, which could be interpreted as meaning "licensed" not only for purposes of GET tax registration, but for the underlying (potentially illegal) business use, regardless of county zoning laws. Moreover, provisions of the current draft may also still have the effect of helping to shield illegal rentals by allowing transient accommodations brokers to act on behalf of the operators, making it difficult to obtain underlying information about the rentals (*See* HB 1471, H.D. 3, Sections 2 and 3). Such results would be in direct contravention of the clear intent of the measure.

**Conclusion.** LURF believes a measure such as HB 1471, H.D. 3 is vital to identify non-compliant short-term rental lodging operators and owners, and to collect the TAT and GET currently being avoided, but rightfully owed by them to the State. For the reasons set forth above, LURF **supports the intent** of HB 1471, H.D. 3, however, respectfully urges the Committees' review and clarification of any incompatible language contained in this current draft to preclude any unintended negative consequences of the legislation, and to allow for favorable consideration of this measure.

Thank you for the opportunity to present testimony regarding this matter.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR  
TIMOTHY F. T. HIU  
ACTING DEPUTY DIRECTOR

March 22, 2017

The Honorable Glenn Wakai, Chair  
and Members of the Committee on  
Economic Development, Tourism  
and Technology  
The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Public  
Safety, Intergovernmental and Military Affairs  
Hawaii State Senate  
Hawaii State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Dear Chairs Wakai and Nishihara, and Committee Members:

Subject: House Bill No. 1471, HD 3, Proposed SD 1  
Relating to Taxation

The Department of Planning and Permitting (DPP) **supports, with a recommended amendment**, House Bill No. 1471, HD 3, Proposed SD 1, which would allow transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services. The Proposed SD 1 also would require vacation rental operators or plan managers to provide verification of compliance with county land use laws in the form of certification from the appropriate county agency.

With the popularity of transient accommodations websites, the number of transient vacation rental operators has ballooned. A report by the Hawaii Tourism Authority in 2014 showed that there were more than 4,400 units advertised on these online sites and we believe an overwhelming majority is operating without a valid permit. We've seen studies that report this number has increased dramatically in the past three years.

The DPP is charged with enforcing the county's transient vacation rental law, and we are finding it increasingly difficult to keep up with the number of illegal vacation rentals on the island. In 2016, we added three special inspectors just to investigate short-term rental complaints. With this support, we inspected or re-inspected 3,392 complaints of illegal vacation rental units, but this resulted in only 91 Notices of Violation.

The Honorable Glenn Wakai, Chair  
and Members of the Committee on  
Economic Development, Tourism  
and Technology

The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Public  
Safety, Intergovernmental and Military Affairs

Hawaii State Senate

House Bill No. 1471, Proposed SD 1

March 22, 2017

Page 2

(NOV) being issued because of the difficulties we face in proving that a unit is being operated illegally.

House Bill 1471, Proposed SD 1, will provide us with a critical tool in our enforcement efforts because it will require the operator or plan manager of a vacation rental unit to "provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency." This verification must be done prior to the placement of an advertisement for the rental unit, either online or in print. Without it, the transient accommodations broker will not be allowed to place an ad for the operator or plan manager.

We ask that the Bill be amended to require operators to also include in their ads proof of compliance with county regulations, such as a county certification number. We would be happy to work with the State and licensed transient accommodations brokers in setting up this certification and verification process.

For the reasons stated above, please pass House Bill 1741, HD 3, Proposed SD 1, with our recommended amendment.

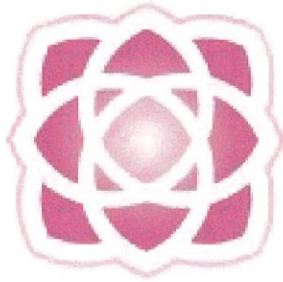
Thank you for the opportunity to testify.

Very truly yours,



Kathy Sokugawa  
Acting Director





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,  
TOURISM & TECHNOLOGY AND THE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL, & MILITARY AFFAIRS  
HAWAII STATE CAPITOL, SEMATE CONFERENCE ROOM 414  
WEDNESDAY, MARCH 22, 2017 AT 2:45 P.M.**

To The Honorable Glenn Wakai, Chair;  
The Honorable Brian T. Taniguchi, Vice Chair; and  
Members of the Committee on Economic Development, Tourism, & Technology

To The Honorable Clarence K. Nishihara, Chair;  
The Honorable Glenn Wakai, Vice Chair; and  
Members of the Committee on Public Safety, Intergovernmental, & Military Affairs

**TESTIMONY IN SUPPORT FOR HB 1471 RELATING TO TAXATION**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees. I am writing share our support of the intent of HB1471.

We support a level playing field and a fair and equitable marketplace. All accommodations should be required to pay the transient accommodations tax and general excise tax like everyone else. While we support leveling the playing field with TAT and GET taxes, we do not support the additional surcharge. The proposed additional surcharge is not being charged to anyone else so it feels as if this is going above and beyond. The surcharge seeks to target people for using a brokerage or electronic means and we believe this will further discourage people from registering with them. Therefore, it could make those units less desirable in the marketplace and make it less competitive. We support the intent of this bill and would support it fully if the surcharge section was removed.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed with amendments.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



**HB1471 HD3 Proposed SD1  
RELATING TO TAXATION**

Senate Committee on Economic Development, Tourism, and Technology  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

March 22, 2017

2:45 p.m.

Room 414

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB1471 HD3 Proposed SD1, which seeks to capture additional tax revenue on transient accommodations by allowing online brokers to remit transient accommodation taxes on behalf of operators. OHA believes that amendments included in the Proposed SD1 are necessary to assist the counties in meaningfully enforcing pre-existing regulations on short-term vacation rentals. Specifically, requiring brokers doing business in our state to ensure that their operators are in compliance with land-use laws would significantly enhance land-use enforcement, with minimal cost to the state or counties.

Unfortunately, notwithstanding county land use ordinances that prohibit their operation in certain areas, illegal short term vacation rentals have proliferated throughout the state. Such vacation rentals may have removed much-needed units from the residential rental market, and exacerbated the rise in housing costs that now exceed what many state residents are able to afford.<sup>i</sup> **Without meaningful enforcement of county land use laws, the potential impacts of illegal short term vacation rental operations on the long-term housing market will remain unaddressed. OHA notes that Native Hawaiians are particularly disadvantaged by these land uses that contribute to increased housing costs and rental housing shortages.**<sup>ii</sup>

**As drafted, HB1471 HD3 Proposed SD1 may provide substantial assistance to the counties in meaningfully enforcing county land use laws relating to vacation rentals, thereby mitigating concerns regarding the impacts transient vacation rentals may have on our housing market.** The Proposed SD1 includes important provisions that would require brokers to obtain and ensure proof of compliance from all operators that use their listing services. Previous drafts of this measure only required that a broker notify a vacation rental operator of applicable county land use laws as part of the acceptance of the terms of service of the website. OHA believes that it is critical to place a greater responsibility on brokers, who realize significant profits from transient vacation rentals, to ensure that their operators comply with county land-use laws. The Proposed SD1 also includes important enforcement provisions that can assist the counties in identifying those who post illegal listings or listings that commercialize public land and resources.



To further facilitate enforcement and compliance with land use laws, the Committee may wish to further amend this measure, to include fines or penalties for brokers who repeatedly allow and profit from illegal transient vacation rental listings.

Mahalo for the opportunity to testify on this measure.

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<sup>i</sup> For example, a recent study by the Department of Business, Economic Development & Tourism (DBEDT) indicates that the recent increase in demand for single family vacation rentals has already contributed to the overall increase in demand for housing units in our islands.<sup>i</sup> An increase in short term vacation rental activity has also correlated with major drops in available residential rental listings, including those for increasingly rare single family units. Notably, the Hawai'i Tourism Authority report found 22,238 individually advertised units each day in Hawai'i for 2014—units that could otherwise provide residential housing for 117,607 individuals. See INDIVIDUALLY ADVERTISED UNITS IN HAWAI'I (VACATION RENTALS) DECEMBER 2014, available at [http://www.hawaii-tourism-authority.org/default/assets/File/research/accommodations%20studies/Individual%20Advertised%20Units%20in%20Hawaii%20\(Vacation%20Rentals\).pdf](http://www.hawaii-tourism-authority.org/default/assets/File/research/accommodations%20studies/Individual%20Advertised%20Units%20in%20Hawaii%20(Vacation%20Rentals).pdf).

<sup>ii</sup> Native Hawaiians in particular substantially rely on the rental market. Native Hawaiian homeownership rate is significantly lower than the state average and must rely substantially on the rental housing market. See OFFICE OF HAWAIIAN AFFAIRS, OHA DATA BOOK HOUSING TENURE BY RACE-ETHNICITY IN HAWAI'I 2014, available at <http://www.ohadatabook.com/T02-131-15u.pdf>. This figure includes 8,329 DHHL residential lease "owner-occupied" property units. DHHL ANNUAL REPORT 2014, P. 48, available at <http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.



## Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

HB1471 HD3 (Proposed SD1)

**Relating To Taxation**

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY  
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

**Wednesday, March 22, 2017, 2:45pm**

**Conference Room 414**

Dear Chairs Wakai and Nishihara, Vice Chair Taniguchi and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. 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%).

MHLA **supports HB1471 HD3 (Proposed SD1)**, which allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers. Requires registered transient accommodations broker tax collection agent's operators and plan managers to obtain a GET license and TAT registration. Requires registered transient accommodations broker tax collection agents to file periodic and annual TAT returns. Requires all registered transient accommodations broker tax collection agents to inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws and remove advertisements for transient accommodations for which operators and plan managers failed to comply with land use or tax requirements. Requires the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency. Applies to taxable years beginning after December 31, 2017. (Proposed SD1)

MHLA is in support of establishing a level playing field for all visitor accommodations. There are more than 25,000 alternative accommodations in the Hawaiian Islands competing with hotels, resorts, timeshares, and bed-and-breakfasts, with many them likely avoiding the 9.25 percent transient accommodations and general excise taxes. This Bill would simplify administration for both the Department of Tax and the alternative accommodations, and reduce the State's enforcement burden in ensuring individual tax compliance.

Thank you for the opportunity to testify.



## ETT Testimony

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**From:** Troy Flanagan <tflanagan@ahla.com>  
**Sent:** Tuesday, March 21, 2017 12:46 PM  
**To:** ETT Testimony  
**Cc:** kekoa.mcclellan@gmail.com  
**Subject:** HB1471 SD 1- Providing Comments



Aloha Chair Wakai and Chair Nishihara,

We appreciate the heavy lifting by your joint committee to ensure short-term rental companies and the unregulated commercial businesses they facilitate operate by a standard set of rules that ensure a level playing field and protect our neighborhoods. The SD 1 that you have provided is clearly a step in the right direction. We support the intent of the SD1 for the following reasons.

This issue is important to the American Hotel & Lodging Association and our industry's employees who live in every precinct in Hawaii. To this extent, AHLA has been on the ground, working with local unions, hotels, community associations, and residents to provide support for legislation which will ensure:

- Mandatory state registration for short-term rentals;
- Transparency of data reported by STR platforms to ensure maximum collection of taxes from STR activity;
- Penalties sufficient to encourage compliance by hosts, and penalties for platforms listing non-compliant units, and;
- No preemption of County authority to regulate STR's.

AHLA, through our Hawaii spokesman and our member organizations, will be providing draft language for your consideration which we believe will further strengthen the intent of HB1471 SD1. We urge you to consider the adoption of these common-sense amendments to guarantee short-term rental companies are compliant with State and County regulation, to protect the quality of our tourism product and to preserve the residential nature of our communities.

Representing our organization at the hearing will be Kekoa McClellan. He will provide further details on our position and can take questions you and your committee may have for AHLA.

Thank you for your consideration of our comments.

**Troy Flanagan** | Vice President, State & Local Government Affairs | American Hotel & Lodging Association | 1250 I Street, NW, Suite 1100, Washington, DC 20005  
Direct: 202-289-3125 | Cell: 202-285-4371 | [tflanagan@ahla.com](mailto:tflanagan@ahla.com)





Committee on Economic Development, Tourism, and Technology  
Senator Glenn Wakai, Chair  
Senator Brian T. Taniguchi, Vice Chair

Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Wednesday, March 22, 2017 2:45pm  
Conference Room 414 State Capitol

**TESTIMONY ON BEHALF OF AIRBNB RE: [HB1471 HD 3 SD1](#)**

Statement in Support of the Intent of HB1471 HD 3 SD1

Dear Members of the Committee:

We support the intent of HB1471 HD3 SD1 to allow online platforms such as Airbnb to voluntarily collect and remit taxes to the state on behalf of our hosts. To that end, we supported HB1471 HD3, which was approved by the House and was to be considered by this Committee before the introduction of the proposed SD1. We submitted testimony in support of HD3 which is part of the record.

We want to pay taxes and be a good partner with the State of Hawaii. If Airbnb had been allowed to collect and remit taxes it would have generated more than \$41 million in new revenue for the state over the past two years. We are hopeful that we can work together to craft a bill that works for the state, our company, our hosts, and the industry as a whole.

However, while we support the intent of HB 1471 HD3 SD1 to allow us to collect and remit taxes on behalf of our hosts, we must raise serious reservations about numerous provisions that have been added to the bill including the following:

1. The requirement for platforms to “ensure” that “the transient accommodation is in compliance with all pertinent state and county land use laws...” puts the platforms solely in the role of being police, judge, and jury for compliance with local land use laws. We want to work with local jurisdictions to put in place common sense laws to provide them the tools to regulate short term rentals, but putting this requirement solely on the platforms is infeasible.
2. Requiring the operator or plan manager to “provide verification of compliance with county land use laws” is placing a burden on operators to secure a form of verification that does not currently exist. We are unaware that there is a process for operators to seek out and obtain “a written certification, verification, or permit”, from their local government to meet

being drained from our state. Please do everything you can to reverse this trend. Kill this bill, or amend it as suggested above. Our members will thank you for your service.



Board of Directors:

**Senate Committee on Economic Development, Tourism & Technology**

**Hawai'i Alliance for Progressive Action opposes: HB 1471 HD3**

Gary L. Hooser  
President

Andrea N. Brower  
Joshua D. I. Mori  
Co-Vice Presidents

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Katie McMillan

Walter Ritte Jr.

Karen Shishido

Leslie Malu Shizue Miki

Kekaulike Prosper Tomich

Cade Watanabe

Dear Chairs Wakai and Nishihara and Committee Members:

My name is Anne Frederick and I am the Executive Director for the Hawai'i Alliance for Progressive Action (HAPA). HAPA is a statewide environmental, social and economic justice organization. HAPA engages over 10,000 local residents annually through our work.

From October through December of 2016 HAPA and several of our partners held a series of input gathering forums across the islands called the People's Congress. Over 800 people attended forums on Kaua'i, O'ahu, Maui and Hawai'i Island to discuss the most pressing issues facing their communities. The lack of affordable housing was one of the top concerns and priorities raised by residents across the state.

**I strongly oppose HB1471 HD3**, Airbnb's bad bill. We are in the middle of an affordable housing crisis, yet there are an estimated 33,000 homes being used as vacation rentals in the state. Homes in neighborhoods all over the state, including my own, are being rented short-term to tourists instead of long-term to residents.

I urge you to kill this bill unless it includes the following amendments:

- 1) We must not preempt the counties' ability to enact good regulations;
- 2) Rental operators should be required to certify to the tax collection broker that they are operating legally and provide documentation to back that up;
- 3) We should ensure that any measure complements – and does not nullify – Act 204 in allowing the state to hold operators accountable;
- 4) Tax collection brokers should be required to operate transparently by providing lists of names and addresses of operators to the State so the State can verify the money it is collecting reflects reality.

Thank you for considering my testimony in opposition of HB 1471.

Respectfully,

Anne Frederick, Executive Director  
Hawai'i Alliance for Progressive Action

*The Hawai'i Alliance for Progressive Action (HAPA) is a public non-profit organization under Section 501(c)(3) of the Internal Revenue Code. HAPA's mission is to catalyze community empowerment and systemic change towards valuing 'aina (environment) and people ahead of corporate profit.*





# HAWAII APPLESEED

## CENTER FOR LAW & ECONOMIC JUSTICE

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Testimony of Hawai'i Appleseed Center for Law and Economic Justice

Supporting HB 1471 HD3 Relating to Vacation Rentals

Senate Committees on Economic Development, Tourism and Technology and Public Safety, intergovernmental and Military Affairs

Scheduled for Hearing Tuesday, March 23, 2017, Conference Room 414

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*Hawai'i Appleseed Center for Law and Economic Justice Hawai'i Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.*

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Thank you Chairs Wakai and Nishihara and members of the committees for an opportunity to testify in strong support for SB HB1 1471 HD 3. The bill allows transient accommodations brokers to registers tax collectors but mandates that they certify that the owners are complying with all local and state legal requirements well as provided funding to counties to vigorously enforce the laws prohibiting unlicensed vacation rentals.

A recent report by the Department of Economic Development and Tourism determined Hawaii will need 65,000 more homes to house our residents by 2025. That estimation is similar to the projection by the Hawaii Housing Finance & Development Corporation's (HHFDC) that between 2015 and 2020 we have a housing shortage of 29,500 units. The Hawaii Tourism Authority estimates that there are over 27,000 vacation rentals in the state that are advertised online. The overwhelming number of these rentals are illegal. Every home that is used illegally as a visitor lodging business is one less home for our residents.

Another recent report by the Hawaii Housing Finance and Development Corporation (HHFDC) indicated an alarming drop in rental listings over the last three years for both multi-family and single-family units on all islands. In some areas, advertised rental housing listings have dropped by 80%, with the number of single-family listings in Kaua'i at less than 10% of the number of listings available three years ago. Another recent study by the Honolulu County Office of Community Services indicated that at 80 % of occupancy, the average vacation rental unit in 2015 would bring in about 3.5 times more than for a long term rental to local residents. Now more than ever we need state and county cooperation to ensure any housing, whatever the number of units, stays as residential. We need to encourage landlords to rent to residents trying to find affordable housing rather than incentivize them to converted units to vacation rentals.

It is a high priority that we should bring some semblance of order to the proliferation of illegal vacation rentals and this bill would bring us a step closer to that goal. Thank you for an opportunity to testify in strong support for HB 1471.

Aloha,  
Victor Geminiani  
Hawaii Appleseed center for Law and Economic Justice

Ernest David Kaimana Carvalho  
1031 Nuuanu Ave.  
Honolulu, Hawaii  
96817  
808-371-3840  
[edkcmrs808@yahoo.com](mailto:edkcmrs808@yahoo.com)

I am against Airbnb's because they are not a solution to our problems in Hawaii but instead they will help to make our problems worst here in Hawaii. As I sit back and watch the T.V. commercial's airing now in Hawaii all I realize is that Airbnb is waging a war built on misconceptions.

I do understand that the people in Hawaii are looking for ways to make extra income but this is not the way. To use the word Aloha in their commercials is an insult to all of us in Hawaii. Aloha is a very special word and should be used wisely. Yes we have Aloha but to say that one is showing Aloha when they allow others to rent out their homes for a vacation here is just inaccurate. There is no Aloha in this.

They are renting out their homes because they need extra money which we all need in Hawaii. Aloha would be to share your home from your heart. In this case you would be doing it because your love of who we are as a people and you would not ask for a dime. Now that is aloha sharing without taking from anyone. So people don't let these commercials sway you into believing their campaign.

Airbnb's in Hawaii is a very disastrous thing for all of us. They will creep into our communities and destroy our neighborhoods especially our country side. They will not help with affordable housing and they will come in and take money away from our people and we will not see a fair tax on this.

If tourist wants to come to Hawaii let them stay in the fine Hotels that we have here for them. Let them enjoy the hospitality of our people through these hotels which we have. Do not let them destroy our Hotel business and do not let them destroy the lives of all our people who depend on these hotels as a way to earn money for a living

Airbnb's will take jobs away from our people only to add on to our houseless population. They will take away jobs from Bellhops, Housekeeping, Kitchen staff, Servers, Bartenders, Front Desk Clerk, Porters, Concierges, Room Service, Administrative, Accounting, Purchasing, Event Planners, Hotel Managers, Executive Chefs and yes Beach boys and even more. These are just some of the jobs that will be affected plus all others that are associated with the Hotels.

By Allowing Airbnb's we are saying yes to more houseless and allowing another industry to come in and have a hand in destroying what Hawaii is. Enough already with creating more problems for our people as we need to take control of what is happening in our homeland. We should be looking to sound solutions to help our people and Airbnb is not the solution to this. Renting out your home or room to vacationers is not the solution. If we really want to rent our rooms out then we should be renting it out to the people who live here. We should not be turning our back on our people but that is exactly what we are doing when we rent out to tourist instead of locals.



I support the Hotels and the Unions that help to make our Hotel Industry one of the best in the world. Let us not destroy this harmony by allowing Airbnb's a foothold in Hawaii. I call for the total elimination of Airbnb's in Hawaii.

Ernest David Kaimana Carvalho



The Senate  
The Twenty-Ninth Legislature  
Regular Session of 2017

To: Senator G. Wakai, Chair  
Senator C. Nishihara, Chair

Date: March 22, 2017

Time: 2:45 p.m.

Place: Conference Room 414  
Hawaii State Capitol

RE: **House Bill 1471 SD1, Relating to Taxation**

Chair Wakai, Chair Nishihara and Members of the Committee:

*Rental By Owner Awareness Association (RBOAA) is a Hawaii non-profit corporation founded in 2011, with over 1000 members. Our mission is to provide Hawaii vacation-rental 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 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 enforcement of existing regulations.*

RBOAA **OPPOSES** HB 1471 SD1 as written *pending specific amendments*.

RBOAA welcomes the very significant improvements proposed to this bill compared to HB1471 HD3. We recognize legislators are working hard to address the complex issues surrounding vacation rentals and tourism. Respectfully, we request you consider the input of vacation rental operators who are currently operating legally.

There are specific issues with **HB1471 SD1**.

1. The clause *“Requiring the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency”* is not viable.
  - a. While the County of Honolulu issues permits, the counties of Maui, Kauai and Hawaii currently do not have a uniform permitting system. Those counties would require time and resource to prepare for this requirement.

## 2 | HB 1471 SD1 RELATING TO TAXATION

- b. In the interim, the tax collection agents could provide the addresses of the vacation rentals to the counties who could then compare against their zoning records.
2. This version of the bill corrects a significant problem included in previous versions whereby accommodation brokers were required to provide tax return information to the Counties, directly or indirectly. As you are aware, taxpayer information can only be shared with the IRS and the State Department of Taxation and the previous versions most likely contravened Hawaiian state laws, HRS §235-116 and HRS §237-34. Please do not reinsert that language. The final language of the bill must respect all applicable privacy regulations.
3. The bill provides no recognition of the fact that there are thousands of transient vacation rental operators who are currently operating legally in the State of Hawaii.

### The State of Hawaii is taking on responsibilities by signing this agreement

If the State of Hawaii is delegating tax collection and remittance to a third-party corporation, the State must ensure the company has in place sufficient internal controls around record keeping, cash balances held, and protection of private information. The tax-collection agent will be holding funds on behalf of vacation-rental operators, travelers and the State of Hawaii, yet they are not banks, they are not insured by the travel industry, and may not operate under regulations applicable to real-estate trust funds.

The State must ensure that funds held by the tax-collection agents are no less protected than funds held in the Bank of Hawaii.

The State is obligated to ensure the tax-collection agent has adequate processes to secure and protect the private information of operators.

### Opt-Out Provision is Necessary

Many operators have been properly collecting and remitting tax to the State of Hawaii for many years. Those operators should have the ability to opt out of the tax-collection agent program and continue to deal directly with the State of Hawaii. Not only do they fear being charged high fees for the tax-collection service, they don't want the advertising platform to hold their cash for long periods of time. (In Hawaii, unlike San Francisco where AirBnb controls the market, most bookings are made a year in advance.)

The DoT knows which operators are in compliance with TAT and GET filings and could issue tax certificates to those operators. The DoT is protected by the right to request and receive 1099K and 1042S reports from the tax-collection agents. Vacation rental operator GET and TAT numbers are cross-referenced to the respective federal tax identification numbers.





The bill already acknowledges that not all bookings are done through the advertising platforms, so the opt-out amendment is not a significant change to the bill as there is already provision for operators to self-report.

RBOAA **OPPOSES** the bill but could change that position if **five amendments** be made:

1. Defer implementing the clause: “Requiring the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency” until all the counties are able to issue certifications or permits.

Add wording stating:

2. “The tax-collection agent shall permit and facilitate an annual audit of its internal controls. The audit shall be designed and conducted by the Office of the Auditor of the State of Hawaii or an independent third party auditor. Further, the tax-collection agent shall comply with all recommendations and address all deficiencies identified in the report of the Office of the Auditor as a condition of retaining the registration as a tax-collection agent.”
3. “Upon presentation of a tax certificate issued by the Hawaii Department of Taxation and a certificate from the applicable County, the advertising platform shall permit any operator to opt out of the tax collection agent program. The operator will then be solely responsible for collecting and remitting all applicable taxes and filing all required tax returns.”
4. “No transient accommodation broker, acting as a tax-collection agent, may charge a fee to an operator for providing the tax-collection service when the tax collection agent is paid by the State of Hawaii for the tax-collection service.”
5. In order to protect the Due Process requirements of all operators: “The tax collection agent shall notify all operators and plan managers of all information provided to the Director and the County Tax Official.”

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead  
President, Rental by Owner Awareness Association



Committee on Economic Development, Tourism, and Technology  
Senator Glenn Wakai, Chair  
Senator Brian T. Taniguchi, Vice Chair

Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Monday, March 20, 2017 1:15pm  
Conference Room 414 State Capitol

**TESTIMONY ON BEHALF OF AIRBNB RE: [HB1471 HD 3](#)**

Dears Chairs, Vice-Chairs, and members of the committees:

I write in support of HB1471 HD 3.

This bill is similar to that which was adopted by the Legislature last year as HB1850 but vetoed by the Governor, regarding Airbnb and similar platforms to collect and remit Transient Accommodations Tax (TAT) and General Excise Tax (GET) on behalf of our host communities. However, HB1471 includes a number of notable differences from last year's bill, including an allocation of tax proceeds going to County government for the purposes of enforcing local land use regulations, and the creation of a surcharge directed to the rental housing revolving fund. Most notably, the bill makes the collection of TAT and GET tax by platforms mandatory.

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 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 50,000 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 support this legislation. The current iteration of the bill makes the collection of the taxes mandatory for all platforms instead of voluntary. Whether the bill requires the payment of taxes or is voluntary as originally proposed, Airbnb is committed to be a responsible partner to the state and to entering into an agreement to collect and remit our fair share of taxes.

HB1471 would simplify administration for both the Department of Taxation and our host community and reduce the State of Hawaii's enforcement burden in ensuring tax compliance. Airbnb first began collecting and remitting hotel and tourist taxes from guests on behalf of hosts

in San Francisco and Portland in 2014. We are now successfully collecting and remitting taxes in more than 220 jurisdictions across the world, including San Francisco, Los Angeles, Amsterdam, Chicago, Malibu, Oakland, Washington D.C., Palo Alto, Paris, Philadelphia, San Diego, San Jose, and nearly 20 states, including Washington, Colorado, Oregon, Connecticut, North and South Carolina, Vermont, Florida, and Arizona. Attached is a study we conducted this year that discusses how much revenue we have generated globally for jurisdictions with whom we have reached an agreement.

When we were before the Legislature last year, we noted that if we had been allowed to collect taxes on behalf of our host community we would have remitted to the state approximately \$15 million in 2015. Today I can share with you that if we had been allowed to collect taxes on behalf of our host community in 2016, we would have remitted \$26 million. Combined over the year two period, we would have remitted more than \$40 million to Hawaii. According to recent testimony by the HLTA, the value of this bill to the state could be more than \$100 million per year. Airbnb wants to pay taxes, we believe that there is value to this to all parties, and we hope you will agree with us and adopt legislation allowing us to do it this year.

I would also like to share an additional statistic with the committee that is worth noting. While use of Airbnb in Hawaii is robust, it is also a favorite of Hawaii residents. In 2016 alone, Hawaii residents used Airbnb to travel more than 110,000 times including more than 11,000 inter-island trips within the state. Put simply, Hawaii residents like to use Airbnb, both to host guests and to travel themselves.

This bill as noted previously will also direct revenue to support the creation of affordable housing. If it is the committee's desire to allocate revenue for this purpose, we would like for the Committee to consider a simpler approach to achieve this goal than the surcharge proposed in HD 3. This approach would be to direct a portion of the revenues remitted by transient accommodations brokers to the fund. The proposed surcharge raises issues related to the Internet Tax Freedom Act, a federal law that essentially prohibits taxing things online differently than they are taxed offline. The current draft also creates confusion regarding the base that is subject to the surcharge.

We also raise, for the Committee's consideration, that this bill has made collection mandatory by transient accommodations brokers as has been addressed above, while also preserving language related to a voluntary collection system as proposed in previous drafts, potentially creating internal inconsistencies and confusion. We suspect that was not the drafter's intent and wanted to bring to the committee's attention if it should desire to clarify the language, to make it consistent with whichever approach the state pursues.

Let me transition to some concerns that critics raised about short term rentals and the potential impact on housing affordability. We turned over a year of booking data to respected Hawaii housing analyst Paul Ricky Cassidy, who conducted a housing impact study. He found that Airbnb has no material impact on the Hawaii housing market, representing only 1.5% of the

Hawaii housing stock. Of all the “entire home” listings on Airbnb, the majority (61%) are rented fewer than 60 days a year, and the vast majority (88%) are rented fewer than 180 days a year.<sup>1</sup> This indicates most of these units are otherwise used by owners and would not be on the long term market, with or without Airbnb. In fact, the study showed that for many Hawaii residents, Airbnb is a valuable tool that makes their housing *more* affordable: 65% percent of Hawaii hosts have told us that the additional income they get from hosting helps them stay in their homes and 21% said that it helped them to avoid eviction or foreclosure. The average host earned \$9,000 last year, the equivalent of a 12% raise to the local median household income. The fastest growing demographic of Hawaii hosts is women over 60. Local businesses and jobs are also supported by Airbnb visitors. Joe Toy, in a study conducted last year, found that Airbnb visitors spent more per day than guests of any other accommodations category in Hawaii, contributing a total of \$353 million to the state economy in 2015.

Next, during the last session opponents alleged that the legislation would not ensure proper accountability. The Department of Taxation (DOTAX) addressed this issue by stating the following: “Auditing [under the bill] is actually made simpler as there is only one source to request documentation to initiate an audit.” Under HB 1471, Airbnb would register as the single taxpayer, assuming full responsibility with respect to applicable taxes on its platform and using its tax ID number to meet Act 204’s posting requirement. The bill would actually give greater transparency and create new enforcement tools for the state it would not otherwise have. For example, it gives DOTAX authority to obtain names and federal tax ID numbers of platform users, as well as the ability to audit the platform and administratively subpoena other user information for enforcement purposes. However, it has been suggested that the requirement that all hosts still be required to obtain their own TAT number and post it with the listing be retained; if that were the will of the Committee, we would support that revision.

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. HB1471 is a tax bill designed to allow Airbnb to help its community pay its fair share of taxes. The legislative history of Act 204 demonstrates that the purpose of the law was ensuring tax assessment and payment, not DOTAX’s enforcement of county land use laws. Tax payment does not impact a user’s county land use liability. Moreover, taxpayer information is already confidential under state law. However, it has been suggested that the bill should be amended to add language clearly asserting that the bill does not preempt the ability of the counties to enforce the law, and we would support that change.

As we move forward, we are 100% committed to working with local 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.

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<sup>1</sup> The study’s findings are specific only to Airbnb because Airbnb could only provide Mr. Cassidy with access to its own data.

We remain committed to partner with the state and local governments. We are hopeful that you will adopt HB1471 that will allow our hosts to pay their fair share of taxes. At the same time we are committed to working with all interested parties to make home sharing work for local communities and our hosts to the benefit of everyone.

Regards,

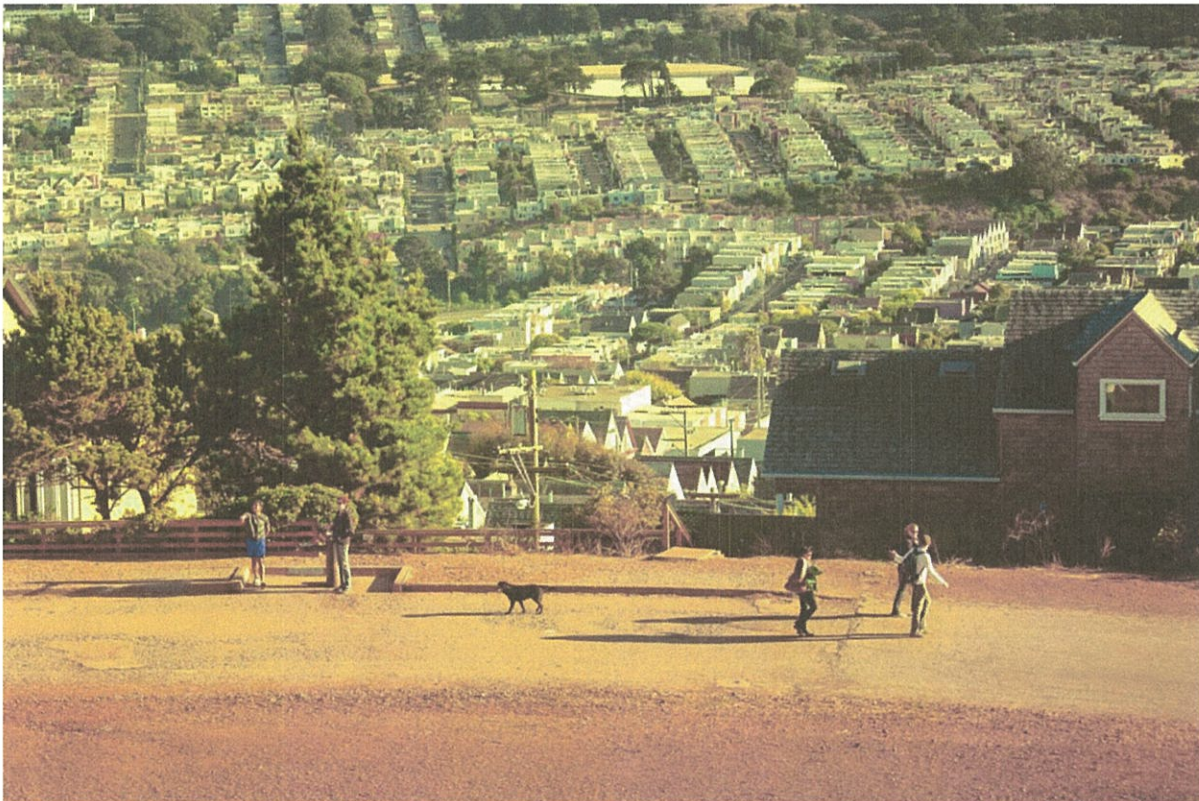
A handwritten signature in black ink, appearing to read 'Matt Middlebrook', with a long horizontal flourish extending to the right.

Matt Middlebrook  
Head of Public Policy  
Hawaii





# Airbnb: Generating \$2.5 Billion in Potential Tax Revenue for America's Cities



## Introduction

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Airbnb is a people-to-people platform—of the people, by the people and for the people—that was created during the Great Recession to help people around the world use what is typically their greatest expense, their home, to generate supplemental income. Today, Airbnb is the world's leading community-driven hospitality company, with over 3 million listings in 50,000 cities and more than 190 countries across the globe, and our online platform is:

- Democratizing travel by helping everyday people visit places they might have missed, including places they otherwise could not afford.
- Democratizing capitalism by expanding the economic pie for ordinary people, allowing them to use their home to help pay for costs like food, rent, and their children's education.
- Democratizing revenue by generating new tax dollars for governments all over the world.

In 2015, Airbnb launched the Community Compact, a document based on our core principles that guides how we partner with cities. In 2016, we released the new Airbnb Policy Tool Chest, a resource informed by hundreds of successful discussions with local policymakers for use by other governments that likewise want to smartly regulate the sharing economy.

In early 2016, our team visited the U.S. Conference of Mayors annual meeting and urged communities to work with us to collect more tax revenue from the Airbnb community. As Airbnb's Head of Global Policy and Communications Chris Lehane said at that meeting:



**Read my lips: we want to pay taxes.”**

Since that time, we have continued to expand our programs to collect and remit hotel, occupancy, and tourist taxes on behalf of our hosts and guests. This report updates information we released in 2016 and offers new data regarding the tax revenue opportunity Airbnb presents to cities in the United States, while demonstrating how Airbnb strengthens city economies. The report also discusses how cities that are already collecting this tax revenue are using it to support a range of progressive programs and services.

## Summary of key findings

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Airbnb has already remitted \$175 million in hotel, tourist and occupancy taxes to more than 220 cities and communities around the world—up from \$42.6 million in taxes remitted in 20 cities as of our report in January 2016.

By partnering with Airbnb to create clear tax rules for home sharing, the 50 largest cities in the United States could have collected a total of \$250 million in hotel, tourist and occupancy taxes from Airbnb in 2016—up from \$200 million estimated for 2015 due to the growth of our community in these cities.

The Airbnb community is growing incredibly fast, and more and more travelers are using Airbnb to see the world. But even in the extremely unlikely event that the Airbnb community remains static at its current size, this would represent a total of \$2.5 billion over 10 years in tax revenue for the 50 largest cities in the United States.

Communities that are collecting tax revenue from the Airbnb community are using the resources to support a range of progressive programs and services, including aid for the homeless and new housing construction.

## The Airbnb community strengthens cities

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Across the United States, the Airbnb community is making cities stronger and generating much needed revenue for families and communities. While governments are debating the best way to support the middle class, Airbnb is generating real money for families right now. The typical host in the United States earns \$6,100 every year. There's no other government or private sector program we know of that's putting a 14 percent raise in middle-class families' pockets.

Most hosts earn this significant economic boost by occasionally sharing the home in which they live. The typical host in the United States shares their listing 39 days per year. Their guests are visiting neighborhoods and local businesses that haven't benefited from tourism in the past. Historically underserved neighborhoods are among the fastest growing part of our host community. In New York City's 50 majority-minority zip codes, we have seen year-over-year growth of over 70 percent and in most cities, over 75 percent of Airbnb listings are outside the main hotel districts.

Travelers go on to spend their dollars in these communities: typically, up to 50 percent of Airbnb guest spending occurs in the neighborhoods where they stay. For example, the Airbnb community generated \$12 million in economic activity in Queens, New York, in one year. In San

San Francisco, Airbnb guests spent \$4.4 million at shops and restaurants in the Inner and Outer Sunset. And data shows that Airbnb guests stay longer and spend more money in the communities they visit than a typical hotel guest: 31 percent of the people who travel on Airbnb say they would have stayed home or wouldn't have stayed as long but for Airbnb.

Additionally, more of this spending goes directly to the citizens of the city they're visiting: Airbnb hosts keep 97 percent of what they charge for their listing. According to The Economist, hotels spend just 30 to 35 percent of their revenue on local labor<sup>1</sup>.

We have issued detailed reports outlining the Airbnb community's substantial positive economic impact in Chicago, Washington, D.C., New Orleans, and Austin, and recent estimates indicate that the Airbnb community will continue to generate substantial economic activity.

City	Estimated Airbnb economic impact
New York City	Over \$1.7 billion
Los Angeles	Over \$600 million
San Francisco	Over \$500 million

## Airbnb is committed to partnering with cities

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Airbnb first began collecting and remitting these taxes in San Francisco and Portland in 2014. Since then, we have worked together with forward-thinking authorities on similar initiatives in cities and jurisdictions around the globe, including:

- Ajaccio, France
- Amsterdam
- Alabama
- Anchorage, AK
- Annecy, France
- Antibes, France
- Arizona
- Avignon, France
- Biarritz, France
- Boulder, CO
- Bordeaux, France
- Cannes, France
- Chamonix-Mont-Blanc, France
- Cleveland, Cuyahoga County, Ohio
- Colorado Springs, CO
- Connecticut
- District of Columbia
- Florida (as well as over 35 individual county tax authorities in Florida)
- Humboldt County, CA
- Idaho

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<sup>1</sup><http://www.economist.com/news/finance-and-economics/21685502-services-airbnb-are-altering-economics-hotel-business-buffetts>



- Illinois and Chicago, IL
- India
- Jersey City, NJ
- Kansas
- La Rochelle, France
- Lille, France
- Lisbon, Portugal
- Louisiana
- Los Angeles, CA
- Lyon, France
- Malibu, CA
- Marseille, France
- Montgomery County, MD
- Montpellier, France
- Nantes, France
- New Orleans, LA
- Nice, France
- North Carolina (as well as 150 individual local tax jurisdictions in North Carolina)
- Oakland, CA
- Oregon
- Palo Alto, CA
- Paris, France
- Pennsylvania and Philadelphia, PA
- Phoenix, AZ
- Portland, OR
- Reno, NV
- Rhode Island
- Saint-Malo, France
- San Diego, CA
- San Francisco, CA
- San Jose, CA
- Santa Clara, CA
- Santa Cruz County, CA
- Santa Fe, NM
- Santa Monica, CA
- South Carolina
- Strasbourg, France
- Taos, NM
- Toulouse, France
- Utah
- Vermont
- Washington State

These taxes can be a significant source of revenue for city governments. All told, the Airbnb community has contributed \$175 million in additional tax revenue to the more than 220 jurisdictions where we have launched this initiative.

