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**STATE OF HAWAII**  
**DEPARTMENT OF TAXATION**  
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To: The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 28, 2018  
Time: 11:00 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 2489, S.D. 1, Relating to Taxation

The Department of Taxation (Department) offers the following comments on S.B. 2489, S.D. 1, for the Committee's consideration.

S.B. 2489, S.D. 1, amends the amount of transient accommodations tax (TAT) imposed on resort time share vacation units by amending the base of the tax to an unspecified amount. Currently, the TAT is imposed on resort time share vacation units at the rate of 10.25 percent of the "fair market rental value," which is defined as one-half percent of the gross daily maintenance fees. This bill amends the definition of fair market rental value to an unspecified percent of the gross daily maintenance fees. The bill has a defective effective date of January 1, 2050.

The Department notes that this bill will require form and computer system changes and therefore requests that the bill is amended to apply to tax years beginning after December 31, 2018.

Thank you for the opportunity to provide comments.



TO: Senator Donovan M. Dela Cruz, Chair, Committee  
Senator Gilbert S.C. Keith Agaran, Vice Chair  
Members of the Committee on Ways and Means

FR: AMERICAN RESORT DEVELOPMENT ASSOCIATION (ARDA) –HAWAII  
via Blake Oshiro, Executive Director

RE: SB2489 SD1 Testimony in **opposition**

The American Resort Development Association – Hawaii (ARDA-Hawaii) is the trade association representing the vacation ownership and resort development industries (timeshares) here in Hawaii. Thank you for the opportunity to submit written testimony in **opposition** to the bill that considers amending the transient occupancy tax (TOT) formula.

According to the Hawaii Tourism Authority, in “2016, Hawaii’s timeshare industry generated \$72.2 million in state and county taxes, with real property taxes accounting for 47.4% of the total.” This calculates to about \$38 million in general excise (GET), transient accommodation (TAT), and TOT.

<http://www.hawaiitourismauthority.org/default/assets/File/research/Timeshare/Hawaii%20Timeshare%20Quarterly%20Survey%20Year%20End%202016.pdf>

Timeshare units, when rented on a transient basis by NON-owners, or used for marketing purposes by developers are already subject to the TAT. The TOT applies when timeshare owners, many of whom are Hawaii property owners under the law, use their property interest and stay at the Hawaii timeshare unit. They pay a yearly maintenance fee including real property taxes, GET and other fees. No other owner of real property in Hawaii is required to pay an occupancy tax to stay in real property that they already own. In fact, Hawaii is the only state to assess a TOT on timeshare owners in the United States.

Moreover, the tax rate for timeshare owners has already been increased three times in the last three years by nearly 50% already. In 2015, Act 93 Session Laws of Hawaii, increased the TOT by two percent (2%). The rate was increased from 7.25% to 8.25% in 2016, then another one percent to 9.25% in 2017. In addition, Act 1 of the Special Session of 2017, increased the rate to 10.25% for the next 12 years.

Our concern lies in the potential negative impact any increase could have on our currently healthy tourism economy. The proposed increases in the TOT are ultimately borne by visitors that could potentially create a drag on our healthy, but always competitive, visitor market. Visitors, especially for our industry where there is a trend to

have vacation clubs with choices of destinations, have a multitude of choices for their travel. While the “Hawaii-brand” is always attractive, this must still be balanced and tempered by the associated costs to come and stay here.

Increases to the tax rate will send a potentially negative message to visitors, and especially timeshare owners, that they are being targeted to bear the burden of the increases. Several counties, Kauai, Maui and Hawaii county, have already increased or are nearly about to increase their real property tax rates for hotels and timeshare. Thus, our members already pay their fair share of taxes – TOT, real property, and general excise tax – and any such additional increases create another burden on our visitors here on top of the taxes that they already pay.

Therefore, we respectfully oppose this bill. Thank you.



