

HB 2009 HD 1

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| Measure Title: | RELATING TO TAXATION. |
| Report Title: | Transient Accommodations Tax; Accessory Dwelling Unit; Property Types; Leases |
| Description: | Clarifies the property types that may be used as transient accommodations and applicable lease terms for purposes of the transient accommodations tax. (HB2009 HD1) |
| Companion: | SB2698 |
| Package: | None |
| Current Referral: | HOU, WAM |
| Introducer(s): | ONISHI, CACHOLA, FUKUMOTO, Ward |

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To: The Honorable Will Espero, Chair
and Members of the Senate Committee on Housing

Date: Tuesday, March 20, 2018
Time: 3:00 P.M.
Place: Conference Room 225, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2009, H.D. 1, Relating to Taxation

The Department of Taxation (Department) offers the following comments on H.B. 2009, H.D. 1, for the Committee's consideration.

H.B. 2009, H.D. 1, amends the definition of "transient accommodations" in Hawaii Revised Statutes (HRS) section 237D-1 by (1) clarifying that accessory dwelling units are included in the definition and (2) specifying that if a room or unit is not in one of the listed types of property (hotel, motel, condominium, dwelling unit, etc.), it may be in any other place where lodgings are furnished to transients, as opposed to requiring the room or unit to be in a place where lodgings are *regularly* furnished to transients. A conforming amendment to the definition of "lease" in HRS section 237D-1 is also made.

The definitions of "transient accommodations" and "lease" in HRS section 237D-1 were amended by Act 181, Session Laws of Hawaii (2017), which is effective on January 1, 2019. Sections 2 and 4 of this bill amend the current version of HRS section 237D-1 (unaffected by Act 181) and Sections 3 and 5 of this bill amend the version of HRS section 237D-1 that includes the changes made by Act 181. According to Section 7 of this bill, the bill is effective upon approval, but Sections 3 and 5 will be effective on January 1, 2019.

The Department notes that the current definition of transient accommodations is already broad enough to include accessory dwelling units; this bill will merely clarify that position. Accordingly, the Department will be able to administer this bill by the current effective dates.

Thank you for the opportunity to provide comments.



HB2009 HD1
RELATING TO TAXATION
Senate Committee on Housing

March 20, 2018

3:00 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2009 HD1, which seeks to expand the definition of transient accommodations for tax purposes. Given the impact of unlawful transient vacation rentals on housing opportunities for Native Hawaiians and other Hawai'i residents, OHA respectfully suggests that any updated taxation requirements for vacation rentals also seek to improve enforcement of county land use regulations.

Unfortunately, the unaddressed proliferation of illegal vacation rentals may exacerbate the rise in Hawai'i's rental housing costs -- which are already beyond what many Hawai'i residents and Native Hawaiians are able to afford -- and has directly removed and continues to remove much-needed housing units from the residential rental market. The 2016 Hawai'i Housing Planning Study estimates that there are now 28,397 non-commercial vacation rentals, located in nearly all communities in Hawai'i;¹ with much if not a majority of these rentals likely being illegal. Not surprisingly, the proliferation of such units, which generate nearly 3.5 times more income for property owners than the average long-term residential rental unit,² has correlated with substantially increased housing costs throughout the islands: over the past several years. For example, Honolulu in particular has seen rapid rates of increase in average monthly rent and average daily rent over the past several years; during this time, the number of vacation rentals increased by 34% per year.³ In addition to raising the costs of available residential rental units, the proliferation of illegal vacation rentals also represents a direct loss of housing units from the long-term residential rental market.⁴

¹ There are an estimated 45,075 total vacation rental units measured by the study. The study estimates that at least 37% of these rentals are 'commercial' rentals, or resort condominium and condominium hotel properties which are legally permitted commercial operations. As such, the study estimates that 28,397 units are non-commercial, i.e. unlawful transient vacation rentals. SMS, HAWAII HOUSING PLANNING STUDY, at 58 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf.

² See *id.*, at 55.

³ Honolulu's average monthly rent growth rate from 2010-2015 was 26.1%, and the six-year growth rate of average daily rent was 47%. SMS, THE IMPACT OF VACATION RENTAL UNITS IN HAWAII 61 (2016), available at <http://www.hawaiitourismauthority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>.

The number of vacation rentals increased by 34% per year between 2005 and 2015. *Id.* at 3.

⁴ Further investigation found that between 2011 and 2014, units held for seasonal use and not available for long term rent increased by 12%. See *id.* at 3.

Clearly, the growing use of our limited housing supply for illegal transient vacation rental purposes will only continue to exacerbate our housing crisis. Without more meaningful regulatory and enforcement mechanisms, there is nothing to stop the negative impacts of illegal vacation rentals on housing opportunities for Native Hawaiians and other local residents. In contrast, each and every illegal vacation rental unit that is returned to long-term residential use is one more unit that can help to meet our existing and growing housing demand.⁵ **Accordingly, OHA has advocated for legislation that will improve regulatory and enforcement approaches that can systemically curb and reverse the impact that illegal vacation rentals continue to have on residential housing opportunities in Hawai‘i.**

Notably, research shows that vacation rental activity in the State generally is not likely to provide meaningful and long-term economic benefits to Hawai‘i or its residents, including Native Hawaiians. **Data has shown that 70% of properties listed as vacation rentals in Hawai‘i are owned by out-of-state property owners who do not reside in the islands.**⁶ Native Hawaiians in particular are less likely to benefit directly from a transient vacation rental operation: with Native Hawaiian homeownership rates lower than the state average, they are less likely to own second or additional homes that could be rented as vacation units.⁷ Native Hawaiians also often live in overcrowded households,⁸ without the extra rooms needed to operate an owner-occupied vacation rental. As such, while some Hawai‘i residents may be able to earn extra income from the use of their property as a vacation rental, vacation rental operations appear to primarily benefit nonresident property owners and real estate speculators – who may also seek to buy out any vacation rentals operated by local residents, now and in the future.

In addition, other jurisdictions have found that any economic benefits gained from permitted short-term vacation rental operations are far outweighed by the larger social and economic costs of removing long term rentals from the housing market. **For example, an economic analysis by the City of San Francisco found a negative economic impact of \$300,000 for each housing unit used as a vacation rental, negating and exceeding any purported economic benefits from visitor spending, hotel tax, and associated revenues.**⁹ Again, the short-term benefits of vacation rental units to some property owners, including

⁵ See generally SMS, *supra* note 1.

⁶ Notably, the Hawai‘i Tourism Authority report found that 45,075 total properties are available for short term vacation rentals, with between 21,295 and 23,002 as non-commercial vacation rental units advertised in 2016. 70% of these properties are offered by out-of-state property owners. SMS, *supra* note 3, at 5-6.

⁷ For non-DHHL properties, the Native Hawaiian homeownership rate is 38.9%, 18.3 percentage points below the statewide rate of 57.2%. See U.S. Census Bureau. (2017). American Community Survey (ACS) 1-year Estimates: 2016. HHL: Homestead Services Division. (01/24/17) Commission submittal.

⁸ 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals, and 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. SMS, *supra* note 1, at 70.

⁹ See CITY OF SAN FRANCISCO, OFFICE OF THE CONTROLLER, AMENDING THE REGULATION OF SHORT-TERM RESIDENTIAL RENTALS: ECONOMIC IMPACT REPORT, May 2015, available at http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458-150295_economic_impact_final.pdf?documentid=6457.

non-resident property owners and corporate vacation rental operators, are likely to be substantially outweighed by the fiscal impacts on Honolulu and its residents from increased housing costs, increased real estate speculation, and the need for more social services and housing subsidies. **Again, OHA strongly believes that regulatory and enforcement mechanisms that decrease the number of illegal vacation rental units operating in Hawai'i will best benefit Native Hawaiians and all Hawai'i residents.**

In light of the above, OHA respectfully recommends that the Committee consider and support the robust enforcement framework proposed in other measures pertaining to illegal transient vacation rentals, such as SB2963 SD1. This latter measure includes mandatory compliance monitoring and reporting requirements for transient vacation rental brokers who wish to act as tax collection agents; a requirement that brokers remove listings for illegal vacation rentals; and the disgorgement of profits derived from illegal vacation rental activities, as well as other strict penalties for noncompliance by both brokers and operators. **Such provisions will appropriately hold those most responsible for our transient vacation rental problem directly accountable for their actions, and subject their illegal activity to strict penalties that reflect the magnitude of our growing housing crisis.**

Mahalo nui for the opportunity to testify on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: TRANSIENT ACCOMMODATIONS, Include Accessory Dwelling Units in Scope

BILL NUMBER: HB 2009 HD1; SB 2698 (Identical)

INTRODUCED BY: House Committee on Tourism

EXECUTIVE SUMMARY: Adds accessory dwelling units to lodging units eligible for classification as transient accommodations and removes the requirement that they be regularly furnished to transients. The former does not seem necessary, and the latter may have unintended consequences by expanding the scope of the tax to non-business transactions.

SYNOPSIS: Amends section 237D-1, HRS, by adding a new definition of accessory dwelling unit.

Amends the definition of “transient accommodations” to include accessory dwelling units. Also deletes the word “regularly” from the catchall definition, “or other place in which lodgings are regularly furnished to transients.”

EFFECTIVE DATE: This Act shall take effect upon its approval; provided that sections 3 and 5 shall take effect on January 1, 2019.

STAFF COMMENTS: This bill appears to be an attempt to clear up the law by adding accessory dwelling units as eligible for transient accommodation status. Existing law appears clear, however, that such units are eligible.

This bill also deletes the word “regularly” from the definition, “or other place in which lodgings are regularly furnished to transients.” This may be problematic because that TAT is designed to be a business privilege tax, and an isolated instance of letting out a spare room or vacation home may trigger tax liability even though the taxpayer is not running a business. This might not be so much of a problem with the TAT on hotels, because the tax is based on consideration received, and a gratuitous accommodation wouldn’t be taxed; but it might be an issue if the unit is a timeshare.

Digested 2/21/2018

HB-2009-HD-1

Submitted on: 3/16/2018 9:53:05 AM

Testimony for HOU on 3/20/2018 3:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| SharLyn Foo | Individual | Oppose | No |

Comments:

I hope this is not really being considered. This is not how we deal with our housing shortage. We can not control vacation rentals as it is. I strongly oppose this measure