Much of this tax revenue has been collected through the establishment of Voluntary Collection Agreements (VCAs). Because collecting and remitting taxes can be a challenge for the regular people who host through Airbnb, Airbnb developed a tool, the VCA, to ensure that proper taxes are collected and remitted while relieving hosts of onerous tax filings and governments of the burden of collection and enforcement. When a jurisdiction signs a VCA with Airbnb, we collect appropriate local taxes from guests as part of their booking transactions and remit the tax revenue directly to the proper tax administrator on behalf of hosts.



## Contributing an additional \$2.5 billion in tax revenue

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This tax initiative could generate substantial revenue that some cities may not be collecting today. We are eager to partner with more U.S. cities to establish this initiative and help make the most of this new economic opportunity.

This chart outlines tax revenue Airbnb has generated for a series of select cities in 2016:

City	Total taxes city collected in 2016 by partnering with Airbnb <i>(does not include any county- or state-level taxes that may apply)</i>
San Francisco, CA	\$19 million
Los Angeles, CA	\$13 million (began collecting 8/1/2016)
San Diego, CA	\$7 million
Portland, OR	\$4 million
Chicago, IL	\$3 million

According to our analysis of Airbnb booking data and local tax policies, by partnering with Airbnb to create clear tax rules for home sharing, the 50 largest U.S. cities would have collected a total of \$250 million in hotel, tourist and occupancy taxes from Airbnb in 2016. The chart below outlines a rough estimate of the amount of revenue selected cities could have collected in 2016:

City	Rough estimate of amount in hotel, tourist and occupancy tax a city could have collected in 2016 by partnering with Airbnb <i>(does not include any county- or state-level taxes that may apply)</i>
Austin, TX	\$6 million
Boston, MA	\$4 million
Denver, CO	\$4 million
Nashville, TN	\$3 million
Las Vegas, NV	\$3 million

Markets are always fluid and economics can change over time. The Airbnb community is growing incredibly fast, and more and more travelers are using Airbnb to see the world. But even in the extremely unlikely event that the Airbnb community remains static at its current size, this would represent a total of **\$2.5 billion over 10 years** in additional tax revenue for the 50 largest cities in the United States. The chart below outlines a rough estimate of the amount of revenue selected cities could collect over 10 years:

City	Rough estimate of amount in hotel, tourist and occupancy tax that city could collect over coming decade by partnering with Airbnb
Austin, TX	\$60 million over 10 years
Boston, MA	\$40 million over 10 years
Denver, CO	\$40 million over 10 years
Nashville, TN	\$30 million over 10 years
Las Vegas, NV	\$30 million over 10 years

## Supporting progressive policies and programs

The new tax revenue has the potential to support a range of progressive policies and services and many communities already have worked to put these resources to good use.

In Chicago for example, a portion of the new revenue is going to support affordable housing and aid for the homeless, funding supportive services attached to permanent housing for homeless families.

In Los Angeles, a voluntary collection agreement (VCA) was executed in August 2016 and has generated significantly more revenue for the city than anticipated. Mayor Eric Garcetti has expressed that the city plans to use this money in part to help with their serious homelessness problem via affordable and low-income housing initiatives. A vast majority of the funds collected so far have been used for "rapid rehousing" programs for the homeless.

In Portland, Airbnb tax revenue has been dedicated to the city's Housing Investment Fund, which was used to secure an affordable housing bond.

Some governments have considered using these resources to support tourism. In both France

and Florida, tax dollars collected from Airbnb are supporting destination-marketing efforts and tourism infrastructure.

## **Working together to deliver more revenue to more cities**

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Airbnb works to implement these tax programs in partnership with cities, but even with our team working to expand this initiative, figuring out how the different tax rules apply can be a challenge and putting this program in place isn't a matter of merely flipping a switch. In a limited number of jurisdictions including New York and Hawaii, existing laws limit Airbnb's and local tax collectors ability to enter into a tax agreement. We encourage governments to lift these restrictions. We are also reaching out to city and state leaders and are eager to work with them to expand this program. Community leaders interested in working with Airbnb to implement this initiative in their hometown can reach out to Airbnb by emailing [taxfacts@airbnb.com](mailto:taxfacts@airbnb.com).

We look forward to working with city officials to establish programs for collecting and remitting tourist taxes, helping them realize the economic benefits of home sharing, and strengthening the cities and communities that Airbnb hosts call home.

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**Ricky Cassidy**  
rcassiday@me.com

# Airbnb & Hawaii Housing

January 9th, 2017

## OVERVIEW

Paul Richard Kauanahoakalani Cassidy Jr. (Ricky), a researcher who specializes in analyzing residential real estate markets, was retained by Airbnb to examine the potential impact of short-term rentals and home sharing on the Hawaii housing market.

This report dovetails with Cassidy's extensive work on affordable housing for the Hawaii Housing Finance & Development Corporation and the Hawaii Department of Health Services, as well as the City and County of Honolulu, Maui County, Hawaii County, and Kauai County, the Department of Hawaiian Homelands and the Office of Hawaiian Affairs.

For purposes of the analysis, Airbnb provided zip code-level listing and booking data for Hawaii for the 12 month period ending October 1st, 2016. This data was directly compared with other housing data, including that of the U.S. Census Bureau, City and County of Honolulu, the state Bureau of Conveyances, the Realtor's Multiple Listing Service, and the Craigslist listing data base.

## EXECUTIVE SUMMARY

1. **Airbnb's activity in the state is so small that it has no material impact on the availability of housing for local families.** Airbnb entire home listings represent a miniscule percentage of Hawaii's housing stock, and they are largely studio and one bedroom apartments in multi-unit buildings in traditional tourist areas. These units are often built as second homes for owners that live in them for only part of the year, and would not otherwise be on the long-term housing market. Many units are also primary residences rented only on an occasional basis. The vast majority of entire home listings are booked fewer than 180 days a year, suggesting these listings are being used otherwise, and would not be available for a long-term tenant.
  - a. In the State of Hawaii, there were **8,134 entire home listings on Airbnb** with at least one booking during this time period, **representing 1.53% of the statewide housing stock**. More than 61% of those listings were only rented infrequently

(less than 60 days per year). Only 949 of those units (0.18% of housing stock, or less than 1/5 of 1%) were rented more than 180 days.

- b. On Oahu, there were **3,185 booked entire home listings representing 0.93% of Oahu housing stock**. More than 52% of those listings were only rented infrequently (less than 60 days per year). 83% of those Airbnb listings were rented between 1 and 180 days per year. Only 550 listings, or 0.16% of total housing stock, were rented more than 180 days per year.
- c. Maui had **2,383 entire home listings** with at least one booking during this time period, representing 3.3% of Maui housing stock. However, only 173 of those units (0.24% of housing stock) were rented more than 180 days. More than 68% were rented infrequently (less than days per year).
- d. Hawaii Island had **1,827 entire home listings** with at least one booking during this time period, **representing 2.21% of Hawaii Island housing stock**. However, only 129 of those units (0.15% of housing stock) were rented more than 180 days. Nearly 66% were only rented infrequently (less than 60 days per year).
- e. Kauai had **739 entire home listings** with at least one booking during this time period, **representing 2.42% of Kauai housing stock**. However, only 97 of those units (0.32% of housing stock) were rented more than 180 days. Nearly 65% were only rented infrequently (less than 60 days per year).

**2. Housing availability and affordability is not impacted by these very small number of short-term rentals, but instead by complex housing market regulations, conditions, and interactions.** These factors include zoning laws, mainland and foreign direct investment, limited supply, lack of public investment, policy, economic opportunity, lack of infrastructure, cost of production, and other dynamics.

- a. At a fundamental level, **housing demand is growing much faster than supply:** Honolulu gains 1,300 new households per year, yet only builds 970 new housing units. The projected three-year outlook shows this disparity growing, with household growth increasing to 1,475 families per year.<sup>1</sup> A study from the state's Department of Business, Economic Development & Tourism on housing for 2015-2025 projects a demand for housing units up to 66,000 over this 10-year period.<sup>2</sup>

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<sup>1</sup> [https://www.huduser.gov/publications/pdf/HonoluluHI\\_comp.pdf](https://www.huduser.gov/publications/pdf/HonoluluHI_comp.pdf)

<sup>2</sup> <http://files.hawaii.gov>



- b. Honolulu has far more regulation of residential development than any other US metropolitan area. **An index measuring land use regulation in U.S. cities—the Wharton Residential Land Use Regulatory Index— ranks Honolulu as the most regulated U.S. city.**<sup>3</sup> Its high score stems from multiple layers of rigorous, lengthy review by both state and county governments for all new development projects. This impedes development of new supply and drives up housing prices.
3. **Vacation rentals have been a part of the Hawaii housing stock for decades.** Census data shows a relatively static proportion of the Hawaii housing stock has been historically dedicated to vacation rentals. The market entry of Airbnb in 2008 did not result in a correlating spike in vacation rental inventory, or a correlating loss in long-term rental housing. Instead, the existing alternative accommodations inventory was redistributed across the platforms/intermediaries.
  - a. Between 2009 and 2014, the number of vacation rentals in Hawaii grew by a maximum of 4% each year, while the number of Airbnb booked entire home listings increased by an annual average of over 100%.
  - b. Airbnb listings are primarily concentrated in traditional tourist destination areas, so it is unlikely they were units converted for short-term use from units that were part of the long-term affordable housing stock. Only 550 Airbnb entire home listings on Oahu were rented over 180 days. Of those, nearly 60% were located in Waikiki (many are former hotel buildings that obsolesced from their original purpose of accommodating visitors).
4. **Overregulation of short-term rentals and home stays could have a net negative impact on the economy and housing affordability.** According to the State Department of Business, Economic Development & Tourism, 31.7% of Hawaii households with mortgages and 48% of Hawaii renter households are housing cost-burdened.<sup>4</sup> The opportunity to generate additional household income from existing assets would have a tangible positive financial impact. Therefore, an immaterial impact on the long-term rental market from home sharing should be balanced against the number of local families who derive income from the practice and are able to achieve affordability.
  - a. In many cases, Airbnb income provides economic stability for people to stay in their homes: in a 2016 Airbnb survey, **65% of Oahu hosts said that income from**

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<sup>3</sup> [http://www.uhero.hawaii.edu/assets/LaCroix-Land\\_Housing.1.27.pdf](http://www.uhero.hawaii.edu/assets/LaCroix-Land_Housing.1.27.pdf)

<sup>4</sup> DBET Research and Economic Analysis, 2014, <http://dbedt.hawaii.gov/economic/ranks/>

**Airbnb helped them afford to stay in their home, and 21% said the income they earned on Airbnb helped them avoid eviction or foreclosure.**

- b. Restricting home sharing, therefore, could create more Hawaii households that are housing cost-burdened. Similarly, enabling accessory dwelling unit (ADU) construction and short-term rental of these units unlocks rental income opportunities for homeowners and promotes affordability by creating both new housing supply and new income streams.
- c. Households who occasionally rent their home on Airbnb can significantly supplement their income: **a typical Airbnb listing in Hawaii earns close to \$9,000 in a year, equivalent to a 12% raise for the local median household.** Restricting the ability for people to home share would decrease income and hurt the livelihood of these casual hosts, and could extinguish what could one day be an important financial safety net in Hawaii. In a state-funded effort to keep families in their homes, Aloha United Way found that a one-time payment of only \$1,046,<sup>5</sup> on average, was enough to keep at-risk families from becoming homeless. This amount could be quickly earned by renting a home when unused, and survey data suggests that residents are using the service in such a way.
- d. Furthermore, overregulation may have an adverse effect on the economy. According to an earlier study by Hospitality Advisors,<sup>6</sup> **Airbnb guests contributed \$353 million to Hawaii's economy in 2015.**
- e. Nevertheless, the short-term rental industry should be subject to reasonable regulation. Hawaii's short-term rental regulations are outdated and in need of modernization to reflect changing technology and evolving travel and economic trends. Updated short-term rental regulations should follow best practices implemented by other governments, including: distinguishing between the local resident that rents his or her home out occasionally to supplement income and the dedicated commercial operator; requiring minimum insurance coverage and smoke and carbon monoxide alarms; and ensuring short-term rental platforms are paying requisite taxes.

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<sup>5</sup><https://www.auw.org/more-families-risk-homelessness-expected-dan-nakaso-honolulu-star-advertiser>

<sup>6</sup> <http://www.bizjournals.com/pacific/news/2016/05/03/airbnb-visitors-spent-353m-in-hawaii-in-2015.html>



## EXISTING HOUSING MARKET CONDITIONS

At a fundamental level, housing demand in Hawaii is growing much faster than supply.

**Honolulu gains 1,300 new households per year, yet only builds 970 new housing units.** The projected three-year outlook shows this mismatch being exacerbated, with household growth increasing to 1,475 families per year.<sup>7</sup> DBEDT's study of housing for 2015 -2025 projects a demand for housing units up to 66,000 over this 10-year period). Indeed, the Hawaii real estate market has been and remains characterized by tight supply and high demand – and, because of this, Hawaii median house prices have been about three times U.S. mainland median prices. As strong demand leaks from outside the islands, the market has and will experience volatility upwards. Unlike most residential markets, this offshore demand is both for short and long-term stays (vacations, second-home ownership and permanent relocations). Simply put, the high quality of life, especially in comparison with other locations, is the foundation of this strong demand from current residents, tourists, investors, short-term migrants, and long-term immigrants.