February 22, 2018

Senator Donovan Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Aragan, Vice Chair  
Senate Ways and Means Committee  
Hawaii State Capitol

Dear Senator Dela Cruz, Senator Keith-Aragan and Members of the Ways and Means Committee:

**Testimony in Opposition to SB2489 SD1**

The Kohala Coast Resort Association (KCRA) opposes SB2489 SD1 which modifies the transient accommodations tax provisions regarding time share units. Specifically, this measure eliminates and makes blank the percentages of gross daily maintenance fees paid by the owner. We oppose this change. Timeshare accommodations serve pre-paid, timeshare owners who therefore have more discretionary income on their visits. Timeshare visitors are also property owners, many of whom also reside in Hawaii, and they pay both real property taxes and maintenance fees. In short, timeshare owners bring substantial and consistent tax dollars to the state. Increasing the price of owning a timeshare in Hawaii may ultimately contribute to a visitor decline, because if taxes continue to rise, owners may decide to vacation elsewhere.

KCRA is a collection of master-planned resorts and hotels situated north of the airport which represents more than 3,500 hotel accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the Island of Hawai`i. KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

We encourage your opposition to this measure.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho  
Administrative Director

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Increase Transient Occupancy Tax

BILL NUMBER: SB 2489 SD1

INTRODUCED BY: Senate Committee on Economic Development, Tourism, and Technology,  
Senate Committee on Commerce, Consumer Protection, & Health

EXECUTIVE SUMMARY: Increases tax on timeshare units by increasing the tax base from half of the gross daily maintenance fee to an unspecified percentage. The definition of the taxable base was adjusted three years ago, and at that time the legislature declined to change the percentage against the Department of Taxation's recommendation. Justification for increasing the percentage now is questionable given that history.

SYNOPSIS: Amends section 237D-1, HRS, by changing the definition of "fair market rental value" on which timeshares are taxed from half the gross daily maintenance fees to an unspecified percentage of the gross daily maintenance fees.

EFFECTIVE DATE: January 1, 2050.

STAFF COMMENTS: Section 1 of the bill recites that the tax formula for levying taxes on timeshare units has not been adjusted since the state began taxing timeshares in 1998, and that the existing tax formula for timeshares significantly underestimates the fair market value of many timeshare units.

Section 237D-1, HRS, contains the definition of "fair market rental value" against which the TAT rate for timeshare units is applied. The definition ends with the sentence, "The taxpayer shall use gross daily maintenance fees, unless the taxpayer proves or the director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods."

The premises behind the bill, as recited above, appear to be questionable. The definition of fair market value of a timeshare unit was indeed adjusted a mere three years ago, by Act 93, SLH 2015. In its consideration of the bill the Conference Committee explained:

Your Committee on Conference finds that a change to the definition of "fair market rental value" is in order because the Department of Taxation has not exercised its discretion to take into account comparable transient accommodation rentals or other appraisal methods. However, the Department of Taxation believes that the scope of the gross daily maintenance fees should be clarified so that there is little question as to what is included and what is not included. The tax is based on the maintenance fees of the time share plan and does not include charges for optional goods or services such as food and beverage service. The purpose of this change is not intended to expand or reduce the scope of fees included in the gross daily maintenance fees, and as such, fees such as food and beverage,

or other recreational rentals, as well as time share units' condominium association assessments should not be included.

Conf. Comm. Rep. No. 75 (on HB 169) (2015). The Conference Committee came to these conclusions in the face of testimony by the Department of Taxation that “One-half of daily maintenance fees in most cases is significantly below the true market value of any accommodation. These two factors result in timeshare TAT liability being significantly lower than the liability imposed on comparable hotel accommodations.” Department of Taxation, Testimony Before Senate Ways and Means Committee on HB 169 (Mar. 31, 2015). The Department recommended that “fair market rental value” be adjusted to 100%, rather than 50%, of average daily maintenance fee.

If the Department indeed had determined that gross daily maintenance fee grossly understated fair market value, why didn't the Department do something about it as contemplated by the last sentence of the definition in section 237D-1, HRS? The Department didn't bother to support its assertion, the Conference Committee apparently didn't believe the Department for that reason, and the formula in the definition was not adjusted. If that decision is now to be reexamined, it should be based on hard evidence, not on wild hand-waving and unsupported assertions.

Digested 2/22/2018



# Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

SB 2489 SD1

**Relating To Taxation**

COMMITTEE ON WAYS AND MEANS

**Wednesday, February 28, 2018, 11:00 am**

**Conference Room 211**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 185 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 is **opposed** to **SB 2489 SD1**, which amends the formula for the amount of transient accommodations tax to be collected from time shares by increasing the base on which time share occupancy is taxed from one-half of the gross daily maintenance fees paid by the owner and are attributable to the time share unit to an unspecified per cent of the gross daily maintenance fees paid by the owner of the time share and are attributable to the time share unit. Takes effect on January 1, 2050.

