



EXECUTIVE CHAMBERS
HONOLULU

LATE

DAVID Y. IGE
GOVERNOR

Testimony of **Ford Fuchigami**
Administrative Director, Office of the Governor

Before the
Senate Committee on Ways and Means
February 28, 2018
10:30 a.m., Conference Room 211

In consideration of
Senate Bill No. 2699, Proposed SD1
RELATING TO THE TRANSIENT ACCOMMODATIONS TAX

Chair Dela Cruz, Vice Chair Keith-Agaran, and committee members:

Thank you for the opportunity to provide comments in support of **Senate Bill 2699, Proposed SD1, RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.**

The Office of the Governor supports the intent of the measure which is to clarify how the transient accommodations tax (TAT) is calculated and addresses compliance for operators and transient accommodations intermediaries.

Thank you for the opportunity to submit testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2699 Proposed S.D.1, RELATING TO TRANSIENT ACCOMMODATIONS TAX.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 28, 2018 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Cynthia M. Johiro, Deputy Attorney General

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General has concerns about this bill because it may be challenged as violating the federal Stored Communications Act (SCA), 18 U.S.C. § 2701, et seq., that protects the privacy of online communications.

This bill amends the definition of "transient accommodations broker" in section 237D-1, Hawaii Revised Statutes (HRS) to "transient accommodations intermediary." A "transient accommodations intermediary" includes a person or entity that operates or markets transient accommodations through "travel agencies, tour packagers, wholesale travel companies, online websites, online travel agencies, online booking agencies, or booking platforms[.]" (Page 4, lines 1 - 6). The bill, at section 3, page 4, line 18 through page 5, line 2, amends section 237D-4, HRS, to require that each transient accommodations intermediary register the name and physical address of each transient accommodation with the Director of Taxation as a condition precedent to engaging or continuing in the business of furnishing transient accommodations.

The SCA protects communications held by: (1) an electronic communication service (ECS), which is "any service which provides to users thereof the ability to send or receive wire or electronic communications." § 2510(15); or (2) a remote computing service (RCS), which is "the provision to the public of computer storage or processing services by means of an electronic communications system." § 2711(2). If an entity is deemed to be an ECS or RCS, a governmental entity may not compel the ECS and/or RCS to provide stored wire or electronic

communications and records absent a subpoena, warrant, court order, or the authorized consent of the ECS and/or RCS.

In *HomeAway.com, Inc. v. City of Portland*, Civ. No. 17-00091-MO (2017), the City of Portland conceded that the SCA preempted ordinances that required: (1) operators (as that term is defined in the Portland ordinances) to state their names, affiliated companies or brands, addresses, and other information" to facilitate the collection of the short-term rental tax as the Division may require"; and (2) operators to state certain information upon registration of doing business and the prominent display of a Certificate of Authority from the Revenue Division by those seeking occupancy.

To avoid a challenge under the SCA, we suggest that this bill be amended to provide that transient accommodations intermediaries obtain prior written consent from their operators and plan managers to disclose all information required in chapter 237D, HRS, or that the department be required to obtain a subpoena prior to disclosure of the information required in this bill.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET, ROOM 221
HONOLULU, HAWAII 96813
<http://tax.hawaii.gov/>
Phone: (808) 587-1540 / Fax: (808) 587-1560
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 28, 2018
Time: 10:30 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2699, Proposed S.D. 1, Relating to the Transient Accommodations Tax

The Department of Taxation (Department) supports the intent of S.B. 2699, Proposed S.D. 1, and offers the following comments for the Committee's consideration.

Summary of S.B. 2699, Proposed S.D. 1

The following is a summary of key points of the bill, which is effective upon approval and applies to taxable years beginning after December 31, 2018.

Definitions

- "Transient accommodations intermediary" replaces the definition of "transient accommodations broker" and is defined as any person who operates or markets transient accommodations through travel agencies, tour packagers, wholesale travel companies, online websites, online travel agencies, online booking agencies, or booking platforms that advertises or collects payment for transient accommodations or time shares.
- "Gross rental" or "gross rental proceeds" in Hawaii Revised Statutes (HRS) section 237D-1 is amended as including the gross amount collected from the consumer, including booking fees, resort fees, cleaning fees, lodging fees, transient fees, and other fees, but excluding fees for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations.
- "Resort fee" is defined as any mandatory charge imposed by an operator to a transient for the use of the transient accommodation's property, services, or amenities.

Imposition of TAT

- The TAT will be imposed on transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates.

- When transient accommodations are furnished through transient accommodations intermediaries at noncommissioned negotiated contract rates, the TAT will apply to each person with respect to that person's portion of the proceeds.

Registration

- Transient accommodations intermediaries will be required to register with the Department.