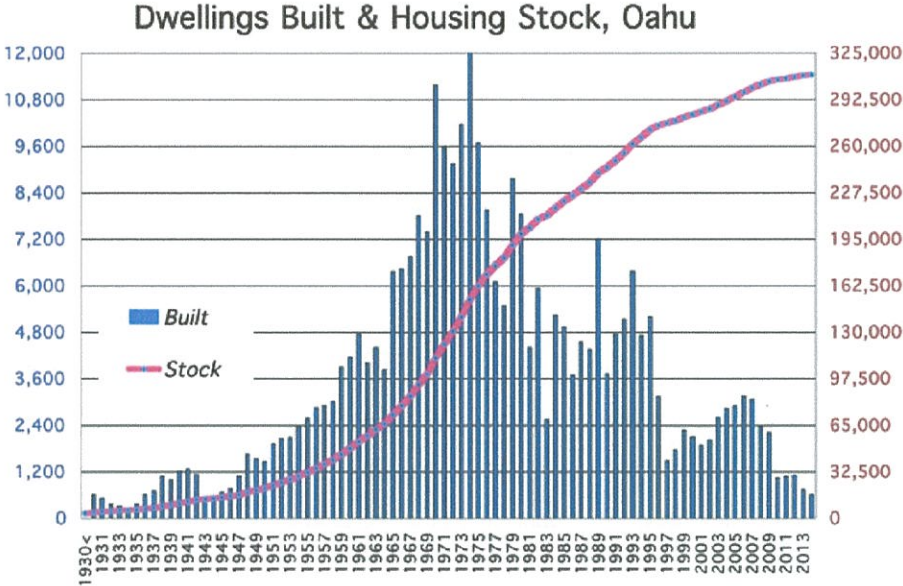
Hawaii's quality of life is its global economic comparative advantage. One manifestation is the large size and high quality of its visitor industry. Another is its growing residential population. A third is its large second home industry. A fourth is the large military population (Hawaii is home to more US servicemen than any other location globally, save Okinawa), though this is driven by strategic positioning and global politics. This advantage is based on a unique combination of attributes, which include temperate climate, beautiful surroundings, accommodating society and culture, the safety of American jurisprudence and security of a dollar-denominated economy.

The housing development process in Hawaii and Oahu is extremely restrictive: it is costly, time-consuming, and politically and economically uncertain. The cost is high because land is limited, rugged and isolated, labor is in short supply, a long supply chain and expensive warehousing drive up costs of inputs, and there is overregulation of land use. The housing development process is especially time-consuming due to rigorous regulations that often require numerous public hearings, environmental review, and multiple government approvals. The cost and time involved in developing housing in Hawaii combine to create high-risk investment conditions, particularly for housing for local consumers (market, workforce, or affordable housing) where margins are lower (as opposed to luxury or visitor-related

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<sup>7</sup> DBEDT Research and Economic Analysis, 2014

developments with potentially higher margins for investors). Honolulu is the most regulated city in the United States, according to the Wharton Residential Land Use Regulatory Index. This impedes supply growth and drives up housing prices.



With the goal of determining how Airbnb fits into this bigger picture, this study considers the magnitude of the impact of home stay business on our community. Indeed, the largest consideration would be the potential impact on our community’s largest problem, the lack of shelter (and affordable shelter), but it also considers the significant contributions to the local economy, including increasing household incomes for hosts and deepening the tax base of the counties and the state.

**DATA AND ANALYSIS**

The methodology used below was very similar to the Honolulu Rental Market study, starting with quantifying the total number of homes in the market. Airbnb provided zip code level listing and booking data for Hawaii for the 12 month period ending October 1st, 2016. This data was directly compared with other housing data, including those of the U.S. Census Bureau, City and County of Honolulu, the state Bureau of Conveyances, the Realtor’s Multiple Listing Service, and the Craigslist listing data base. This provided a baseline percentage of homes that are being rented to guests at least once per year.

**Minimal Housing Impact**



The US census' latest estimate of the total number of housing units on Oahu (July 15, 2015) is 344,108. The number of booked listings on Airbnb (their count) is 3,185 entire home listings in the 12 months ending October 1, 2016. **Thus, only 0.93% of total Oahu housing stock hosted a guest in the one year study period for one day or more.**

Assuming that these homes are not available for long-term rental means assuming that demand for the one is exactly the same as the other. But they are completely different: home sharing happens in short-term, and is usually infrequent and occasional; home renting happens long-term, and is done consistently. This became apparent when I analyzed how the hosts shared their homes -- specifically the number of days they were occupied.

It also became apparent that one entire home listing is not equivalent to one unit of long-term housing taken off the market. This is because the unit may not have amenities required for long-term tenants such as a kitchen (e.g., ohana unit), may be reserved for visiting friends and family, or is poorly located in terms of commuting to work, medical and other services, etc.

It turns out that 52% of the 3,185 entire home listings on Oahu were shared for 60 or fewer days a year. So, a majority of these units were occupied by short-term renters less than 16% of the year.

Deducting those units from the total number of units absorbed by this business model, and comparing that with the total housing stock, reveals that **0.44% of the housing stock was rented for more than 60 days on Airbnb.**

In fact, of the Oahu entire home listings with a trip in the 12 month period, 83% were rented 180 days or less. 35% were rented between 1 and 30 days. Only 550 units were rented more than 180 days, representing just 0.16% (or one-sixth of one percent) of the housing stock. This data suggests that most Airbnb hosts are casual operators, renting space that would not likely be available on the long-term market.

Of Airbnb's 550 entire home listings rented over 180 days in the 12 months ending October 1st, 2016, 400 are attached dwelling units (apartments and condos) — of these, 185 are studios and 160 are 1 bedroom apartments. Many of these are studio and one bedroom apartments located in Waikiki that owners occupy only seasonally and stand empty for many parts of the year (i.e., not owner-occupants). These apartment units typically have higher maintenance fees, higher property taxes, and resort-like amenities making them less than ideal for locals. By filling the units while owners are away, short-term rentals have the potential to attract visitor spending that sustains neighborhood businesses and supports local jobs.



### Hawaii Entire Home Listings by County

County	Booked Entire Home Listings	1 to 30 nights	31 to 60 nights	61 to 90 nights	91 to 180 nights	Over 180 nights	Housing Units (2015 Census Estimate)	All Booked Entire Homes as % of Housing Stock	Over 180 Days as % of Housing Stock
Hawaii	1,827	920	283	193	302	129	86,009	2.21%	0.15%
Oahu	3,185	1,158	508	332	637	550	344,108	0.93%	0.16%
Kauai	739	376	103	68	95	97	30,503	2.42%	0.32%
Maui	2,383	1,228	398	226	358	173	71,722	3.32%	0.24%
Statewide Total	8,134	3,682	1,292	819	1,392	949	532,342	1.53%	0.18%

Waikiki has 47% of all entire home listings on the island, or 1,494 of the 3,185 total units on Oahu (of entire home/apts), for the 12 months ending in October 1, 2016. This equates to **0.43% of the housing stock**, and that reduces to **0.49% the percent of Oahu's housing stock** that is on Airbnb outside of Waikiki (without considering bedroom count or frequency of time usage). More than half of those 1,494 Waikiki units, or 690 units, were studios. Only 168 (or 0.05% percent of the housing stock) of those were rented out more than half of the year, while 522 were rented out for less than half the year. These Waikiki units are already a major part of the existing vacation rental market and are in a visitor destination area. They are an important part of the hospitality ecosystem and likely have not been part of the long-term housing supply for decades.

On Maui, there were 2,383 entire home listings with at least one booking during this time period, representing 3.3% of Maui housing stock. However, only 173 of those units (0.24% of housing stock) were rented more than 180 days.

Given the history of tourism in Hawaii, the data indicates that Airbnb is a new overlay on an existing market, but one that has improved the visitor experience and empowered local

homeowners to become hosts. Furthermore, Airbnb and other similar platforms serve a vital role in providing additional inventory for a visitor accommodations market that has experienced record high occupancy levels for traditional hotels and resorts<sup>8</sup> over the past few years. Many of Airbnb's listings in popular visitor destinations were already being rented out to vacationers, usually through the yellow pages or the classified section of newspapers. The demand for short-term rentals predated the hotel industry on Oahu (sailors on shore leave) and represents a legitimate supply option for visitors seeking affordable accommodation in a desirable location. Visitor shelter and accommodation has long been supplied by the Hawaii tourism industry, which ended in the late 1970s when public sentiment turned against building more hotels. The commercial activity of home stay and accommodation rental is a logical result of that undersupply. The participants in this market included hotel visitors who determined to extend and expand their time in Hawaii by buying a small unit in or around Waikiki, and then renting it out when they were not there. A number of rental agencies and agents grew up in order to assist. This was well established before the turn of the century. With the arrival of the internet, this activity responded by moving from advertising in the newspaper to advertising on the internet, mainly Craigslist. As the internet economy matured, companies sprang up to aid and service both the suppliers and their customers.

The late market entry of Airbnb in 2008 did not result in a correlating increase of vacation rental units, as they simply were in different locales, different usages, and different time frames. Instead, this small number of accommodations simply switched, going from one business model using agents and classified advertising to 'doing it yourself' using the internet. These units were redistributed across the platforms/intermediaries, but they were a small number to begin with and remain relatively small in number, particularly in comparison to the larger market. Airbnb remains a minority market participant, following VRBO and Homeaway.

Airbnb listings are primarily concentrated in traditional tourist destination areas, meaning they are less likely to be conversions of what would be considered long-term affordable housing stock. Only **550 Airbnb entire home listings on Oahu** were rented over **180 days**. Of those, **327 (59%) were located in Waikiki**. **1,494, or 47% of all Airbnb booked entire home listings on Oahu, were located in Waikiki**. While many zip codes in urban Honolulu do have a number of Airbnb entire home listings, the zip codes making up urban Honolulu outside of Waikiki only contain 549 (17%) of the Airbnb entire home listings on Oahu.

### **Beneficial Income for Local Residents and Revenue for Local Businesses**

Income from Airbnb may also help residents afford their homes. Households who rent their home on Airbnb casually are meaningfully supplementing their income (**e.g., a typical Airbnb**

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<sup>8</sup> Hawaii Department of Business, Economic Development and Tourism, Quarterly Visitor Statistics



**listing in Hawaii earns close to \$9,000 in a year, equivalent to a 12% raise for the median household).** Overregulation would decrease income and hurt the livelihood of these casual hosts, and could extinguish what could one day be an important financial safety net in Hawaii. As mentioned above, Aloha United Way found that a one-time payment of only \$1,046, on average<sup>9</sup>, was enough to keep at-risk families from becoming homeless. This amount could be quickly earned by renting a home if a household could find temporary housing with family or friends or rent their home while they are traveling for work or visiting family or friends, and Airbnb host survey data suggests that residents are using the service in such a way: **65% of hosts on Oahu say that income from Airbnb has helped them afford to stay in their home, and 21% of hosts on Oahu say that the income they have earned on Airbnb helped them to avoid eviction or foreclosure.**<sup>10</sup>

#### Typical Host Earnings

County	Typical <sup>11</sup> Listing Annual Earnings	Median Household Income <sup>12</sup>	Equivalent to % Raise for Median Household
Hawaii	\$5,505	\$60,033	9.2%
Oahu	\$11,358	\$77,273	14.7%
Kauai	\$10,966	\$77,140	14.2%
Maui	\$9,002	\$70,497	12.8%
Statewide	\$8,842	\$73,486	12.0%

### Appropriate Regulation

Additionally, over-regulation of the short-term rental market will neither solve Hawaii’s housing crisis nor increase housing affordability. There are much larger forces affecting supply and demand in Oahu’s historically volatile housing market, including restrictive zoning laws, high costs of development, low wages and low alternative economic opportunities, and a simple lack of infrastructure.

<sup>9</sup> “Rent funding through AUW makes a dent in evictions,” Dan Nakaso, Honolulu Star-Advertiser, December 22, 2016

<sup>10</sup> Airbnb Survey Data, 2016

<sup>11</sup> A “typical listing” is defined as a listing that was first active before the start of the 12 month study period, and had a booking during the 12 month study period.

<sup>12</sup> American Community Survey 2015, Median Income in the Past 12 Months, 1 Year Estimates (Table S1903)

Given the strong growth of the homestay and short-term rental industry, it is time to give thought to new regulation that is both reasonable and fair. And, as Hawaii's current short-term rental regulations are outdated, the rules on the books should be modernized. New rules should reflect changing technology, as well as evolving travel preferences and lifestyle trends. They should protect and enhance Hawaii's position globally as a premium place to visit and enjoy recreation. And they should balance the needs of the hosts with the wants of the guests, in a win-win fashion. If done with foresight and common sense, these regulatory updates and changes will preserve and encourage the success of this new business model, while boosting Hawaii's economy and enhancing consumer choice.

Modern short-term rental regulations should follow best practices implemented by other governments. These include suggestions that governments and regulators:

1. Establish regulations that distinguish between the local resident that rents his or her home out occasionally to supplement income, and dedicated commercial vacation rental operators;
2. Allow primary residents to share their homes without limitation and with low regulatory burden, because these are homes that would not otherwise be on the long-term market;
3. Create a streamlined, online permit system for vacation rental operators and second home owners to legitimize a market that has existed for decades and is an important part of Hawaii's economy, supporting local jobs and neighborhood businesses;
4. Create safety and insurance standards such as minimum coverage limits for liability, fire extinguishers and smoke and CO alarms on site; and
5. Enable all short-term rental platforms to pay taxes on behalf of their users.

## **ABOUT THE AUTHOR**

Ricky Cassidy is a market researcher who specializes in analyzing residential real estate markets. He was retained by Airbnb to examine the impact on the housing market of their business model – the home stay or home sharing business – which effectively enables homeowners to shelter guests on a short-term basis for a fee.

The data and statements herein are based on independent research by Ricky Cassidy and are in no way contingent upon outside findings or recommendations. He has spent 18 years as an independent, third party consultant doing supply and demand, feasibility, long-range planning and pricing and absorption studies on for-sale and rental housing. Before that, he had eight

years of experience as the in-house market analyst for the two largest residential developers in Hawaii. This experience informed his creation of several extensive databases of proprietary data that includes for-sale transactional (sales) data, for-sale and rental listing (offering) data, housing stock or housing inventory data, future project and entitled land data and, most uniquely, in-house developer data on sales and prices over the last 25 years.

