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**STATE OF HAWAII  
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To: The Honorable Richard H.K. Onishi, Chair  
and Members of the House Committee on Tourism & International Affairs

Date: Tuesday, February 5, 2019  
Time: 9:00 A.M.  
Place: Conference Room 312, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 1376, Relating to Taxation

The Department of Taxation (Department) offers the following comments on H.B. 1376 for the Committee's consideration.

H.B. 1376, which is effective upon approval, authorizes the counties to adopt a county surcharge on the transient accommodations tax (TAT), and changes the TAT rate from 10.25% to 7%. The county surcharge, which will be capped at an unspecified amount, shall be levied no sooner than 180 days after the adoption of the surcharge on TAT.

First, it is unclear how a county would establish a surcharge on TAT. If the Committee wishes to authorize the counties to adopt a surcharge on TAT, the Department suggests that the counties be required to enact an ordinance adopting the surcharge, similar to the requirement Hawaii Revised Statutes (HRS) section 46-16.8.

Second, the Department notes that in subsection (a) of Section 2 of the bill, provides that the Director of Taxation will have the power to determine the county in which a person is engaged in the business of furnishing transient accommodations. Additionally, subsection (f) provides that the Director of Taxation shall adopt rules specifying the taxation district to which the county surcharge on TAT shall be assigned. The Department suggests replacing these provisions with language that the county surcharge shall be assigned to the taxation district in which the transient accommodation is located. Specifically, the Department suggests amending subsections (a) and (f) as follows:

(a) The county surcharge on transient accommodations tax, upon the adoption of county ordinances and in accordance with the requirements of section 46-\_\_\_, shall be levied, assessed, and collected as provided in this section on all gross rental, gross rental proceeds, and fair market rental

value taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than \_\_\_\_\_ per cent of all gross rental, gross rental proceeds, and fair market rental value taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on transient accommodations tax. With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in the business of furnishing transient accommodations and, in the case of a person engaged in the business of furnishing transient accommodations in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on transient accommodations tax attributable to business conducted in each county.

. . .

(f) The taxpayer shall designate the taxation district to which the county surcharge on transient accommodations tax ~~[is assigned in accordance with rules adopted by the director of taxation under chapter 91.]~~ to the taxation district in which the transient accommodation or resort time share vacation unit is located. The taxpayer shall file a schedule with the taxpayer's periodic and annual transient accommodations tax returns summarizing the amount of taxes assigned to each taxation district.

Finally, the Department notes that this bill will require form, instruction, and substantial computer system changes. The Department is in the process of its last implementation phase of the Tax System Modernization project which is scheduled to be completed towards the end of calendar year 2019. As such, the Department does not believe that it will be able to implement a new county surcharge on TAT by January 1, 2020. Therefore, the Department respectfully requests that the effective date of levying a new county surcharge be delayed until January 1, 2021.

Thank you for the opportunity to provide comments.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Allow Counties to Surcharge TAT

BILL NUMBER: HB 1376

INTRODUCED BY: ONISHI, LUKE, SAIKI, YAMASHITA

EXECUTIVE SUMMARY: Authorizes each county to impose a surcharge on transient accommodations tax. Changes the transient accommodations tax rate to 7%. Authorizes the State to “skim” an unspecified percentage of gross collections to defray costs of administration. Repeals the distribution of transit accommodations tax revenues to the counties.

SYNOPSIS: Adds a new section to chapter 46, HRS, allowing each county to establish a surcharge on TAT.

Adds a new section to chapter 237D, HRS, providing for the surcharge, and limiting the surcharge to \_\_% of taxable gross rental, gross rental proceeds, and fair market rental value. States that all provisions of the TAT law apply to the surcharge. Gives the director of taxation exclusive rights to determine the county or counties in which a person is engaged in business, and allows the director to determine, through apportionment or other means, that portion of the surcharge attributable to business conducted in each county.

States that the surcharge will begin in the taxable year after the surcharge is established, but with a minimum of 180 days lead time. In addition, contracts entered into before June 30 of the year prior to the year the taxes become effective, and which do not provide for the passing on of increased taxes, receive grandfather protection.

Requires the taxpayer to file with the TAT return a schedule assigning taxable receipts or market value among the counties. Penalties apply for failure to file the schedule, including a penalty equal to 10% of the amount of surcharge and tax for failure to file the schedule or failure to correctly report the assignment of tax by county.

Taxpayers filing on a fiscal year basis shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and ending on the taxpayer’s normal fiscal year end.

Adds a new section to chapter 248, HRS, with technical information about how the collection and distribution of TAT surcharge will work. Provides that the State will deduct \_\_% of the gross proceeds of a respective county’s surcharge to reimburse the State for the costs of assessment, collection, disposition, and oversight, to be general fund realizations of the State.

Amends section 237D-2, HRS, to drop the TAT rate from 9.25% to 6% (7% between July 1, 2019, and Dec. 31, 2030).

Amends section 237D-6.5, HRS, to repeal the TAT earmark in favor of the counties.

Makes technical conforming changes.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: In law prior to 2009, the TAT was levied at the rate of 7.25% on most transient accommodations. Once collected, 44.8% of the tax, after satisfying specified earmarks, was distributed to the counties. Act 61, SLH 2009, increased the TAT rate to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15. Act 161, SLH 2013, made permanent the TAT rate of 9.25% and changed the allocations of TAT from a percentage basis to a specific dollar amount.

After the counties complained about their allocations, Act 174, SLH 2014, required a state-county functions working group to be convened to evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services and to recommend an appropriate allocation of the transient accommodations tax revenues between the State and counties that properly reflects the division of duties and responsibilities relating to the provision of public services. The working group met and issued a report to the 2015 legislature, recommending that the percentage allocation of the TAT be restored. Bills were drafted to adopt that recommendation. The bills did not pass. After some years of going back and forth, Gov. Ige this year announced that his administration would submit a bill to restore some form of percentage allocation to the counties.

The current bill presents one way to end the bickering. “Stop complaining about the amount allocated to you from the TAT,” the bill’s proponents seem to be saying, “because we’ll give you the authority to impose TAT on your own.”

We have concerns about the 10% penalty on the gross tax due for failure to file the apportionment schedule or to correctly apportion the tax to the counties. We realize that the penalty is modeled after the one that already exists in HRS section 237-8.6 relating to the county surcharge on state tax, but we think that the amount of the penalty imposed by either law can be grossly excessive and is not in proportion to the harm suffered by the government. We prefer a rule that would allow a county who has been aggrieved to recover a penalty that would be a percentage of the amount of deficiency from the county’s perspective. For example, if a taxpayer earns \$100,000 in taxable gross rentals and fails to file the schedule, and the gross rentals are located on Maui where Maui has, we assume, adopted a 1% surcharge, then the penalty would be a percentage of the \$1,000 deficiency that Maui has suffered, instead of \$10,000 which, under the bill, would all go to the State.

We also note that the new section in chapter 248, which is modeled after a similar section dealing with the county surcharge on general excise tax (section 248-2.6, HRS) contains a yet unspecified amount for a “skim” that the State will impose to reimburse itself for the cost of administration. The Foundation challenged a 10% skim off the Honolulu rail surcharge, and its lawsuit is still pending in the Supreme Court of Hawaii. We believe that any “skim” should

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reasonably reflect actual costs of administration and not be grossly excessive like the 10% skim was.

Digested 2/2/2019



# Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

HB 1376

**Relating To Taxation**

COMMITTEE ON TOURISM AND INTERNATIONAL AFFAIRS

**Tuesday, February 5, 2019, 9:00 am**

**Conference Room 312**

Dear Chair Onishi, Vice Chair Holt and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 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 HB 1376**, which authorizes each county to impose a surcharge on transient accommodations tax. Changes the transient accommodations tax rate to 7%. Repeals the distribution of transit accommodations tax revenues to the counties.

MHLA is opposed to any Bill that would create unnecessary competition within each County of the State of Hawaii. Having different Transient Accommodation Tax (TAT) rates in each County added to the base TAT rate will lead to an unintended platform for Counties to have the ability to charge lower tax rates by County.

Thank you for the opportunity to testify.