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**RECEIVED**  
**Date & Time**  
Feb 12, 2018, 9:20 am

**STATE OF HAWAII  
DEPARTMENT OF TAXATION**

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To: The Honorable Richard H.K. Onishi, Chair  
and Members of the House Committee on Tourism

Date: Tuesday, February 13, 2018  
Time: 9:00 A.M.  
Place: Conference Room 429, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 2009, Relating to Taxation

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

H.B. 2009 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 lodging are furnished to transients, as opposed to requiring the room or unit to be in a place where lodgings are *regularly* furnished to transients.

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

First, the Department notes that the current definition of transient accommodations is already broad enough to include accessory dwelling units. Accordingly, this bill will merely clarify that position.

Second, the Department notes that if the Committee decides to advance this bill, similar amendments should be made to the definition of "lease" in HRS section 237D-1 for consistency.

Thank you for the opportunity to provide comments.

**LATE**

**RECEIVED  
Date & Time**

Feb 13, 2018, 8:09 am



**HB2009**  
**RELATING TO TAXATION**  
House Committee on Tourism

February 13, 2018

9:00 a.m.

Room 429

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2009, 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.

**As home prices, rental prices, and homelessness continue to increase, and as O'ahu anticipates additional population growth and an associated demand for more housing over the next decade,<sup>1</sup> land-use planning that ensures housing affordability and availability is more critical now than ever before.** As the legislature recognizes, Hawai'i is in the midst of an affordable housing crisis: recent research indicates a need for 65,000 more housing units by 2025, with half of this demand for units at or below 60% of the Area Median Income (AMI);<sup>2</sup> only 11 percent of this demand is for housing units at or above 140% AMI, or for units that do not meet the State's current definition of "affordable housing."<sup>3</sup> **With 48% of households in the State already unable to afford basic household necessities including housing, food, transportation, health care, and child care,<sup>4</sup> the lack of affordable housing and rising housing costs require bold and aggressive policies that meaningfully prioritize the housing needs of local residents.**

**Native Hawaiians are particularly disadvantaged by land uses that contribute to our residential housing challenges, including increased rental housing costs and shortages in our rental housing supply.** Native Hawaiians are less likely to own a home and, therefore, disproportionately rely on the rental housing market.<sup>5</sup> Native Hawaiian

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<sup>1</sup>See SMS, HAWAII' I HOUSING PLANNING STUDY, at 34 (2016), available at [https://dbedt.hawaii.gov/hhfdc/files/2017/03/State\\_HHPS2016\\_Report\\_031317\\_final.pdf](https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf)

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 34.

<sup>4</sup> ALOHA UNITED WAY, ALICE: A STUDY OF FINANCIAL HARDSHIP IN HAWAII' I (2017)

<sup>5</sup> See OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN HOMEOWNERSHIP HO'OKAHUA WAIWAI FACT SHEET

VOL.2016, No. 1, page 3, available at

<https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/NH-Homeownership-Fact-Sheet-2016.pdf> Sheet-2016.pdf. This figure includes 8,329 DHHL residential lease "owner-occupied"

property units. DHHL ANNUAL REPORT 2014, at 47, available at

<http://dhhl.hawaii.gov/wpcontent/uploads/2011/11/DHHL-Annual-Report-2014-Web.pdf>. For non-DHHL

households are also much more likely to be “doubled up,” with multi-generational or unrelated individuals living together in single households,<sup>6</sup> and Native Hawaiian households are more than three times more likely to have a “hidden homeless” family member than all state households.<sup>7</sup> Accordingly, increases in rental housing costs and shortages in affordable residential rental opportunities may have a particularly high impact on the housing and financial security of the Native Hawaiian community.

**Unfortunately, the unaddressed proliferation of illegal vacation rentals may exacerbate the rise in rental housing costs beyond what Honolulu residents and Native Hawaiians are able to afford, and has directly removed 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;<sup>8</sup> much if not a majority of these rentals are likely illegal. Not surprisingly, the proliferation of such units, which generate nearly 3.5 times more income than the average long-term residential rental,<sup>9</sup> has correlated with substantially increased housing costs throughout the islands: over the past several years, Honolulu in particular saw the highest rates of increase in average monthly rent and average daily rent; during this time, the number of vacation rentals increased by 34% per year.<sup>10</sup> 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.<sup>11</sup>

Clearly, allowing the continued illegal use of housing units for vacation rentals will only 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 meet our existing housing demand.<sup>12</sup> **Accordingly, OHA has advocated for legislation that will improve regulatory and enforcement approaches that can**

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properties, the Native Hawaiian homeownership rate is therefore 41.2%, 15.5 percentage points below the statewide rate.

<sup>6</sup> 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than two generations or unrelated individuals. SMS, *supra* note 1, at 70.

<sup>7</sup> 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. *Id.*

<sup>8</sup> 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, *supra* note 1, at 58.

<sup>9</sup> SMS, *supra* note 1, at 55.

<sup>10</sup> Honolulu’s average monthly rent growth rate was 26.1%, and the six-year growth rate of average daily rental rate was 47%. SMS, THE IMPACT OF VACATION RENTAL UNITS IN HAWAI‘I, 2016, at 8, available at <http://www.hawaiitourismauthority.org/default/assets/File/Housing%20and%20Tourism%20113016.pdf>

<sup>11</sup> The Hawai‘i Tourism Authority’s 2016 study found that vacation rentals increased by 34% per year between 2005 and 2015. 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.

<sup>12</sup> See generally SMS, *supra* note 1.

**systemically curb and reverse the impact that illegal vacation rentals continue to have on residential housing opportunities in Hawai'i.**

Accordingly, OHA recommends that, rather than or in addition to the taxation framework contained in this measure, the Committee and the Legislature seek to support the robust enforcement framework provided for in other measures, such as SB2693 SD1. This measure includes mandatory compliance monitoring and reporting requirements for transient vacation rental brokers who wish to act as tax collection agents on behalf of rental operators; the requirement that brokers remove listings for illegal vacation rentals; and the disgorgement of profits derived from illegal vacation rental activity, along with additional 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 them to strict penalties that reflect the magnitude of our growing housing crisis.**

As a final note, 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.<sup>13</sup> 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.<sup>14</sup> As previously mentioned, Native Hawaiians also often live in overcrowded households, 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 a property as a vacation rental, vacation rental operations 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, exceeding any economic benefits from visitor spending, hotel tax, and associated revenues.**<sup>15</sup> Again, the short-term benefits of vacation rental units to some property owners, including non-resident property owners and corporate vacation rental operators, are likely to be substantially

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<sup>13</sup> 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 10, at 5-6.

<sup>14</sup> For non-DHHL properties, the Native Hawaiian homeownership rate is 41.2%, 15.5 percentage points below the statewide rate. See *supra* note 5.

<sup>15</sup> 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/6458150295\\_economic\\_impact\\_final.pdf?documentid=6457](http://sfcontroller.org/sites/default/files/FileCenter/Documents/6458150295_economic_impact_final.pdf?documentid=6457).

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. **Accordingly, 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.**

Mahalo nui for the opportunity to testify on this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Include Accessory Dwelling Units in Scope

BILL NUMBER: HB 2009; SB 2698 (Identical)

INTRODUCED BY: HB by ONISHI, CACHOLA, FUKUMOTO, Ward; SB by WAKAI

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: Upon approval.

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 2/9/2018

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Feb 12, 2018, 9:21 am

**HB-2009**

Submitted on: 2/10/2018 2:27:27 PM

Testimony for TOU on 2/13/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harry Mattson		Support	No

Comments:

Aloha, Chair Onishi, Vice Chair Fukumoto and Members of the House Committee on Tourism

My name is Amanda Pedigo, the Vice President for Government and Corporate Affairs for Expedia, Inc. On behalf of the Expedia family of companies, I am pleased to submit testimony in SUPPORT of HB2009.

HB2009 expands, for tax purposes, the definition of transient accommodations to include accessory dwelling units, single-family homes and multi-family homes. In addition, the bill adds a definition of "accessory dwelling unit" to the statute.


In our view, these amendments validate the Legislature's efforts to recognize the value of the vacation rental business to Hawaii's lodging capacity and are a direct reflection of the diversity of accommodations being made available to visitors.


Amanda Pedigo





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February 13, 2018

**The Honorable Richard Onishi, Chair**  
House Committee on Tourism  
State Capitol, Room 429  
Honolulu, Hawaii 96813

**RECEIVED**  
**Date & Time**  
Feb 12, 2018, 10:27 am

**RE: House Bill 2009, Relating to Taxation**

**HEARING: Tuesday, February 13, 2018, at 9:00 a.m.**

Aloha Chair Onishi, Vice Chair Fukumoto and Members of the Committee,

I am Ken Hiraki, 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 almost 9,500 members. HAR **supports** House Bill 2009, which amends the definition of transient accommodations for tax purposes to expressly include accessory dwelling units, single family homes, and multi-family homes. Adds a definition of accessory dwelling unit.

From a tax fairness perspective, any property being used for transient accommodations should also be responsible for paying the transient accommodations tax. As such, HAR supports this measure in that it provides clarity by adding accessory dwelling units.

Mahalo for the opportunity to testify on this measure.