Background

Under current law, the imposition of the TAT on transient accommodations sold through a travel agency or tour packager varies depending on whether the transaction was on a commissioned or noncommissioned basis. In Travelocity.com, L.P. v. Director of Taxation, 135 Hawaii 88 (2015), the Hawaii Supreme Court explained that a "commission" is a "fee paid to an agent or employee for a particular transaction, usually as a percentage of the money received by the transaction." Travelocity, 135 Hawaii at 111 (quoting Black's Law Dictionary 327 (10th ed. 2014) (internal quotations omitted). The court further explained that a "noncommissioned rate" is "an amount of money paid to an entity or person other than an agent or an employee." Travelocity, 135 Hawaii at 111. The court clarified that unlike a commissioned transaction, in which a fee is usually paid as a percentage of the income received, in a noncommissioned transaction, a hotel has no means of knowing what the travel agent's mark-up will be. In sum, when a hotel pays a travel agent for a room on a commission basis, the room rate is readily definable, but in a noncommissioned transaction, the hotel has no means of knowing the travel agent's markup and actual room rate. Id.

When transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates, the TAT is imposed solely on the operator on its share of the proceeds. There is no tax imposed on the travel agency's or tour packager's share of proceeds. In comparison, when transient accommodations are furnished through a travel agency or tour packager on a commissioned basis, the TAT is imposed on the gross proceeds of the operator, including the commission paid to the travel agency or tour packager. Similarly, when transient accommodations are sold directly by the operator, the TAT is imposed on the gross proceeds of the operator. Accordingly, the TAT imposed on a unit will differ depending on whether the unit was sold directly by the operator, sold by a travel agent or tour packager on a commissioned basis, or sold by a travel agent or tour packager on a noncommissioned basis.

For example, if a room is sold for \$100 to a guest directly by a hotel, the hotel will owe \$10.25 in TAT (10.25 percent of \$100). Similarly, if a room is sold for \$100 by a travel agency who earns a \$20 commission on the transaction, the hotel will owe \$10.25 in TAT (10.25 percent of \$100). If, however, the same room is sold for \$100 by an online travel company (OTC) who has a noncommissioned agreement with the hotel and keeps \$20 from the transaction, the hotel will owe \$8.20 in TAT (10.25 percent of \$80); the \$20 kept by the OTC is not subject to TAT. These concepts are illustrated in the following table.

Type of Transaction	Amount Paid by Guest	Amount Kept by Travel Agency	Amount Kept by Operator	TAT Base	TAT Due
Direct sale by hotel	\$100	\$0	\$100	\$100	\$10.25
Sold by travel agent on commissioned basis	\$100	\$20	\$80	\$100	\$10.25
Sold by travel agent on noncommissioned basis	\$100	\$20	\$80	\$80	\$8.20

Comments

First, the Department notes that resort fees, also known as amenity fees and facility fees, are fees that are added to the nightly rate of transient accommodations. The components of resort fees vary greatly between transient accommodations, but often include amenities that were previously built into the nightly rate, such as in-room internet access, in-room water and coffee, use of an in-room safe, pool towels, access to pools, access to a fitness center, parking, and housekeeping. This bill will clarify that these fees, if mandatory, are subject to the TAT.

Second, the Department notes that this bill attempts to create parity between commissioned and noncommissioned transactions by imposing the TAT on each person's share of income when transient accommodations are booked through an intermediary at noncommissioned negotiated contract rates. Section 2 of the bill, however, should be amended to clarify that the TAT is imposed on operators in all transactions, not just those in which transient accommodations are furnished at noncommissioned negotiated contract rates. As currently drafted, HRS section 237D-2(b) could be interpreted as making the TAT inapplicable to commissioned transactions. Accordingly, the Department suggests the following language:

Every [~~operator and every~~] transient accommodations intermediary who arranges transient accommodations at noncommissioned negotiated contract rates and every operator shall pay to the State the tax imposed by subsection (a), as provided in this chapter.

Third, because transient accommodations intermediaries will be required to register with the Department under HRS section 237D-4(i), the Department suggests deleting "transient accommodations intermediary" from HRS section 236D-4(a) in Section 3 of the bill.

Fourth, the Department suggests amending HRS section 237D-4(i) to clarify that all intermediaries, not just those who market transient accommodations through a travel agency, who furnish transient accommodations at noncommissioned rates must register to pay the TAT. The Department suggests the following language:

Each transient accommodations intermediary [~~who~~

~~markets transient accommodations through a travel agency~~], as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The ~~[travel agency or tour packager]~~ transient accommodations intermediary shall make a one-time payment of \$15 for each registration, upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the transient accommodations ~~[remarketer or travel agency]~~ intermediary in whose name it is issued.

Fifth, the Department suggests amending the definition of “transient accommodations intermediary” to clarify that an intermediary may be a travel agency, tour packager, wholesale travel company, etc., as opposed to a person who *markets through* a travel agency, tour packager, wholesale travel company, etc. The Department suggests the following language:

"Transient accommodations intermediary" means any person or entity~~[,]~~ that offers, lists, advertises, markets, accepts reservations for, or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans, including but not limited to ~~[persons who operate or market transient accommodations through]~~ travel agencies, tour packagers, wholesale travel companies, online websites, online travel agencies, online booking agencies, ~~[or]~~ and booking platforms~~[, and any other person 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]~~.

Finally, the Department notes that it is able to administer this measure with its current effective date. Thank you for the opportunity to provide comments.