MHLA believes this Bill will unfairly impact a very specific portion of Hawaii property owners who choose to visit our state on an annual basis and contribute to Hawaii's economy.

Timeshare units when not used by their owners and rented on a transient basis by non-owners or used for marketing purposes by developers are already subject to the exact same TAT rates as hotel units.

Timeshare owners are Hawaii property owners who have made a long-term commitment to Hawaii by owning Hawaii real estate. They and their guests are dependable, consistent, and stable visitors who bring substantial tax dollars to Hawaii and continue to come even during economic downturns. They pay a yearly maintenance fee including real property taxes, GET and other fees. No other owner of real property in Hawaii is required to pay an occupancy tax to stay in real property that they already own.

Thank you for the opportunity to testify.

**The following is a list of hotels (members) represented by Maui Hotel & Lodging Association:**

Andaz Maui  
Aston at the Whaler on Kā'anapali Beach  
Aston Kā'anapali Shores  
Aston Mahana at Kā'anapali  
Best Western Pioneer Inn  
Destination Maui Vacation Rentals  
Destination Residences Hawai'i  
Fairmont Kea Lani, Maui  
Four Seasons Resort Lāna'i  
The Lodge at Koele, a Four Season Resort  
Four Seasons Resort Maui at Wailea  
Grand Wailea Resort  
Hana Kai Maui Resort  
Honua Kai Resort & Spa  
Hotel Molokai  
Hotel Wailea Maui  
Hyatt Regency Maui Resort & Spa  
Hyatt Residence Club, Kā'anapali Beach  
Kā'anapali Beach Club  
Kā'anapali Beach Hotel  
Kahana Falls  
Lāhaina Shores, Classic Resorts  
Mana Kai Maui  
Marriott's Maui Ocean Club  
Maui Beach Hotel  
Maui Coast Hotel  
Maui Condo & Home, LLC  
Maui Eldorado Kā'anapali by Outrigger  
Mauian Hotel, The  
Montage Kapalua Bay  
Napili Kai Beach Resort  
Napili Shores Resort by Outrigger  
Plantation Inn  
Residence Inn Maui Wailea  
Ritz-Carlton Kapalua  
Royal Lāhaina Resort  
Sheraton Maui Resort & Spa  
Travaasa Hana  
Wailea Beach Marriott Resort & Spa  
Wailea Point  
Westin Kā'anapali Ocean Resort Villas  
Westin Maui Resort & Spa  
Westin Nanea Ocean Villas  
Maui Beach Ocean View Rentals, LLC





**Imanaka Asato**  
A LIMITED LIABILITY LAW COMPANY

February 26, 2018

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Members of the Senate Committee on Ways and Means  
Twenty-Ninth Legislature  
Regular Session of 2018

**RE: SB 2489, SD 1 - Relating to Taxation**  
**Hearing date: February 28, 2018 at 11:00 am**

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committee on Ways and Means,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation ("MVWC") in OPPOSITION to SB 2489, SD1-Relating to Taxation. MVWC is a global leader in the timeshare industry with five resort properties in Hawaii.

Timeshare is an important and stabilizing part of the tourism industry throughout Hawaii. Timeshare unit owners have made a long-term commitment to our state by purchasing and owning real property here. Statistics have shown that these owners are consistent and dependable visitors who bring substantial tax dollars to the state and continue to return to the islands even during periods of economic downturn.

In addition, timeshare owners also contribute significantly to public facilities and government services through the payment of state and local taxes, without posing the same tax collection problems that other transient accommodations such as home rentals do. In fact, according to the Hawaii Tourism Authority, in 2016, Hawaii's timeshare industry generated about \$72 million in real property, general excise, transient accommodations and transient occupancy taxes.

MVWC is deeply concerned about the significant negative impacts that SB 2489, SD 1 may have on the timeshare industry. Timeshare owners, many of whom already pay real estate taxes on their timeshare ownership, also pay transient occupancy tax to stay in their Hawaii timeshare units. Increases to the tax rate will add even more to the disproportionately heavy tax burden already being shouldered by timeshare owners.