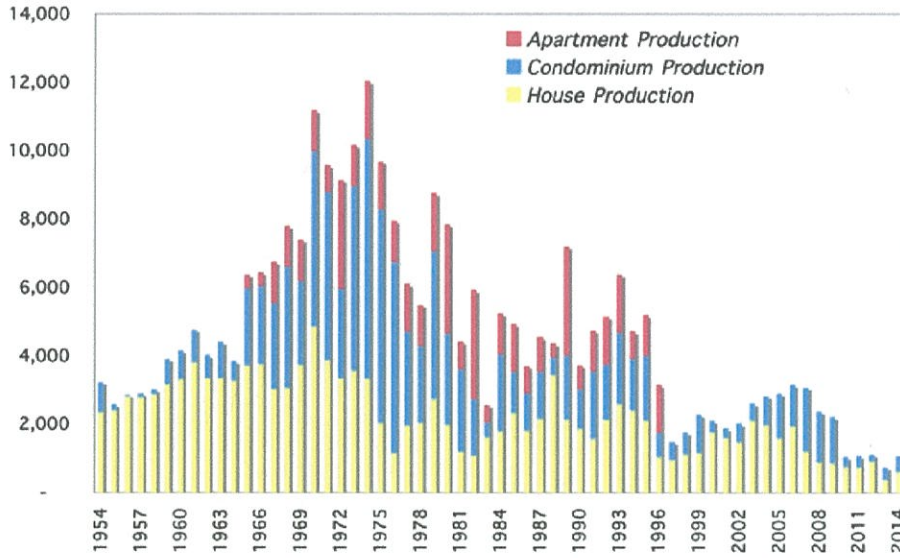
In addition to working with the private sector, he has worked with public agencies on their analysis and forecasting needs, including all four counties, the state housing finance agency, and two of the three branches of military services.

This examination dovetails with his extensive work on affordable housing for the [Hawaii Housing Finance & Development Corporation](#) and the Hawaii Information Service, plus the four counties, the Department of Hawaiian Homelands and the Office of Hawaiian Affairs, all of whom clearly have an interest in both the issue of the lack of shelter in the community, and the solution. This resulted in the Honolulu Rental Market Study (<http://dbedt.hawaii.gov/hhfdc/files/2015/02/RENTAL-HOUSING-STUDY-2014-UPDATE-CITY-COUNTY-OF-HONOLULU.pdf>).

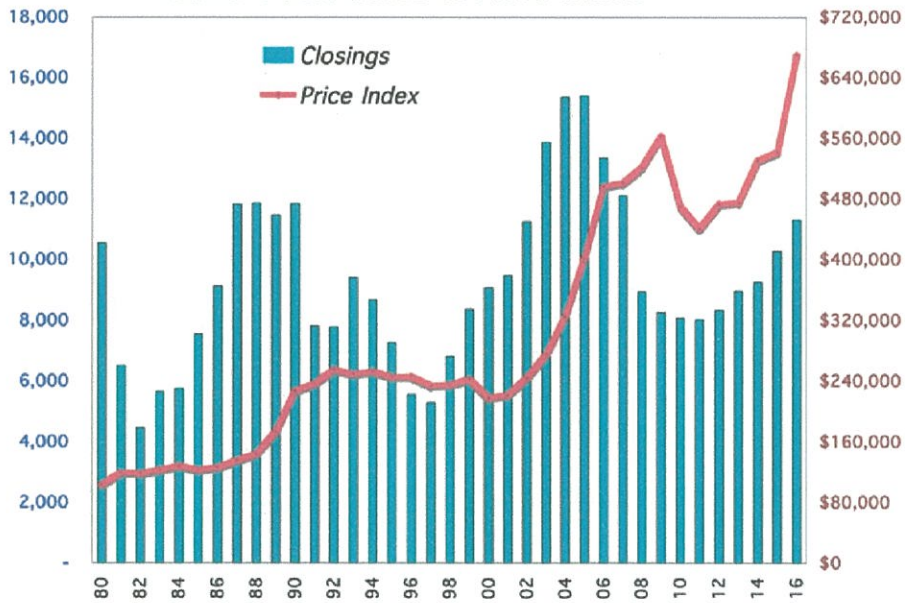


APPENDIX A. Supplementary Figures

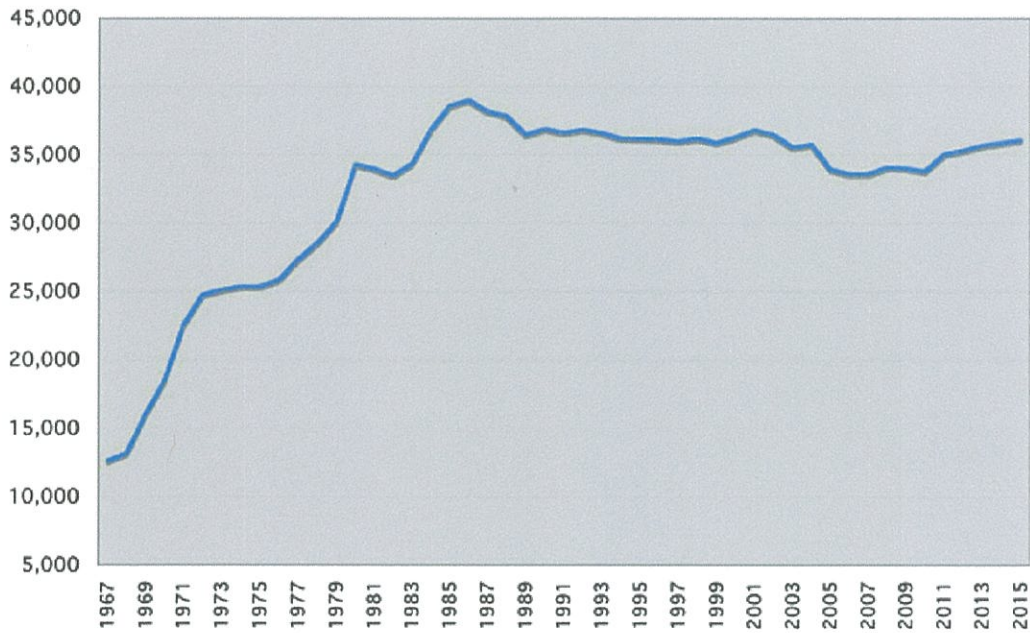
Annual Production, Pre-Statehood to 2014



Oahu Total Sales & Price Index



### Hotel Room Inventory Oahu



### APPENDIX B. Supplementary Tables

#### HAWAII ISLAND AIRBNB LISTINGS WITH TRIP IN YEAR PERIOD, BY ROOM TYPE

Listing Type	Number of Listings with Trip in 12 Months Ending October 1st, 2016	Share of Listings
Entire Home/Apt	1,827	74%
Private/Shared Room	653	26%

#### OAHU AIRBNB LISTINGS WITH TRIP IN YEAR PERIOD, BY ROOM TYPE

Listing Type	Number of Listings with Trip in 12 Months Ending October 1st, 2016	Share of Listings
Entire Home/Apt	3,185	66%
Private/Shared Room	1,611	34%

**KAUAI AIRBNB LISTINGS WITH TRIP IN YEAR PERIOD, BY ROOM TYPE**

Listing Type	Number of Listings with Trip in 12 Months Ending October 1st, 2016	Share of Listings
Entire Home/Apt	739	77%
Private/Shared Room	222	23%

**MAUI AIRBNB LISTINGS WITH TRIP IN YEAR PERIOD, BY ROOM TYPE**

Listing Type	Number of Listings with Trip in 12 Months Ending October 1st, 2016	Share of Listings
Entire Home/Apt	2,383	82%
Private/Shared Room	431	18%

**STATEWIDE AIRBNB LISTINGS WITH TRIP IN YEAR PERIOD, BY ROOM TYPE**

Listing Type	Number of Listings with Trip in 12 Months Ending October 1st, 2016	Share of Listings
Entire Home/Apt	8,134	74%
Private/Shared Room	2,917	26%

**DAYS OF OCCUPANCY, ATTACHED AIRBNB ENTIRE HOME LISTINGS, BY BEDROOMS**

Bed	0-3 Mo.	4-6 Mo.	7-9 Mo.	10-12 Mo.
0	436	205	116	72
1	542	196	106	54
2	219	69	34	15
Bed	0-3 Mo.	4-6 Mo.	7-9 Mo.	10-12 Mo.
0	53%	25%	14%	9%
1	60%	22%	12%	6%
2	65%	20%	10%	4%

**DAYS OF OCCUPANCY, DETACHED AIRBNB ENTIRE HOME LISTINGS, BY BEDROOM**

Bed	0-3 Mo.	4-6 Mo.	7-9 Mo.	10-12 Mo.
0	48	20	21	13

1	123	49	31	18
2	198	39	27	7
3	174	37	16	4
Bed	0-3 Mo.	4-6 Mo.	7-9 Mo.	10-12 Mo.
0	47%	20%	21%	13%
1	56%	22%	14%	8%
2	73%	14%	10%	3%
3	75%	16%	7%	2%

## APPENDIX C. Discussion of Housing Stock Numbers and Owner Occupancy

### HOUSING STOCK, OR TOTAL INVENTORY OF RESIDENTIAL UNITS

There are two different indices of housing inventory or the stock of dwellings in the City and County of Honolulu: US Census and the city's tax assessor.

The US Census shows that there are some 344,108 housing units, as of July 1, 2015. Their definition is: "A housing unit is a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall."

The 2010 number is drawn from their Census survey instrument, and I find that a pretty robust number. That said, the 2015 number is less so. That's because it is a calculation, taking into account a number of different variables, including jobs, incomes, and economic growth. What's one man's house is another man's shack. That said, here are the counts.

### RESIDENTIAL DWELLING UNITS COUNTS & TRENDS, US CENSUS

	Count
Housing units, July 1, 2015	344,108
Housing units, April 1, 2010	336,899

The following table shows the total housing stock in Honolulu, as best defined and described by the state sponsored study on housing, in 2010. It is drawn from the City & County's database used by the tax assessor to assess property tax on the property owner. It is data that is a bit more robust if it comes from the tax assessor. The city's revenues depend on it. The table describes the data historically.

### RESIDENTIAL DWELLING UNITS COUNTS & TRENDS, HONOLULU TAX DATA

Year	1992	1997	2003	2006	2010	2016
------	------	------	------	------	------	------

Single family	137,299	145,078	150,957	160,686	165,440	170,748
Condominium	81,293	92,503	91,913	94,640	100,438	106,731
Apartment	40,535	43,732	39,602	43,275	43,424	43,573
Military/Student	26,430	28,160	28,994	20,804	20,422	20,422
<b>Total</b>	<b>285,557</b>	<b>309,473</b>	<b>311,466</b>	<b>319,405</b>	<b>329,724</b>	<b>341,474</b>
Percentage Increase		8.4%	0.6%	2.5%	3.2%	3.6%

Note that the 2016 dwelling unit counts are an estimate, one that I made by using the actual closing counts of newly built or developer units to increase the total amount for the housing stock on the island. Additionally, I used a small factor to decrease the total housing counts in order to account for the few units that were destroyed by natural or other events.

Note that the two numbers for housing stock or total dwellings on the island are similar in size, in count. I opt to use the US Census estimates for the analysis, because they are transparent and easily verified.

Non-owner occupants are comprised of some local investors, but significantly more investor-owners living elsewhere, or offshore buyers. For instance, around 70% of all Maui Condos are owned by non-owner occupants, many of which are offshore investors. This is also true for Waikiki and other Oahu resort areas. The table below shows this for Downtown to Waikiki, as well as for just Waikiki and just the Kapiolani area (location of the development).

#### INVESTOR OWNED UNITS (NON-OWNER OCCUPANTS) BY PERCENTAGE

Beds	Downtown-Waikiki	Waikiki
Studio	90%	94%
1	72%	85%
2	60%	72%
3	51%	64%
4	64%	100%

The next table shows the total inventory of attached residential units on Oahu, broken out into owner occupants (OO) and non-owner occupants (Non-OO).

#### TOTAL ATTACHED DWELLING UNITS ON OAHU, BY OWNER OCCUPANCY

Beds	Non-OO	OO	Total
Studio	24,197	1,290	25,487



1	33,601	7,732	41,333
2	40,015	20,558	60,573
3	12,005	9,119	21,124
4	749	979	1,728
5	29	30	59
6	-	1	1

The next table shows the total inventory of detached residential units on Oahu, broken out into owner occupants (OO) and non-owner occupants (Non-OO). However, note that these numbers do not capture all of the accessory dwelling units existing, as the dwelling data is defined by being on separate properties.

**TOTAL DETACHED DWELLING UNITS ON OAHU, BY OWNER OCCUPANCY**

Beds	Non-OO	OO	Total
Studio	522	92	614
1	2,190	556	2,746
2	7,526	3,477	11,003
3	48,203	20,420	68,623
4	34,752	13,391	48,143
5	11,639	4,573	16,212
6	4,776	2,159	6,935



The Senate  
The Twenty-Ninth Legislature  
Regular Session of 2017

To: Senator G. Wakai, Chair  
Senator C. Nishihara, Chair

Date: March 20, 2017

Time: 1:15 p.m.

Place: Conference Room 414  
Hawaii State Capitol

**RE: House Bill 1471 HD3, Relating to Taxation**

Chair Wakai, Chair Nishihara and Members of the Committee:

*Rental By Owner Awareness Association (RBOAA) is a Hawaii non-profit corporation founded in 2011, with over 1000 members. Our mission is to provide Hawaii vacation-rental 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 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 enforcement of existing regulations.*

This bill can be stripped down to one very simple requirement. The State should compel the advertising platforms to regularly provide four pieces of information to the DoT and to the counties. The rest of this bill is redundant. The four pieces of information are:

1. Name of the operator
2. Address of the vacation rental
3. TAT or GET number of the operator
4. Mailing address of the operator.

With these pieces of information, the counties and the DoT have everything they need to collect tax and enforce land use laws. Your Department of Taxation is exceptionally capable at collecting tax and does not need AirBnB collecting tax on their behalf.

## 2 | HB 1471 HD3 RELATING TO TAXATION

RBOAA strenuously **OPPOSES** HB 1471 HD3 as written and recommends gutting the entire bill and inserting the simple and effective solution described above.

