

DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

**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 Clarence K. Nishihara, Chair  
and Members of the Senate Committee on Public Safety, Intergovernmental, and  
Military Affairs

The Honorable Glenn Wakai, Chair  
and Members of the Senate Committee on Energy, Economic Development, and  
Tourism

Date: Wednesday, February 6, 2019  
Time: 2:45 P.M.  
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 198, Relating to Transient Accommodations Tax

The Department of Taxation (Department) offers the following comments on S.B. 198 for the Committee's consideration.

S.B. 198, which is effective upon approval, authorizes the counties to adopt a county surcharge on the transient accommodations tax (TAT). The county surcharge, which will be capped at 2%, shall be levied no sooner than January 1, 2021 and not after December 31, 2036. The counties must enact an ordinance adopting the surcharge prior to December 31, 2019.

First, 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.

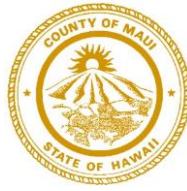
Second, the Department notes that this bill does not contain provisions regarding the disposition of county surcharge on TAT. The Department suggests adding a new section similar to HRS section 248-2.6.

Lastly, if a county enacts an ordinance adopting the surcharge on TAT prior to December 31, 2019, the Department believes that it will be able to implement the new county surcharge on TAT beginning January 1, 2021.

Thank you for the opportunity to provide comments.

Michael P. Victorino  
Mayor

Sananda K. Baz  
Acting Managing Director



**OFFICE OF THE MAYOR**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov](http://www.mauicounty.gov)

February 4, 2019

The Honorable Clarence K. Nishihara, Chair  
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Glenn Wakai, Chair  
Senate Committee on Energy, Economic Development, and Tourism

Dear Senator Nishihara, Senator Wakai, and Committee Members:

Re: Hearing of February 6, 2019; **COMMENTS** on **SB 198**,  
Relating to Transient Accommodations Tax

Thank you for the opportunity to **offer comments** on **SB 198**. This important measure authorizes the counties to levy a county surcharge on transient accommodations tax pursuant to certain conditions.

The latest annual visitor report from the Department of Business, Economic Development & Tourism (DBEDT) shows more visitors are staying in Maui County each year, and spending more time and money in our local economy. However, the counties are not sharing with the State of Hawaii, the increase in revenues from the growth in tourism.

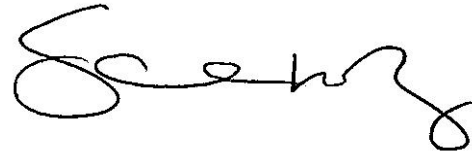
Maui County's tourism related expenditures for infrastructure and services, such as fire safety, police, parks, and lifeguards are also rising, but at a pace far exceeding what the counties are allocated by the TAT. This has resulted in residents picking up the cost of visitor related expenditures, despite visitors paying their fair share of expenses.

I support the intent of replacing the TAT revenue allocations to the counties with a proposal that fairly allocates revenues to Maui County based on visitor related expenditures and growth in tourism. However, I believe the language of **SB 404** will more adequately fund Maui County's tourism related expenses.

February 4, 2019  
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Mahalo for your consideration of **SB 198**.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Sandy", written in a cursive style.

SANDY BAZ  
Acting Mayor  
County of Maui

# 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: SB 198; HB 1173 (Identical)

INTRODUCED BY: SB by KEITH-AGARAN, Dela Cruz, English; HB by YAMASHITA

EXECUTIVE SUMMARY: Authorizes each county to impose a surcharge on transient accommodations tax. Changes the transient accommodations tax rate to an unspecified amount. Does not repeal 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. The ordinance to do so must be adopted prior to Dec. 31, 2019. The surcharge may not be imposed before Jan. 1, 2021, or after Dec. 31, 2036.

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.

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.

Digested 2/2/2019

**SB-198**

Submitted on: 2/5/2019 10:32:49 PM

Testimony for EET on 2/6/2019 2:45:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brett Kulbis	Testifying for Honolulu County Republican Party	Oppose	No

Comments: