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To: The Honorable Sylvia Luke, Chair  
and Members of the House Committee on Finance

Date: Wednesday, February 20, 2019  
Time: 4:00 P.M.  
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 631, H.D. 1, Relating to Taxation

The Department of Taxation (Department) offers the following comments on H.B. 631, H.D. 1, for the Committee's consideration.

H.B. 631, H.D. 1, authorizes the counties to adopt a county surcharge on the transient accommodations tax (TAT), changes the TAT rate from 10.25% to an unspecified amount, and repeals the distribution of TAT revenues the counties. 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. The bill is effective January 1, 2021.

First, the Department notes that the House Committee on Tourism & International Affairs (TIA) adopted its suggestion that counties are required to enact an ordinance adopting the county surcharge on TAT, similar to the requirement of Hawaii Revised Statutes (HRS) section 46-16.8. However, H.B. 631, H.D. 1, does not provide a deadline for counties to adopt an ordinance adopting the surcharge, and the Department is required to collect the surcharge no sooner than 180 days after the adoption of the surcharge. The Department suggests setting a deadline for counties to adopt an ordinance adopting the surcharge (such as, no later than December 31, 2019), and the date that the Department is required to collect the surcharge be no earlier than January 1, 2021, similar to sections 46-16.8(a)(2) and 46-16.8(a)(3), HRS. This will give the Department at least twelve months to implement changes required to implement a new county surcharge on TAT.

Second, the Department appreciates the House Committee on Tourism and International Affairs' adoption of its suggestion that the surcharge shall be assigned to the taxation district in which the transient accommodation is located. However, the Department notes that subsection (a) of Section 2 of the bill, provides the Director of Taxation with the power to determine the county in which a person is engaged in the business of furnishing transient accommodations. For the purpose of consistency, the Department suggests amending subsection (a) of Section 2 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.~~

Third, the Department notes that the House Committee on Tourism and International Affairs adopted its suggestion, and inserted provisions regarding the disposition of county surcharge on TAT, similar to HRS section 248-2.6, in subsection (g) of Section 2 of the bill.

Fourth, the Department notes that Section 5 of this bill contains conflicting dates on the effective date of the change in TAT rates. The effective date of the change in TAT rates in HRS sections 237D-2(a)(6), 237D-2(c)(4), and 237D-2(e) must be the same date. The Department suggests that the effective date of the change in TAT rates be January 1, 2021, or the same effective date as the new county surcharge on TAT.

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 earliest date that the Department will be able to implement a new county surcharge on TAT is January 1, 2021.

While the Department appreciates that the House Committee on Tourism and International Affairs changed the effective date of the bill to January 1, 2021, the Department notes that January 1, 2021 is the earliest date that it is requesting that imposition of the new TAT surcharge begin. As stated above, the Department is suggesting that a deadline for the counties

to adopt an ordinance be added to the measure. If the measure only has a single effective date as currently written, there could be no time between adoption of the ordinance and the start of the imposition for the Department to prepare. The Department's suggestion is that the deadline to adopt an ordinance be made no later than December 31, 2019. This will give the Department twelve months to prepare for the new TAT surcharge.

Thank you for the opportunity to provide comments.



OFFICE OF THE MAYOR  
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

Testimony of Derek S. K. Kawakami  
Mayor, County of Kaua'i

Before the  
House Committee on Finance  
February 20, 2019; 4:00 pm

In consideration of  
House Bill 631 HD1  
Relating to Taxation

Honorable Chair Luke, Vice Chair Cullen, and Members of the Committee:

The County of Kaua'i is in **support** of HB631 HD1 which proposes to authorize each county to impose a surcharge on transient accommodations tax (TAT). This measure would change the transient accommodations tax rate to an unspecified amount and repeal the distribution of transit accommodation tax revenues to the counties.

As the TAT rate is unspecified, and the county surcharge, which will be capped, is also unspecified, we look forward to the continued conversation of how this bold change might improve the economies of our counties and state. Analyzing the data of revenues generated and given the language, we suggest a 4% county surcharge authority for Kaua'i would be fair.

We look forward to continued discussion on this matter.

Mahalo for the opportunity to submit testimony on this measure.

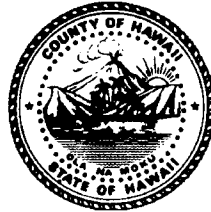
Respectfully,

Mahalo  
nu  
loa!

Derek S.K. Kawakami



Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

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February 19, 2019

Representative Sylvia Luke, Chair  
Committee on Finance

Representative Ty J.K. Cullen, Vice Chair  
Committee on Finance

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

### RE: **HB 631, HD1 Relating to Taxation**

Thank you for the opportunity to testify on HB 631, HD1, which would authorize each County to impose a surcharge on the State's transient accommodations tax.

We appreciate the innovative approach this bill brings to the table, and the recognition of the counties as partners in the affairs of Hawai'i governance. We do not shy away from the responsibilities that these bills would place on the counties to raise their own revenue, and appreciate that the State would still "levy, assess, collect, and otherwise administer the county surcharge," because it would be wasteful and prohibitive for each County to set up parallel structures.