Hawai'i Convention Center
1801 Kalākaua Avenue, Honolulu, Hawai'i 96815
kelepona tel 808 973 2255
kelepa'i fax 808 973 2253
kahua pa'a web hawaii-tourism-authority.org

David Y. Ige
Governor

George D. Szigeti
President and Chief Executive Officer

Statement of
George D. Szigeti
Chief Executive Officer
Hawai'i Tourism Authority
on
SB2699 Proposed SD1
Relating to the Transient Accommodations Tax
Senate Committee on Ways and Means
Wednesday, February 28, 2018
10:30 a.m.
Conference Room 211

LATE

Chair Dela Cruz, Vice-Chair Keith-Agaran and Committee Members:

The Hawai'i Tourism Authority (HTA) **opposes SB2699 Proposed SD1**, which would impose the Transient Accommodations Tax (TAT) on hotel resort fees that are calculated separately from the advertised rate, calculate the TAT based on gross rentals, and require that TAT is collected from operators or transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates.

HTA is opposed to changes to the TAT that would increase the cost for residents and visitors to vacation in the Hawaiian Islands. A direct relationship exists between the number of visitors booking nights in transient accommodations and TAT revenues, which are generated by nights spent in transient accommodations. Last year, Hawai'i's visitor industry supported 204,000 jobs and brought \$1.96 billion in tax revenue. It is important to keep in mind the potential effect of deterring visitors from choosing Hawai'i as a tourist destination, if the cost of booking nights in transient accommodations were increased.

Mahalo for the opportunity to offer this testimony.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Applies Tax to Resort Fees, Attaches Liability to Intermediary

BILL NUMBER: SB 2699, Proposed SD-1

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Imposes the transient accommodations tax on additional hotel resort fees that are calculated separately from the advertised transient accommodation's rate. This appears to be a technical clarification.

Clarifies that the transient accommodations tax shall be calculated based on the gross rental price paid by a visitor. Specifies that the transient accommodations tax is to be collected from operators or transient accommodations intermediaries that collect whole or partial payment for transient accommodations. Trying to expand the tax base in such a manner may have the unintended effect of discouraging those who would like to bring tourists to Hawaii and take care of them here.

SYNOPSIS: Adds a new definition of “resort fee” to section 237D-1, HRS. Resort fee is defined as any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation's property, services, or amenities.

Amends the definition of “gross rental” in section 237D-1, HRS, to explicitly include resort fees.

Also amends the definition of “gross rental” in section 237D-1, HRS, to clarify that it applies to the gross sale or gross charges collected from consumers, including but not limited to booking fees, cleaning fees, lodging fees, transient fees, or any other fees collected, but does not include fees collected for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations.

Changes the definition of “transient accommodations broker” in section 237D-1, HRS, to “transient accommodations intermediary” and defines one as any person or entity, including but not limited to persons who operate or market transient accommodations through wholesale travel companies, online websites, online travel agencies, online booking agencies, or booking platforms, 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.

Also specifies in that definition that when transient accommodations are furnished at noncommissioned negotiated contract rates, the TAT shall apply to each operator and transient accommodations intermediary with respect to that person’s respective portion of the proceeds, and no more.

Amends section 237D-2, HRS, to impose the tax upon every operator or transient accommodations intermediary who arranges transient accommodations at noncommissioned negotiated contract rates.

Amends section 237D-4, HRS, to impose a registration obligation on a transient accommodations intermediary the same as on an operator or plan manager. Also adds a new subsection (i) specifying that each transient accommodations intermediary who markets transient accommodations through a travel agency, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director of taxation.

Makes corresponding changes in nomenclature throughout chapter 237D, HRS.

EFFECTIVE DATE: July 1, 2018.

STAFF COMMENTS: This Proposed SD-1 appears to be a combination of SB 2699 and SB 2615, SD-1.

The amendments relating to “resort fee” appear to be interpretive only. We understand that “resort fee” as so defined is already subject to transient accommodations tax, so these amendments are not substantive but may make the codified law more explicit.

The balance of the bill appears to be a reaction to the Hawai’i Supreme Court’s decision *In re Travelocity.com, L.P.*, 346 P.3d 157 (Haw. 2015). The Travelocity case dealt with hotel rooms provided under a “merchant model.” To illustrate what this model is and what the case held, suppose a hotelier wants to rent out a short-term rental for \$110. An online travel company (OTC) contracts to rent the room for \$100, at which point it becomes the OTC’s obligation to pay the \$100 whether or not the OTC is able to find a tourist to put in the room.

Suppose the OTC is successful in finding a tourist, and OTC charges the tourist \$120 (something the hotelier wouldn’t know and isn’t told).

In this situation, the Department of Taxation assesses the OTC for TAT and GET on the \$120, although the hotelier was paying TAT and GET on the \$100. Our supreme court held that the OTC was not a hotel operator and was not liable for the TAT. The court also held that the OTC was subject to the GET, but that the room was provided at noncommissioned negotiated contract rates, triggering an “income splitting” provision providing that each of the parties involved is to pay the GET on what they keep. Thus, the OTC would pay GET on \$20, which is the spread between the tourist’s price (\$120) and the room rent that was paid to the hotelier (\$100).

The concern that this bill seems to address is that TAT is now being paid on only \$100 when the tourist has parted with \$120 for a hotel room.

Stepping back for a second, consider Attorney General Opinion 65-6, from the days before the TAT even existed. There, the Attorney General considered the taxability of a local travel agent earning money in Hawaii for organizing a tour to the mainland including sending a local tour conductor with the group, and, conversely, a mainland travel agent organizing a tour to Hawaii. The Attorney General held that our GET applied to the local travel agent’s commissions, even if

they were earned partly because of the local tour conductor's services outside Hawaii; and, conversely, that it did not apply to the mainland travel agent's commissions, even if the mainland agent sent a tour conductor here.

The result appeared to be largely practical: if the state attempted to tax an out-of-state travel agent with no presence or only a fleeting presence within Hawaii, difficult federal constitutional questions would be presented.

That problem still has not gone away even with the technological advancements we now have. If the only connection an OTC has with Hawaii is a software platform used by Hawaii hotels and other customers, questions of practicality and constitutionality will be presented. These questions cannot be legislated away. If we attempt to grab and wring dry the travel agents and tour companies that have set up a branch in Hawaii when we can't do the same to travel agents and tour companies that never set foot on our shores, we run the very practical risk of discouraging those who want to take care of their tourist customers in Hawaii while employing local people, and encouraging those who stay offshore, take our tourists' money, and contribute much less to our culture and economy.

As a technical matter, the Committee may wish to consider changing the reference to "transient accommodations remarketer" in the proposed new section 237D-4(i), HRS [page 10, line 11 of the bill], to "transient accommodations intermediary" to make the terminology consistent.

Digested 2/26/2018



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Donovan Dela Cruz, Chair
Committee on Ways and Means
Hawaii State Senate
Hawaii State Capitol

February 28, 2018, 11:00 am, Room 211

REVISED TESTIMONY

Re: S.B. 2996, SD1 – Relating To An Airport Corporation

Dear Chair Dela Cruz and Honorable Committee Members:

On behalf of Airport Concessionaires' Committee I wish to clarify our prior testimony submitted and request for amendment to this bill now before you. My name is Peter Fithian speaking on behalf of the Airport Concessionaires Committee.

Our requested amendment is noted on the attached Exhibit 1 (dated February 27, 2018) which contains hand written changes to our prior requested amendment to you. We respectfully seek an amendment in keeping with attached Exhibit 1 to this testimony with the hand-written changes.

The bill provides for the selection of 4 Board members from each county. The reason for our amendment (attached Exhibit 1) is to allow for the selection of the remaining 5 board members in accordance with the listed disciplines. Added to the list of disciplines is the experience of "non-aviation-airport business" which as a category would include airport concessions among other airport businesses. This is an important discipline that should be listed but is not listed in the current bill. As you know, airport concessions historically have provided 50% to 75% of all airport operating revenues and running a business at

an airport is more complex given all of the additional rules, limitations and security requirements.

We respectfully urge you to support the passage of this bill with the amendment (Exhibit 1) attached to this testimony.

Thank you for allowing us to testify.

27

EXHIBIT 1

Feb 22, 2018 --- RE SB 2996, SD1, Relating to Airport Corporation; Proposed Amendment by Airport Concessionaires Committee.

Note: Added language is underlined. *AND/OR HAND WRITTEN*

Proposed SD 2 Amendment to Section 2 of SB 2996, SD1

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII AIRPORTS CORPORATION

PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter:

"Aeronautics" shall have the same meaning as defined in section 261-1.

"Air navigation facility" shall have the same meaning as defined in section 261-1.

"Aircraft" shall have the same meaning as defined in section 261-1.

"Airport" shall have the same meaning as defined in section 261-1.

"Airport revenue" means all moneys paid into the airport revenue fund pursuant to section 261-5(a).

"Airports corporation" or "corporation" means the Hawaii airports corporation established by this chapter.

EXHIBIT 1

"Chief executive officer" means the chief executive officer of the Hawaii airports corporation.

§ -2 **Airports corporation; establishment; board; members; chief executive officer.** (a) There is established the Hawaii airports corporation to develop and implement management structures, policies, and procedures based on airport industry best practices, to efficiently develop, manage, operate, and maintain the State's airports and aeronautical facilities, and to administer the provisions of chapters 261, 261D, and 262. The corporation shall be a body politic and corporate, and an instrumentality and agency of the State, placed within the department of transportation for administrative purposes only, and, as such, shall enjoy the same sovereign immunity available to the State. The corporation shall not be subject to supervision by the department of transportation or its director. Further, the provisions of sections 26-35(a)(1), 26-35(a)(4), 26-35(a)(5), and 26-35(a)(6) shall not apply to the airports corporation.

(b) The powers of the airports corporation shall be vested in and exercised by a board of directors, which shall consist of nine voting members, who shall be appointed by the governor pursuant to section 26-34; provided that there shall be one member who is a resident of each of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu, ~~one member representing~~

DELETED

~~DELETE~~

~~general airport-concession interests and one member~~
~~representing general aviation interests.~~ All members shall be appointed for terms of four years; provided that the governor shall stagger the initial terms pursuant to section 26-34(a).