RBOAA welcomes proposals which assist in the collection of taxes without placing undue burden on the taxpayer or the state Department of Taxation (DoT). RBOAA had welcomed the significant improvements made in earlier drafts of this bill since the 2016 session.

However, following consideration by the House CPC committee, HB1471 HD3 is exceptionally problematic, both in content and consequence. **This bill now amounts to an attack on legal vacation rental operators and serves only to create a monopoly for AirBnB.** To say this bill is the most egregious and outrageous bill on vacation rentals presented in the last six years would be hardly an exaggeration.

We recognize legislators are working hard to address the complex issues surrounding vacation rentals and tourism. Respectfully, we request you consider the input of vacation rental operators who are currently operating legally and are the most negatively impacted by this proposal.

There are significant issues with **HB1471 HD3**.

1. Recent amendments to the bill make it mandatory for large accommodation brokers to become tax collection agents.
  - a. Not all brokers accept payments from guests (including VRBO and HomeAway), making it impossible to comply with the tax collection requirement.
  - b. Some accommodation brokers will conclude they are not registered under Hawaiian law and therefore will not comply with this legislation if enacted, putting into jeopardy the ongoing business of the operators who are otherwise operating legally in the State of Hawaii. Others will simply exit Hawaii.
  - c. *By making it mandatory* for accommodation brokers to become tax collection agents, the State may have made accommodation brokers and tax collection agents a regulated industry. A sunrise analysis is therefore required.
  - d. *By making it mandatory* for accommodation brokers to become tax-collection agents, the State is taking on the obligation of protecting consumers, travelers, and vacation rental owners from error and improper activities on the part of the accommodation brokers.
2. The bill requires that as tax collection agents, accommodation brokers must furnish tax return information to the Counties. As you are aware, taxpayer information can only be shared with the IRS and the State Department of Taxation. Compliance with County land-use laws is a cornerstone of this initiative, but the method proposed is not legally available in the United States. The bill most likely contravenes Hawaiian state laws, HRS §235-116 and HRS §237-34.
3. The bill provides no recognition of the fact that there are thousands of transient vacation rental operators who are currently operating legally in the State of Hawaii.





The bill also provides no recognition that no other business and no other landlord in Hawaii are forced to use a third party to collect and remit taxes on their behalf.

**If this bill is to be successful legislation, numerous improvements are necessary in order to protect consumers, travelers, vacation-rental property owners, the Counties and the State of Hawaii.**

The State of Hawaii is taking on responsibilities by signing this agreement

*If the State of Hawaii is mandating tax collection and remittance to a third-party corporation, the State must ensure the company has in place sufficient internal controls around record keeping, cash balances held, and protection of private information. The tax-collection agent will be holding funds on behalf of vacation-rental operators, travelers and the State of Hawaii, yet they are not banks, they are not insured by the travel industry, and may not operate under the regulations applicable to real-estate broker trust funds. If the State of Hawaii is to entrust hundreds of millions of dollars to these companies, the State is obligated to take on the requisite consumer-protection functions, including mandatory audits of the internal controls of the tax-collection agent.*

The State must also ensure that funds held by the tax-collection agents are no less protected than funds held in the Bank of Hawaii.

If the State is going to rely on the company to provide personal and tax information to the State, the State is obligated to ensure the company has adequate protection processes to secure the private information.

The bill does not address who is liable if the tax-collection agent defaults on payment. While it is much easier to place a lien on a property located in Hawaii than it is to pursue legal action on a company based in another state, the property owner will also be out of pocket if the agent defaults. The State must protect the Hawaii property owners in the event of default by their contracted tax collector.

Opt-Out Provision is Necessary

Many operators have been successfully collecting and remitting tax to the State of Hawaii for many years. Those operators should have the ability to opt out of the tax-collection agent program and continue to deal directly with the State of Hawaii. Not only do they fear being charged high fees for the tax-collection service, they don't want the advertising platform to hold their cash for long periods of time. (In Hawaii, unlike San Francisco, most bookings are made a year in advance.)

The DoT knows which operators are in compliance with TAT and GET filings and could issue tax certificates to those operators. The DoT is protected by the right to request and receive 1099K and 1042S reports from the tax-collection agents. (Vacation-rental-

#### 4 | HB 1471 HD3 RELATING TO TAXATION

operator GET and TAT numbers are cross-referenced to the respective federal tax identification numbers.)

The bill already acknowledges that not all bookings are done through the advertising platforms, so the opt-out amendment is not a significant change to the bill as there is already provision for operators to self-report.

The benefit to the State of allowing operators to opt out of the tax collection agent program is that by not requiring operators to be part of the program, the consumer-protection requirements noted above are reduced.

#### Enforcement of County Zoning Compliance

Requiring the tax-collection agents to provide names and addresses to the Counties is a positive step to strengthening enforcement of land-use regulations.

However, the bill provides that the tax-collection agent provides “returns, names and addresses” to the Counties. **The Counties do not need and should not get tax return information.**

\*\*\*

There are very significant problems with this bill. The fundamental flaws identified above are offered merely as the most egregious examples of them.

Passing this bill will jeopardize the availability of legal transient vacation rentals across the state. Depending on which numbers you choose to believe about the number of legal transient-vacation rentals, this bill could remove up to 4.3 million visitor nights per year – currently offered legally.

Passing this bill will lead to very poor, and probably unenforceable, legislation, while providing no benefit to any party except perhaps one accommodation broker.

RBOAA **OPPOSES** the bill. However, if the committee sees fit to pass this bill, we respectfully request that **seven amendments** be made:

1. Remove all current language and replace with: “All accommodation brokers accepting advertisements in the State of Hawaii are required to provide, on a monthly basis, the Director of the Department of Taxation and the relevant County authority a) the names of all operators advertising transient vacation rentals; b) the addresses of the transient vacation rentals, c) the TAT or GET number of the operators, d) the mailing addresses of the operator.”

If this committee sees fit to pass this bill largely in its current wording, the following amendments are necessary:





2. Remove the requirement for large advertising brokers to become tax collection agents and make it optional for all, reinstating the language in HB1471 HD1.

Add wording stating:

3. “The tax-collection agent shall permit and facilitate an annual audit of its internal controls. The audit shall be designed and conducted by the Office of the Auditor of the State of Hawaii. The Office of the Auditor, at its sole discretion, may accept an audit report of internal controls conducted by an independent third party. Further, the tax-collection agent shall comply with all recommendations and address all deficiencies identified in the report of the Office of the Auditor as a condition of retaining the registration as a tax-collection agent.”
4. “Upon presentation of a tax certificate issued by the Hawaii Department of Taxation and a certificate from the applicable County, the advertising platform shall permit any operator to opt out of the tax collection agent program. The operator will then be solely responsible for collecting and remitting all applicable taxes and filing all required tax returns.”
5. “No transient accommodation broker, acting as a tax-collection agent, may charge a fee to an operator for providing the tax-collection service when the tax collection agent is paid by the State of Hawaii for the tax-collection service.”
6. “The tax collection agent shall notify all operators and plan managers of all information provided to the Director and the County Tax Official.”

Delete the words “**returns and**” from the following clause (237- f(2)):

7. All [~~returns and~~] the names and addresses provided by a registered transient-accommodations broker tax-collection agent shall be disclosed to a duly authorized County tax official for the limited purpose of real-property tax administration.

Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead  
President,  
Rental by Owner Awareness Association



The Senate  
The Twenty-Ninth Legislature  
Regular Session of 2017

To: Senator G. Wakai, Chair  
Senator C. Nishihara, Chair

Date: March 20, 2017

Time: 1:15 p.m.

Place: Conference Room 414  
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#### 4 | HB 1471 HD3 RELATING TO TAXATION

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Thank you for the opportunity to testify on this measure.

Sincerely,

Neal Halstead  
President,  
Rental by Owner Awareness Association



## ETT Testimony

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**From:** david.nadelman@hyatt.com  
**Sent:** Friday, March 17, 2017 8:22 AM  
**To:** ETT Testimony  
**Cc:** kekoa.mcclellan@gmail.com  
**Subject:** Opposition: HB1471HD3

Aloha Chair Wakai and Chair Nishihara,

I am the Area Vice-President for all of the Hyatt Hotels in Hawaii and the General Manager of the Hyatt Regency Waikiki.

HB 1471-HD3 in its present form is a dangerous precedent in that it creates the following potential undesired results:

- HB 1471-HD3 would legalize currently illegal rentals, and effectively pre-empt county laws.
- HB 1471-HD3 would impede enforcement and allow commercial operators to circumvent existing laws requiring names and addresses.
- HB 1471-HD3 would allow transient accommodations brokers to opt out of and gut Act 204, which was designed to protect our communities from illegal short-term rentals.

We urge you to either defer the passage of this bill altogether, or adopt common sense amendments that have been shared by the American Hotel & Lodging Association, the local labor community, and community groups which would ensure *mandatory* state registration for short-term rentals, transparency of data reported by STR platforms to ensure maximum collection of taxes from STR activity, penalties sufficient to encourage compliance by hosts, and penalties for platforms listing non-compliant units.

Thank you sincerely,



**David Nadelman**  
**Area Vice President & General Manager**

**HYATT REGENCY WAIKIKI BEACH RESORT AND SPA**  
2424 Kalakaua Avenue, Honolulu, HI 96815, USA  
T: 1.808.237.6100 Fax: 1.808.237.6114 E: [david.nadelman@hyatt.com](mailto:david.nadelman@hyatt.com)  
[waikiki.hyatt.com](http://waikiki.hyatt.com)



*THINK BEFORE YOU PRINT: Please consider the environment before printing this email.*

*Celebrating 40 Years of Aloha*  
*2015 State of Hawaii Green Business Award*  
*2015 SHAPE Healthy Travel Awards – Regency Club awarded “Best Complimentary Breakfast”*  
*2015 Winner Hana Nui Award for remodeled rooms by Waikiki Improvement Association*  
*2015 Winner Pili Honua Award for Green Team sustainability efforts by Waikiki Improvement Association*  
*2014 Travel + Leisure World’s Best Hotels List - Hawaii Resorts*



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 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

March 20, 2017

**The Honorable Glenn Wakai, Chair**

Senate Committee on Economic Development, Tourism, and Technology

**The Honorable Clarence Nishihara, Chair**

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

State Capitol, Room 414

Honolulu, Hawaii 96813

**RE: H.B. 1471, H.D.3, Relating to Taxation**

**HEARING: Monday, March 20, 2017, at 1:15 p.m.**

Aloha Chair Wakai, Chair Nishihara, and Members of the Committees.

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 9,200 members. HAR **opposes** H.B. 1471, H.D.3 which:

1. Requires "large" transient accommodations brokers and permits all other transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services;
2. Ensures that the subject property is in compliance with applicable land use laws;
3. Allocates \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals; and
4. Creates a surcharge tax on transient accommodation brokers.

The House Draft 3 of this measure has two important components:

1. Mandates that large transient accommodations brokers shall register and require to collect and remit taxes; and
2. Defines "large transient accommodations" brokers to mandate only those with 3,000 or more listings.

To understand the context of the definition of transient accommodations broker, we need to understand Act 204, SLH 2015. Act 204, SLH 2015 also has several key components:

1. Created definition of on-island "local contact" to ensure that visitors have someone to contact for emergencies and other needs;
2. Created definition of transient accommodations broker; and



3. Required compliance and notice requirements as they relate to local contact, advertisement, and transient accommodations brokers.

HRS 237D-1:

"Transient accommodations broker" means any person or entity, including but not limited to persons who operate online websites, online travel agencies, or online booking agencies, that offers, lists, advertises, or accepts reservations or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans.

**We have always understood that real estate licensees that manage short term rentals would be subject to Act 204, SLH 2015. However, as this issue continues to evolve, we should be mindful that our real estate licensees are on a different playing field and should not be subject to additional regulatory requirements.**

Our members are independent contractors who are required to successfully complete 60 hours of pre-licensing courses, pass the state exam, and continue with education maintenance of 20 hours every 2 years. Actions of real estate licensees are set on a higher a high standard in such a way that a real estate licensee could be sanctioned if one aids and abets an unlicensed person or activity while acting in one's professional capacity.

HAR understands the importance of ensuring that the State is able to collect the appropriate amount of taxes owed by all property owners. As REALTORS®, we often interact with property owners, potential property owners, and fellow real estate professionals on ensuring that proper disclosures are made and guidance is provided in various aspects of the real estate transaction.

**HAR believes this is a complex issue of not only tax collection but an issue that blends into real estate licensing laws. As such, we respectfully suggest that the Committees consider creating an exemption for real estate professionals licensed under HRS 467 who are already regulated by statutes and rules.**

**We should not automatically be subject under the definition of transient accommodations broker and to also be obligated to pay a surcharge solely for acting as a real estate licensee.**

Mahalo for the opportunity to testify.

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# A BILL FOR AN ACT

RELATING TO TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that, under certain circumstances, allowing a private person to act as a tax collection agent is likely to ease the burden of collecting taxes. Section 237-9(e), Hawaii Revised Statutes, allows a person engaged in network marketing, multi-level marketing, or other similar business to enter into an agreement with the department of taxation to act as a tax collection agent on behalf of its direct sellers. The legislature finds that similarly allowing a transient accommodations broker to act as a tax collection agent on behalf of providers of transient accommodations that utilize the services of the transient accommodations broker may facilitate the collection of transient accommodations taxes and general excise taxes.

The purpose of this Act is to require a transient accommodations broker to register as a tax collection agent with respect to transient accommodations taxes and general excise taxes for its operators and plan managers in a manner that recognizes the dynamic changes occurring in the transient accommodations sector. This Act is not intended to preempt or otherwise limit the authority of the counties

to adopt, monitor, and enforce local land use regulations, nor is this Act intended to transfer the authority to monitor and enforce such regulations away from the counties.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Transient accommodations broker as tax collection agent. (a) The director of taxation shall require a large transient accommodations broker, and may allow all other transient accommodations brokers, to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including any violation of this chapter or rules adopted pursuant thereto, violation of any prior tax collection agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

Execution of a tax collection agreement shall not be a requirement for registration as a transient accommodations broker tax collection agent.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker



submits to the director a completed and signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department. The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection agent shall be issued separate licenses under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. A registered transient accommodations broker tax collection agent shall file with the department monthly or other periodic returns as required by section 237-30. The required reporting information shall include gross transient accommodations rentals and exemptions, and taxable income from the registered transient accommodations broker tax collection agent's business activity.

A real estate salesperson or broker is exempt from this section unless the real estate salesperson or broker registers as a transient accommodations broker tax collection agent.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in

subsection (h); provided that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State that are arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall be deemed licensed under this chapter; provided that the licensure shall apply solely to the business activity conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h). For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(d) Under this section, a registered transient accommodations broker tax collection agent shall assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h).

(e) A transient accommodations broker tax collection agent shall collect taxes imposed by this chapter on behalf of operators and plan managers, but if the agent does not report or pay the taxes due, then

the agent shall be personally liable for the taxes due, together with penalties and interest as provided by law.

(f) All returns and other information provided by a registered transient accommodations broker tax collection agent, including the application for registration as a transient accommodations broker tax collection agent or any tax collection agreement, shall be confidential, and disclosure thereof shall be prohibited as provided in section 237-34; provided that:

(1) No disclosure of returns or information provided by the transient accommodations broker tax collection agent with respect to its operators and plan managers shall be made pursuant to section 237-34(b)(9), (10), or (11); and

(2) All returns and the names and addresses provided by a registered transient accommodations broker tax collection agent shall be disclosed to a duly authorized county tax official for the limited purpose of real property tax administration.

(g) A registered transient accommodations broker tax collection agent shall notify all of its operators and plan managers in the State that it has been designated to collect, report, and pay over the tax imposed by this chapter on their behalf.

The director may require the registered transient accommodations broker tax collection agent, as a condition of obtaining a license, to furnish with an annual return, a list including the federal tax

identification number of all operators and plan managers for the taxable year to whom the transient accommodations broker tax collection agent has provided information returns required under the Internal Revenue Code, and any other information that is relevant to ensure proper payment of taxes under title 14.

A registered transient accommodations broker tax collection agent shall provide the names or addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager.

(h) The registration provided for under this section shall be effective until canceled in writing.

A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and each of its operators and plan managers furnishing transient accommodations in the State no later than ninety days prior to the effective date of cancellation.

The director may cancel a transient accommodations broker tax collection agent's registration under this section for any cause authorized by law, including any violation of this chapter or rules adopted pursuant thereto, or for violation of any applicable tax collection agreement, by delivering written notice of cancellation to the transient accommodations broker tax collection agent no later than ninety days prior to the effective date of cancellation.

(i) All registered transient accommodations broker tax collection agents shall:



- (1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent 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 transient accommodations broker; and
- (2) Require the operator or plan manager to attest that the subject property is in compliance with applicable land use laws by using the following language: "By accepting the Terms of Service, I agree and attest that I have reviewed all applicable laws and regulations and that my listing is in compliance."

(j) Nothing contained in this section shall limit the authority of the department under section 231-7 to conduct audits, investigations, and hearings, and to issue subpoenas. This shall include the authority to obtain transaction-level data for specific transactions from a transient accommodations broker tax collection agent.

(k) In addition to all other reporting requirements under title 14, each transient accommodations broker tax collection agent shall report annually to the director on an aggregate basis:

- (1) The total number of operators and plan managers by county on whose behalf the transient accommodations

broker tax collection agent collected and remitted taxes imposed by this chapter; and

(2) The total amount of taxes imposed, collected, and remitted under this chapter by the county.

(1) For the purposes of this section:

"Large transient accommodations broker" has the same meaning as in section 237D-1.

"Operator" has the same meaning as in section 237D-1.

"Plan manager" has the same meaning as in section 237D-1.

"Transient accommodations broker" has the same meaning as in section 237D-1."

SECTION 3. Chapter 237D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§237D-A Transient accommodations broker as tax collection agent. (a) The director shall require a large transient accommodations broker, and may allow all other transient accommodations brokers, to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including any violation of this chapter or rules adopted pursuant thereto, violation of any prior

tax collection agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

Execution of a tax collection agreement shall not be a requirement for registration as a transient accommodations broker tax collection agent.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker submits to the director a completed and signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department. The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection agent shall be issued separate certificates of registration under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. A registered transient accommodations broker tax collection agent shall file with the department monthly or other periodic returns as required by section 237D-6, reporting information including gross rentals or gross rental proceeds, exemptions or deductions, taxable proceeds, and taxes, each separated by taxation district.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in subsection (h); provided that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall be deemed registered under this chapter; provided that the registration shall apply solely to the business activity conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h). For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(d) Under this section, a registered transient accommodations broker tax collection agent shall assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers with respect to their business activities conducted directly through the registered transient accommodations broker tax collection



agent from the date of registration until the registration is canceled as provided in subsection (h).

(e) A registered transient accommodations broker tax collection agent collects taxes imposed by this chapter on behalf of operators and plan managers, but if the agent does not report or pay the taxes due, then the agent shall be personally liable for the taxes due and penalties and interest as provided by law.

(f) All returns and other information provided by a registered transient accommodations broker tax collection agent, including the application for registration as a transient accommodations broker tax collection agent or any tax collection agreement, shall be confidential, and disclosure thereof shall be prohibited as provided in section 237D-13; provided that:

- (1) No disclosure of returns or information provided by the transient accommodations broker tax collection agent with respect to its operators and plan managers shall be made pursuant to section 237D-13(a)(9), (10), or (11); and
- (2) All returns and the names and addresses provided by a registered transient accommodations broker tax collection agent shall be disclosed to a duly authorized county tax official for the limited purpose of real property tax administration.

(g) A registered transient accommodations broker tax collection agent shall notify all of its operators and plan managers in the State

that it has been designated to collect, report, and pay over the tax imposed by this chapter on their behalf.

The director may require the transient accommodations broker tax collection agent, as a condition of obtaining a license, to furnish with an annual return, a list including the federal tax identification number of all operators and plan managers for the taxable year to whom the transient accommodations broker tax collection agent has provided information returns required under the Internal Revenue Code, and any other information that is relevant to ensure proper payment of taxes under title 14.

A transient accommodations broker tax collection agent shall provide the names or addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager.

(h) The registration provided for under this section shall be effective until canceled in writing.

A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and each of its operators and plan managers furnishing transient accommodations in the State no later than ninety days prior to the effective date of cancellation.

The director may cancel a registered transient accommodations broker tax collection agent's registration under this section for any cause authorized by law, including but not limited to any violation of this chapter or rules adopted pursuant thereto, or for violation of

any applicable tax collection agreement, by delivering written notice of cancellation to the transient accommodations broker tax collection agent no later than ninety days prior to the effective date of cancellation.

(i) All registered transient accommodations broker tax collection agents shall:

- (1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent 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 transient accommodations broker; and
- (2) Require the operator or plan manager to attest that the subject property is in compliance with applicable land use laws by using the following language: "By accepting the Terms of Service, I agree and attest that I have reviewed all applicable laws and regulations and that my listing is in compliance."

(j) Nothing contained in this section shall limit the authority of the department under section 231-7 to conduct audits, investigations, and hearings, and to issue subpoenas. This shall include the authority to obtain transaction-level data for specific transactions from a transient accommodations broker tax collection agent.

(k) In addition to all other reporting requirements under title 14, each transient accommodations broker tax collection agent shall report annually to the director on an aggregate basis:

- (1) The total number of operators and plan managers by county on whose behalf the transient accommodations broker tax collection agent collected and remitted taxes imposed by this chapter; and
- (2) The total amount of taxes imposed, collected, and remitted under this chapter.

(1) A real estate salesperson or broker is exempt from this section unless the real estate salesperson or broker registers as a transient accommodations broker tax collection agent.

§237D-B Transient accommodations broker; surcharge tax; imposition. (a) There is levied and shall be assessed and collected on each registered transient accommodations broker a surcharge tax of \_\_\_\_\_ per cent of the **registered** transient accommodations broker's gross proceeds that are derived from the rental or rental proceeds realized by the **registered** transient accommodations broker's operators and plan managers for the furnishing of transient accommodations.

(b) Every registered transient accommodations broker shall pay to the State the surcharge tax imposed by subsection (a), as provided in this chapter.



(c) All surcharge tax revenues collected under this section shall be deposited into the rental housing revolving fund established under section 201H-202."

SECTION 4. Section 237D-1, Hawaii Revised Statutes, is ~~amended by adding a new definition to be appropriately inserted and to read~~ as follows:

"Local contact" means an individual residing on the same island as the transient accommodation or resort time share vacation unit or an entity with a place of business and at least one employee, officer, partner, member, or other person working on behalf of the company who is residing on the same island as the transient accommodation or resort time share vacation unit, and provided that this does not apply to real estate brokers and real estate salespersons.

"Large transient accommodations broker" means a transient accommodations broker that offers, lists, advertises, or accepts reservations or collects whole or partial payment for at least three thousand transient accommodations or resort time share vacation interests, units, or plans within the State.

"Real estate brokers" has the same meaning as in section 467D-1.

"Real estate salespersons" has the same meaning as in section 467D-1."

SECTION 5. Section 237D-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

(1) The registration identification number or an electronic link to the registration identification number of ~~the~~ either:

(A) The operator or plan manager issued pursuant to this section; [and] or

(B) The transient accommodations broker tax collection agent registered under section 237D- , if applicable; and

(2) The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit."

SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Revenues collected under this chapter shall be distributed in the following priority, with the excess revenues to be deposited into the general fund:

(1) \$1,500,000 shall be allocated to the Turtle Bay conservation easement special fund beginning July 1, 2015, for the reimbursement to the state general fund

of debt service on reimbursable general obligation bonds, including ongoing expenses related to the issuance of the bonds, the proceeds of which were used to acquire the conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources important to the State, until the bonds are fully amortized;

- (2) \$26,500,000 shall be allocated to the convention center enterprise special fund established under section 201B-8;
- (3) \$82,000,000 shall be allocated to the tourism special fund established under section 201B-11; provided that:
  - (A) Beginning on July 1, 2012, and ending on June 30, 2015, \$2,000,000 shall be expended from the tourism special fund for development and implementation of initiatives to take advantage of expanded visa programs and increased travel opportunities for international visitors to Hawaii;
  - (B) Of the \$82,000,000 allocated:
    - (i) \$1,000,000 shall be allocated for the operation of a Hawaiian center and the

museum of Hawaiian music and dance at the  
Hawaii convention center; and

(ii) 0.5 per cent of the \$82,000,000 shall be  
transferred to a sub-account in the tourism  
special fund to provide funding for a safety  
and security budget, in accordance with the  
Hawaii tourism strategic plan 2005-2015; and

(C) Of the revenues remaining in the tourism special  
fund after revenues have been deposited as  
provided in this paragraph and except for any sum  
authorized by the legislature for expenditure  
from revenues subject to this paragraph,  
beginning July 1, 2007, funds shall be deposited  
into the tourism emergency special fund,  
established in section 201B-10, in a manner  
sufficient to maintain a fund balance of  
\$5,000,000 in the tourism emergency special fund;

(4) \$103,000,000 for fiscal year 2014-2015, \$103,000,000  
for fiscal year 2015-2016, \$103,000,000 for fiscal  
year 2016-2017, and \$93,000,000 for each fiscal year  
thereafter shall be allocated as follows: Kauai  
county shall receive 14.5 per cent, Hawaii county  
shall receive 18.6 per cent, city and county of  
Honolulu shall receive 44.1 per cent, and Maui county



shall receive 22.8 per cent; provided that commencing with fiscal year 2018-2019, a sum that represents the difference between a county public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the county public employer's contributions into that trust fund shall be retained by the state director of finance and deposited to the credit of the county public employer's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42, if the respective county fails to remit the total amount of the county's required annual contributions, as required under section 87A-43; ~~and~~

(5) \$3,000,000 shall be allocated to the special land and development fund established under section 171-19; provided that the allocation shall be expended in accordance with the Hawaii tourism authority strategic plan for:

- (A) The protection, preservation, maintenance, and enhancement of natural resources, including beaches, important to the visitor industry;
  - (B) Planning, construction, and repair of facilities;
- and

(C) Operation and maintenance costs of public lands, including beaches, connected with enhancing the visitor experience[-]; and

(6) \$4,000,000 shall be allocated to the counties for compliance and enforcement of county ordinances regulating transient vacation rentals as follows: \$1,000,000 for fiscal year 2017-2018 to Kauai county, \$1,000,000 for fiscal year 2017-2018 to Maui county, \$1,000,000 for fiscal year 2017-2018 to Hawaii county, and \$1,000,000 for fiscal year 2017-2018 to the city and county of Honolulu.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.

As used in this subsection, "fiscal year" means the twelve-month period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year."

SECTION 7. A transient accommodations broker shall remain subject to the conditions of Act 204, Session Laws of Hawaii 2015, unless the transient accommodations broker enters into a tax collection agreement with the director of taxation as provided for in sections 2 and 3 of this Act.

SECTION 8. By January 1, 2018, the director of taxation shall make available to transient accommodations brokers a form of

application for registration as a transient accommodations broker tax collection agent under the new section of chapter 237, Hawaii Revised Statutes, added by section 2 of this Act, and under the new section 237D-A of chapter 237D, Hawaii Revised Statutes, added by section 3 of this Act.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2117, and shall apply to taxable years beginning after December 31, 2017, and:

- (1) Shall be repealed on December 31, 2022;
- (2) Shall not apply to taxable years beginning after December 31, 2022; and
- (3) Section 237D-4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

**Report Title:**

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

**Description:**

Requires large transient accommodations brokers and permits all other transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services. Ensures that the subject property is in compliance with applicable land use laws. Allocates \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals. Creates a surcharge tax on transient accommodations brokers. Sunsets on 12/31/2022. (HB1471 HD3)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*