Having recognized the benefit of HB 631, we do have to express concerns.

Hawai'i County gets 18.6% of the TAT revenue allocated to the counties, which most recently came out to \$19.2M. Hawai'i Island does not generate 18.6% of the TAT, so to achieve the same revenue from a County-based surcharge, the surcharge rate has not yet been calculated but surely would be very high. If the Legislature is not willing to give us that much flexibility, or does not think such a rate would be good policy, then some other pathway forward needs to be found.

An alternative is proposed in SB 198, in which the counties would be authorized to impose a surcharge of up to 2%, while continuing to receive \$103M under HRS 237D-6.5 with no change to the existing allocation formula. We would ask this Committee to consider that approach, or some other mechanism that would be fair to all counties and assure that none suffer a revenue loss, while still asking the counties to accept some responsibility for raising their own operating capital.

Respectfully Submitted,

  
Harry Kim  
MAYOR

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: TRANSIENT ACCOMMODATIONS, Allow Counties to Surcharge TAT

BILL NUMBER: HB 631, HD-1

INTRODUCED BY: House Committee on Tourism & International Affairs

EXECUTIVE SUMMARY: Authorizes each county to impose a surcharge on transient accommodations tax. Changes the transient accommodations tax rate to an unspecified amount. 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.

Allows the director of finance to deduct 1% of the gross proceeds of a respective county's surcharge on transient accommodations taxes to reimburse the State for the costs of assessment, collection, disposition, and oversight of the county surcharge on transient accommodations taxes incurred by the State.

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.

Amends section 237D-2, HRS, to drop the TAT rate and the transient occupancy tax (TOT) rate from 9.25% to an unspecified amount beginning July 1, 2021.

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

Makes technical conforming changes.

EFFECTIVE DATE: January 1, 2021.

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. (That bill, BUF-21, introduced as SB 1209 / HB 983, is now dead in both the House and Senate.)

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.

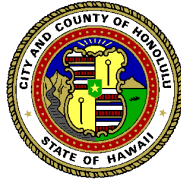
Digested 2/16/2019

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**LATE**

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MANAGING DIRECTOR

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DEPUTY MANAGING DIRECTOR

February 20, 2019

The Honorable Sylvia J. Luke, Chair  
The Honorable Ty J.K Cullen, Vice Chair  
and Members of the Committee on Finance  
The House of Representatives  
State Capitol, Conference Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke, Vice-Chair Cullen, and Members of the Committees on Finance:

SUBJECT: H.B. No. 631 H.D. 1  
Relating to Taxation

H.B. No. 631, H.D. 1, proposes, among other things, to authorize the counties to levy a county surcharge on the transient accommodations tax (TAT) in their respective counties pursuant to certain conditions, including the adoption of a county ordinance establishing the surcharge and public hearing requirements.

The City and County of Honolulu **supports the intent** of this measure as long as it is fiscally prudent for the City and County.

The TAT is collected from hotels and other lodgings that host guests for fewer than 180 days and the allocation of the funds collected is clearly established under Section 237D-6.5, Hawaii Revised Statutes (HRS). While in the past the counties received approximately 44% of all TAT funds collected, the current distribution of TAT to the counties is capped at \$103 million of which the City and County of Honolulu receives 44.1 percent.

The State has experienced a growth in tourism and as a result, the counties have experienced an increase in tourism-related expenditures. Currently, the counties, including the City and County of Honolulu, invest monies in numerous tourism-related services such as beach cleaning and maintenance and maintenance and enhancement of parks, municipal golf courses, bike paths, and other amenities that make Hawaii a premier tourism destination. Basic infrastructure used by tourists and public safety services such as ocean safety, police, fire, and emergency medical services are also provided by counties to keep tourists safe as they enjoy our islands. The provision of all of these necessary services result in incurred costs to the counties for tourism-related activities that are not fully covered by the county's share of TAT. Allowing counties the option of establishing an additional surcharge on TAT would provide



The Honorable Sylvia J. Luke, Chair  
The Honorable Ty J.K Cullen, Vice Chair  
and Members of the Committee on Finance  
February 20, 2019  
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additional resources to the counties to address these needs.

However, this surcharge should be in addition to funds currently remitted to the counties under section 237D-6.5 and should not be a substitution for this allocation. As such, the City and County of Honolulu has concerns regarding language deleting the current allocation to the counties provided under section 237D-6.5 and would need to review the potential fiscal implications this would have on the City and County of Honolulu as the percentage of the surcharge authorized in this measure has yet to be determined.

As enactment of H.B. No. 631, H.D. 1, has the potential of creating additional revenues for the counties above and beyond those revenues currently provided to the counties via the TAT, the City and County of Honolulu supports the intent of this measure if the concerns mentioned above can be addressed. The ability of the counties to serve the visitor industry, support economic development, and maintain a safe and secure environment for visitors and residents alike, is a critical component of this bill.

Thank you for this opportunity to testify on H.B. No. 631, H.D.1.