Members shall have relevant business and management experience, including experience in one or more of the following disciplines: financial planning, budgeting, hospitality, tourism, commercial development, construction program management, marketing, law, NON-AVIATION - AIRPORT BUSINESS, aviation, or the cultural traditions and practices of Native Hawaiians. It is the intent of the legislature that there shall be, as far as practicable, a wide cross-section of these disciplines represented by the board.

The governor may appoint up to two of the at-large members without regard to the requirement in section 78-1(b) that appointive officers be residents of the State at the time of their appointment; provided that no more than two non-residents shall serve as members of the board at any time.

Notwithstanding subsections 26-34(a) and (b), all members of the board shall continue in office until their respective successors have been appointed and qualified by the senate; provided that no member shall serve more than eight consecutive years.

No board member appointed under this section shall be an officer or employee of the State or a county.

Each board member shall serve without pay and shall be reimbursed for necessary out-of-pocket expenses incurred while attending meetings and otherwise discharging the member's board related responsibilities.



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 2699 PROPOSED SD1

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX

COMMITTEE ON WAYS AND MEANS

Wednesday, February 28, 2018, 10:30 am

Conference Room 211

Dear Chair Dela Cruz, Vice Chair Ketih-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 opposes SB 2699, proposed SD 1 with comments, which imposes the transient accommodations tax on hotel resort fees that are calculated separately from the advertised transient accommodation's rate. Clarifies that the transient accommodations tax shall be calculated based on the gross rental. Specifies that the transient accommodations tax is to be collected from operators or transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates. Applies to taxable years beginning after 12/31/2018.

MHLA believes that changing the language in 237D-1 to add "resort fees" to "gross rental proceeds" is not appropriate as resort fees are for services or products provided to the guest sometimes through a third part vendor. While the proposed SD1 does provide some limitations for transportation and excursions we would like to request that additional fees not related to accommodations be added such as: water activity gear (e.g. snorkeling equipment, stand-up paddle boards); parking.

The resort fee typically includes a bundle of services that would cost more individually if they were not grouped. Hotel surveys have revealed that guests prefer an all-inclusive resort fee rather than being charged for each service used.

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

Testimony of

**Kelvin Bloom
Aqua-Aston Hospitality, LLC**

Before the Senate Committee on Ways and Means

**Wednesday, February 28, 2018; 10:30 a.m.
State Capital, Conference Room 211**

**In Consideration of
Senate Bill 2699 SD1
RELATING TO THE TRANSIENT ACCOMMODATIONS TAX**

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

I am Kelvin Bloom, Manager of Aqua-Aston Hospitality, LLC, which manages many hotels and resorts in the State of Hawaii. Aqua-Aston **opposes** Senate Bill 2699 SD1 which would amend the definition of Gross Rental or Gross Rental Proceeds to impose the transient accommodations tax on resort fees that are calculated separately from the advertised transient accommodation's room rate.

Tourism is the state's largest revenue producer and the largest single source of private capital for our economy, but it is not an infinitely prosperous, infinitely taxable entity. Lower-priced destinations and long-haul airline flights make travel to other locales easier and less expensive. Hawaii must remain competitive in its pricing to protect its value and appeal in the eyes of the traveler.

Currently, the transient accommodation tax is paid by transient guests on the amount an owner or operator of a hotel charges for furnishing transient accommodations (the "Gross Rental" or "Gross Rental Proceeds"). This bill proposes to include within the definition of Gross Rental or Gross Rental Proceeds, any resort fee charged by the owner or operator of the hotel for additional services or amenities provided to the transient guest such as gym facilities, WiFi, shuttle services and so forth. The resort fee is not a part of a guest room or transient accommodation, it is a fee for additional services or amenities. Aqua-Aston understands the desire to raise more revenue without raising taxes on the local constituency, however, imposing an additional tax burden on transient guests by charging a tax on the resort fee will put Hawaii's fragile and highly competitive industry at a disadvantage causing tourism to decline and ultimately offset any hopes of increasing revenue.

KB005-2018

Senate Committee on Ways and Means
Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members
Re: Senate Bill 2699 SD1
Page 2

This year, the transient accommodation tax increased to a double-digit tax of 10.25%. Coupled with the Hawaii general excise tax, a transient guest now pays almost 15% in tax for renting accommodations in Hawaii. Hawaii is already one of the highest taxed leisure and resort destinations in the country. Higher taxes harm the ability of Hawaii to compete for visitors. Visitors will soon begin to choose their destinations more carefully to avoid the burden of high taxes.

Finally, the Uniform System of Accounts for the Lodging Industry (USALI) published by the American Hotel and Lodging Association establishes a uniform responsibility accounting system for the lodging industry. The 11th edition of USALI, the most recent edition, treats resort fees as Miscellaneous Income separate and apart from the three other revenue categories of Room Revenue, Food and Beverage Revenue and Other Operating Revenue. The purpose of reporting resort fees as Miscellaneous Income was to ensure consistent reporting of revenues and consistent calculations of the average daily rate (ADR) and the revenue per available room (RevPAR).