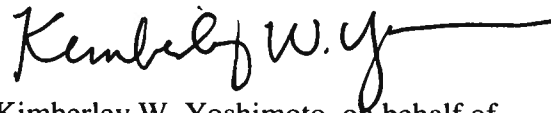
The transient accommodations tax on timeshare has increased from 7.25% to 10.25% since 2015. No state other than Hawaii even charges a transient accommodations tax on

Senate Committee on Ways and Means  
February 26, 2018  
Page Two

timeshare. Increasing the cost of owning a timeshare in Hawaii even more will cause the viability of this important sector of the tourism industry to decline and drive prospective visitors to choose to purchase and vacation elsewhere. For these reasons, MVWC opposes SB 2489, SD1. Thank you for the opportunity to testify.

Sincerely,

Imanaka Asato, LLC

A handwritten signature in black ink that reads "Kimberley W. Yoshimoto". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Kimberley W. Yoshimoto, on behalf of  
Marriott Vacations Worldwide Corporation

# McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.  
ATTORNEY AT LAW

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February 27, 2018

Senator Donovan M. Del Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Members of the Senate Committee on  
Ways and Means  
Twenty-Ninth Legislature  
Regular Session, 2018

Re: S.B. 2489, SD1  
Decision Making on February 28, 2018, 11:00 a.m.  
Conference Room 211

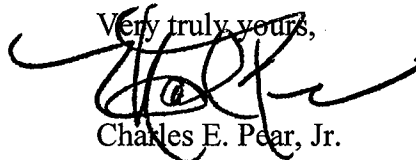
Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying on behalf of Interval Leisure Group, Inc. (ILG). ILG is a global publicly traded company and the parent company of these companies:

- **Interval International**, a leading global provider of membership and leisure services to the vacation industry.
- **Vistana Signature Experiences**, the developer of **Westin** and **Sheraton** vacation ownership resorts in the U.S., Mexico and the Caribbean.
- **Hyatt Vacation Ownership**, developer of various **Hyatt Residence Club** resorts in destinations from Hawaii and California to Florida and the Caribbean.
- **Aqua-Aston Hospitality**, a Honolulu-based company that manages properties under the **Aqua Hotels & Resorts**, **Aston Hotels & Resorts**, **Instinct Hotel Collection**, **Lite Hotels**, and **Maui Condo and Home**.

For the reasons set forth in the testimony of ARDA-Hawaii, ILG strongly opposes S.B. 2489.

Thank you for your kind consideration of the foregoing.

Very truly yours,  
  
Charles E. Pear, Jr.

CEP:kn

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374779.1



**SanHi**

GOVERNMENT STRATEGIES  
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 27, 2018

TO: Senator Donovan M. Dela Cruz  
Chair, Committee on Ways and Means  
*Submitted Via Capitol Website*

RE: **S.B. 2489, S.D. 1 – Relating to Taxation**  
**Hearing Date: Wednesday, February 28, 2018 at 11:00 a.m.**  
**Conference Room: 211**

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Dear Chair Dela Cruz and Members of the Committee on Ways and Means:

We submit this testimony on behalf of Wyndham Vacation Ownership, Inc. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership, Inc. has a substantial presence in Hawaii through its Wyndham Vacation Resorts, WorldMark by Wyndham and Shell Vacations brands.

Wyndham opposes S.B. 2489, SD1 which modifies the transient accommodations tax provisions regarding time share units. Specifically, this measure eliminates and makes blank the percentages of gross daily maintenance fees paid by the owner.

We respectfully submit that increasing the transient accommodations tax on timeshares is ill-advised. Timeshare accommodations serve pre-paid, timeshare owners who travel to Hawaii spend more discretionary income on their visits. Timeshare visitors are also property owners, many of whom also reside and own in Hawaii – they pay both real property taxes and maintenance fees. In short, timeshare owners bring substantial and consistent tax dollars to Hawaii.

Increasing the price of owning a timeshare in Hawaii may ultimately contribute to a visitor decline. If taxes on timeshare owners continue to rise, timeshare owners may ultimately decide to vacation elsewhere. As our economy faces uncertainties because of the changes in federal tax laws, efforts should be made to continue to promote tourism and attract visitors, including timeshare owners to Hawaii.

Finally, we note that there might be issues regarding the overall legality of imposing the transient accommodations tax upon timeshare owners' maintenance fees.

For these reasons, we respectfully oppose this bill and ask that it be held. Thank you very much for the opportunity to submit testimony.