SB 2699 SD1 seeks to impose an additional tax burden on our visitors, who already currently pay approximately 15% in taxes for their accommodations. Let's not make visiting Hawaii a burden for those who are responsible for driving our economy. For the reasons above, I **oppose** SB 2699 SD1. Thank you for the opportunity to testify.

Sincerely,



Kelvin Bloom
Manager

KB:krs



HAWAI'I LODGING & TOURISM
ASSOCIATION

Testimony of

Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

LATE

before the
Committee on Ways and Means

February 28, 2018

Senate Bill 2699 – Proposed SD1: Relating to the Transient Accommodations Tax

Chair Dela Cruz, Vice Chair Keith-Agaran, and committee members:

On behalf of the Hawai'i Lodging & Tourism Association, the state's largest private-sector visitor industry organization with nearly 700 members, thank you for the opportunity to testify on Senate Bill 2699 Proposed SD1, which seeks to apply the transient accommodations tax to hotel resort fees as well as specifies that the transient accommodations tax be collected from operators or transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates.

We appreciate the language that is being proposed regarding closing the TAT loophole on online travel and booking companies who arrange transient accommodations at noncommissioned negotiated rates. However, we would like to voice our **strong opposition** to the imposition of the TAT on resort fees. We oppose this provision for the following reasons:

- The TAT is not applied to the resort fee because this charge is not part of a guest room or transient accommodation. It is for services or products used by guests, such as the use of gym and spa facilities, wifi, shuttle services, and so forth. However, the hotels do collect and remit to the state the general excise tax on these resort fees.
- Many lodging properties have decided to recover some of the costs of guest amenities through the resort fee. This fee customarily includes a bundle of services that would cost more individually if they were not grouped. Hotel surveys have revealed that guests prefer an all-inclusive resort fee rather than being charged for each service used, as was the practice in the past.
- Hotels have been transparent about these resort fees. They are fully disclosed on hotel websites, as well as on online booking engines and at the time of check-in.
- As an industry, we opposed a similar proposal in 2013 and again in 2014. Since then, our industry has continued to experience increased costs of doing business in terms of employee payroll and benefits, construction and maintenance, utilities, and higher taxes.

- The visitor industry, and Hawai‘i’s economy as a whole, have enjoyed six consecutive years of growth, meaning that TAT revenues have grown commensurately and so has the amount of revenue being diverted to the general fund. Not only is additional revenue being generated, but the visitor industry has to finance the City and County of Honolulu’s rail project and is being asked to fund public education. This common practice of the hospitality industry footing the bill for new mandates and to balance the budget with the only overarching justification given that the State needs the money is a dangerous pattern with no end in sight. Last session it was a new increase to the TAT, this year it’s the TAT on resort fees, what will it be next year?
- Legislators promised that the TAT would revert back to 7.75 percent in 2015, but that provision died and we have since been on the watch for ever more increases. In fiscal year 2013, the general fund allocation from the TAT was 41.9%, five years later it ballooned to 52.3% and in fiscal year 2018 it grew to 60.4%.

The visitor industry is the economic driver for our economy. It generates more than 204,000 jobs, and raises \$545 million through the TAT alone, a tax that was just raised at the beginning of the year and is levied solely on the hotel, resort, and timeshare industry.

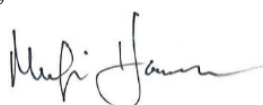
The visitor industry is a fragile and highly competitive industry and we are one of the highest taxed leisure and resort destinations in the country. Adding additional taxes on an already expensive destination only puts us at a disadvantage in the local and global markets.

Rather than continuing to balance the budget on the backs of the hospitality industry, if both legislative chambers came together with the Governor’s concurrence, resolving the tax collection issue with transient vacation rentals would generate the additional revenue you seek.

For these reasons, we oppose the imposition of the TAT on Resort Fees and respectfully ask that you remove this provision from the measure.

Mahalo for the opportunity to offer this testimony.

Sincerely,



Mufi Hannemann
President & CEO



Gregg Nelson
Chairman of the Board



Glenn Vergara
Chairperson Elect



Michael Jokovich
Vice Chairperson



Bonnie Kiyabu
Oahu Chapter Chairperson



Angela Nolan
Maui Chapter Chairperson



Steve Yamarell
Hawai‘i Island Chapter Chairperson



Jim Braman
Kaua‘i Chapter Chairperson

Harris Chan, Area Vice President, Hawaii & French Polynesia, Marriott International
Kelly Sanders, Area General Manager, Marriott Hawaii
Cheryl Williams, General Manager, The Royal Hawaiian Resort
Michael Czarcinski, General Manager, The Westin Moana Surfriider
Fredrick Orr, General Manager, The Sheraton Princess Kaiulani
Tetsuji Yamazaki, General Manager, The Sheraton Maui
Tomo Kuriyama, Deputy General Manager, The Sheraton Waikiki
Rob Robinson, Managing Director, Alohilani Resort
Matthew Grauso, General Manager, Alohilani Resort
Roy Yamamoto, General Manager, Ambassador Hotel
Kurt Kishaba, General Manager, Pearl Hotel Waikiki
Jim Paulon, General Manager Courtyard Marriott Waikiki
Kelly Hoen, Area General Manager, Outrigger Reef Waikiki Beach Resort & Outrigger Waikiki Beach Resort
Revell K. Newton, General Manager, Outrigger Waikiki Beach Resort
Chryssaldo Thomas, Resort Manager, Outrigger Waikiki Beach Resort
Simeon Miranda, General Manager, Embassy Suites by Hilton Waikiki Beach Walk
Dan King, General Manager, Grand Hyatt Kaua`i Resort & Spa
Doug Sears, General Manager, Hyatt Regency Waikiki Beach Resort & Spa
Robin Graf, Vice President of Operations, Castle Resorts & Hotels
Matthew Bailey, President & COO, Aqua-Aston Hospitality
Jeff Caminos, VP Operations, Aqua-Aston Hospitality
Susan Cowan, VP Operations, Aqua-Aston Hospitality
Patrick Kozuma, General Manager, Aston Waikiki Beach Tower
Kaniela Neves, General Manager, Aston at the Waikiki Banyan
Chip Crosby, General Manager, Aston Waikiki Circle
Terry Dowsett, General Manager, Aston at the Executive Center Hotel
Doug Okada, General Manager, Aston Waikiki Sunset
Tim Clark, General Manager, Aqua Aloha Surf Waikiki
Lendy Ma, General Manager, Aqua Ewa Beach Hotel & Aqua White Sands Hotel
Wes Kawakami, General Manager, Ilikai Hotel
Wade Gesteuyala, General Manager, Hampton Inn & Suites by Hilton
Clem Lagundimao, General Manager, Luana Waikiki Hotel & Suites
Ward Almeida, General Manager, Lotus Honolulu at Diamond Head
Alberto Roque, Area General Manager, Pagoda Hotel
Patty Maher, General Manager, Aqua Palma Waikiki
Miho Kamanao-Espiritu, General Manager, Aqua Park Shore Waikiki
Brian Kovaloff, General Manager, Aqua Skyline at Island Colony
Lynette Eastman, General Manager, The Surfjack Hotel & Swim Club
Mark Mrantz, General Manager, Aston Kaanapali Shores
Brian Cox, General Manager, Aston Mahana at Kaanapali
Steven Berger, General Manager, Aston at the Maui Banyan
Greg Peros, General Manager, Aqua Maui Beach Hotel
Dawn Kane, VP, Principal Broker, Maui Condo & Home
Dennis Costa, General Manager, Aston Maui Hill
Lyn Molina, General Manager, Aston at Papakea & Aston Paki Maui
Grant James, General Manager, Aqua Kauai Beach Resort
Lori Morita, General Manager, Aston Islander on the Beach
Kyoko Kimura, Sr. Director Owner Relations, Aqua-Aston Hospitality
Michael Wilding, General Manager, Doubletree by Hilton Alana – Waikiki Beach

The Following is a list of hotels represented by the Hawaii Lodging & Tourism Association:

Aqua-Aston Hospitality, LLC	Aston at the Executive Centre Hotel
Castle Resorts & Hotels	Aston at the Maui Banyan
Colony Capital, LLC	Aston at the Waikiki Banyan
Halekulani Corporation	Aston at The Whaler on Kaanapali Beach
Hawaiian Hotels & Resorts, LLC	Aston Islander on the Beach
Highgate Hotels	Aston Kaanapali Shores
Hilton Grand Vacations	Aston Kona by the Sea
InterContinental Hotels Group	Aston Mahana at Kaanapali
Ko Olina Resort	Aston Maui Hill
Kyo-ya Company LLC	Aston Maui Kaanapali Villas
Kyo-ya Management Company, Ltd.	Aston Shores at Waikoloa
Lucky Hotels U.S.A. Co., Ltd.	Aston Waikiki Beach Hotel
Marriott International, Inc.	Aston Waikiki Beach Tower
Outrigger Enterprises Group	Aston Waikiki Beachside Hotel
Prince Resorts Hawaii, Inc.	Aston Waikiki Circle Hotel
Pulama Lana`i	Aston Waikiki Sunset
Sasada International, LLC	Aston Waikoloa Colony Villas
Aina Nalu Lahaina by Outrigger	Aulani, a Disney Resort & Spa
Airport Honolulu Hotel	Best Western Pioneer Inn
Ala Moana Hotel	Best Western The Plaza Hotel
Alohilani Resort Waikiki Beach	Breakers Hotel
Ambassador Hotel Waikiki	Coconut Waikiki Hotel
Andaz Maui at Wailea Resort	Courtyard by Marriott Kaua'i at Coconut Beach
Aqua Aloha Surf Waikiki	Courtyard by Marriott King Kamehameha's Kona Beach
Aqua Bamboo & Spa	Courtyard by Marriott Waikiki Beach
Aqua Kauai Beach Resort	Courtyard Oahu North Shore
Aqua Oasis	Doubletree by Hilton Alana Waikiki Hotel
Aqua Pacific Monarch	Embassy Suites by Hilton Oahu Kapolei
Aqua Palms Waikiki	Embassy Suites by Hilton Waikiki Beach Walk
Aqua Park Shore Waikiki	Ewa Hotel Waikiki - A Lite Hotel
Aqua Skyline at Island Colony	Fairmont Orchid Hawaii
Aqua White Sands Hotel	Four Seasons Resort Lana`i
Aston at Papakea Resort	Four Seasons Resort Maui
Aston at Poipu Kai	Four Seasons Resort O'ahu at Ko Olina

Grand Hyatt Kauai Resort & Spa
Grand Nanioloa Hotel
Grand Wailea
Hale Koa Hotel
Halekulani
Hampton Inn & Suites, Kapolei
Hapuna Beach Prince Hotel
Hilton Garden Inn Kauai Wailua Bay
Hilton Garden Inn Waikiki Beach
Hilton Grand Vacations at Waikoloa Beach Resort
Hilton Grand Vacations Club
Hilton Hawaiian Village Waikiki Beach Resort
Hilton Waikiki Beach
Hilton Waikoloa Village Resort & Spa
Hokulani Waikiki by Hilton Grand Vacations Club
Holiday Inn Express Waikiki
Holiday Inn Waikiki Beachcomber Resort
Honua Kai Resort & Spa
Hotel Coral Reef Resort
Hotel Renew by Aston
Hotel Wailea Maui
Hyatt Centric Waikiki Beach
Hyatt Place Waikiki Beach
Hyatt Regency Maui Resort & Spa
Hyatt Regency Waikiki Beach Resort & Spa
Ilikai Hotel and Luxury Suites
Ilima Hotel
Ka`anapali Beach Club
Ka`anapali Beach Hotel
Kahana Falls
Kauai Marriott Resort & Beach Club
Kiahuna Plantation Resort by Castle Resorts
Ko`a Kea Hotel & Resort
Kona Coast Resort
Lawai Beach Resort
Lotus Honolulu at Diamond Head
Luana Waikiki Hotel and Suites
Marriott's Kauai Lagoons, Kalanipu'u
Marriott's Ko Olina Beach Club
Marriott's Maui Ocean Club
Marriott's Waiohai Beach Club
Maui Beach Hotel
Maui Coast Hotel
Maui Condo & Home, LLC
Maui Eldorado Kaanapali by Outrigger
Mauna Kea Resort
Mauna Lani Resort
Mauna Loa Village IOA
Moana Surfrider, A Westin Resort & Spa
Montage Kapalua Bay
Napili Kai Beach Resort
OHANA Waikiki East by Outrigger
OHANA Waikiki Malia
Ohia Waikiki Hotel
Outrigger Kiahuna Plantation
Outrigger Napili Shores
Outrigger Palms at Wailea
Outrigger Reef Waikiki Beach Resort
Outrigger Regency on Beachwalk
Outrigger Royal Sea Cliff
Outrigger Waikiki Beach Resort
Pacific Marina Inn
Pagoda Hotel
Pearl Hotel Waikiki
Plantation Hale Suites
Prince Waikiki
Queen Kapiolani
Raintree - Kona Reef Raintree Vacation Club
Ramada Plaza Waikiki
Royal Grove Hotel
Royal Kahana Maui by Outrigger
Royal Kona Resort
Royal Lahaina Resort
Sheraton Kauai Resort
Sheraton Kona Resort & Spa at Keauhou Bay
Sheraton Maui Resort and Spa
Sheraton Princess Kaiulani
Sheraton Waikiki Resort

Shoreline Hotel Waikiki
St. Regis Princeville Resort
Stay Hotel Waikiki
The Cliffs at Princeville
The Club at Kukui`ula
The Fairmont Kea Lani, Maui
The Imperial Hawaii Resort At Waikiki
The Kahala Hotel & Resort
The Laylow, Autograph Collection
The MODERN Honolulu
The New Otani Kaimana Beach Hotel
The Point at Poipu, Diamond Resorts International
The Ritz-Carlton Residences, Waikiki Beach
The Ritz-Carlton, Kapalua
The Royal Hawaiian, A Luxury Collection Resort
The Surfjack Hotel & Swim Club
The Westin Maui Resort & Spa
The Westin Princeville Ocean Resort Villas
Travaasa Hana
Trump International Hotel Waikiki
Turtle Bay Resort
Vive Hotel Waikiki
Waikiki Beach Marriott Resort & Spa
Waikiki Grand Hotel
Waikiki Parc Hotel
Waikiki Resort Hotel
Waikiki Sand Villa Hotel
Waikiki Shore
Waikoloa Beach Marriott Resort & Spa
Wailea Beach Marriott Resort & Spa
Waipouli Beach Resort & Spa by Outrigger
Westin Ka'anapali Ocean Resort Villas
Wyndham at Waikiki Beach Walk
Wyndham Vacation Resorts Royal Garden at Waikiki

LATE

SB-2699

Submitted on: 2/27/2018 12:47:11 PM

Testimony for WAM on 2/28/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Jokovich	Individual	Oppose	No

Comments: