LATE

ARDA
American Resort Development Association
HAWAI'I

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

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

RE: SB714 SD1 RELATING TO TAXATION - **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. We are writing to express our strong **opposition** to Senate Bill (SB) 714 SD1 which addresses several issues, but our testimony is focused on the portions of the bill that proposes to amend the transient occupancy tax (TOT) formula.

This is similar to 2018's Senate Bill 2489 and HB2432, SD1, both of which were shelved last session. It is also similar to this sessions SB382 which recently passed out of this same committee.

SB714 SD1's language would **double** the existing TOT tax rate, which has already seen a 40% increase in the last 4 years. This tax on timeshare owners has already been increased three times. 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.

These increases have already provided the state additional revenues. Based on the recent increases to the tax already on the books as well as a healthy visitor market and occupancy, the **state already realized more than a 20% increase in tax revenues** comparing 2017 to 2016. And the state was on schedule to see the same or more for 2018 (annual 2018 data is not yet available).

According to the Hawaii Tourism Authority, in 2017, Hawai'i's timeshare industry generated "$87.1 million in state and county taxes, with real property taxes accounting for 45.6% of the total." This is an increase of $14.9 million over 2016's numbers or a 20.6% increase in tax revenue. (2016 total was $72.2 million). This calculates to about $47 million in general excise (GET), transient accommodation (TAT), and TOT, which reflects a 23% increase for state taxes.
https://www.hawaiitourismauthority.org/media/2167/hawaii-timeshare-quarterly-survey-year-end-2017-4-16.pdf

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

2018's numbers based on tracking of the first 3 quarters is almost already equivalent to 2017. The 4th quarter and annual numbers from HTA for 2018 are not yet available, but by looking at the first quarter ($27.1 million); second quarter ($24.5 million) and third quarter ($29.6 million) tax collected figures for 2018 without the fourth quarter total $81.2 which is almost near 2017's total $87.1 million.

https://www.hawaiitourismauthority.org/research/infrastructure-research/
Therefore, arguments that the timeshare industry and its visitors are not keeping up to pay their fair share of impacts is not borne out by the data. Tax revenues collection totals continue to rise at a very high rate while their total numbers of visitors remains relatively static.

But, it is important to reiterate this tax is unique, was a thoughtful compromise when created, and Hawaii remains to be one of the only jurisdictions to tax a property owners interest for occupying their own property on top of all of the other taxes that are already paid.

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.

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 considering increasing 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.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Tax Resort Fees, Hike Transient Occupancy Tax, Require Registration of Intermediaries

BILL NUMBER: SB 714, SD-1

INTRODUCED BY: Senate Committee on Energy, Economic Development, and Tourism

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 four years ago, and at that time the legislature declined to change the percentage against the Department of Taxation's recommendation. There is still no hard data that has been presented in the testimony to date. Justification for increasing the percentage now is questionable at best.

Imposes the transient accommodations tax on additional hotel resort fees that are calculated separately from the advertised transient accommodation's rate. If a resort fee is a charge that cannot be avoided once a transient has stayed for a night, then it is inseparable from the room rate and should be taxed as such. That distinction would make it different from SB 2699 (2018), which defined a resort fee as any charge to a transient whether mandatory or not, and it was vetoed last year because of its overbreadth.

Defines "transient accommodations intermediary" and asks for reasonable technical conditions such as furnishing the property address.

SYNOPSIS:

Transient Occupancy Tax

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 100% of the gross daily maintenance fees.

Resort Fees

Amends section 237D-1, HRS, by adding a definition for "resort fee" 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. Also amends the definition of "gross rental" to include resort fees as so defined.

Transient Accommodations Intermediary Registration

Amends section 237D-1, HRS, to replace the current definition of "transient accommodations broker" with "transient accommodations intermediary" defined as 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 travel agencies, tour packagers, wholesale travel companies, online websites, online travel agencies, online booking agencies, and booking platforms.

Amends section 237D-4.5, HRS, to provide that each transient accommodations intermediary shall provide the physical address of each transient accommodation for which it will enter into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates; provided that the transient accommodations intermediary has obtained prior written consent from the operator or plan manager to disclose the address of the transient accommodation. The transient accommodations intermediary shall make a one-time payment of $15 to register with the director.

Makes various technical and conforming amendments.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

STAFF COMMENTS:

Transient Occupancy Tax

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." 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?

In 2015, the Department similarly asserted 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 then recommended that "fair market rental value" be adjusted to 100%, rather than 50%, of average daily maintenance fee.

As a result, the definition of fair market value of a timeshare unit was indeed adjusted four years ago, by Act 93, SLH 2015, but the percentage was not adjusted. At that time 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 Department at that time 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.

Testimony to date is still devoid of any data demonstrating that the current statutory formula is inadequate. If the legislature's decision in 2015 is now to be overturned, it should be based on hard evidence, not on wild hand-waving and unsupported assertions.

Resort Fees

A "resort fee," which also goes on your bill if you stay at a hotel, and not only in Hawaii but in some foreign destinations such as Mexico, Canada, and the Caribbean, is to pay for other amenities such as use of the hotel's weight room, or pool, or Wi-Fi internet service.

"Oh?" you might say. "I thought those things were included in the room rate."

That's precisely the point, both for the hotels and the Tax Department. The TAT is 10.25% of the gross room rate. Our supreme court has said, "in determining tax liability it is fundamental that substance, rather than the form of the transaction, governs. Actualities and consequences of a commercial transaction, rather than the method employed in doing business, are controlling factors in determining such liability." *In re Kobayashi*, 44 Haw. 584, 358 P.2d 539 (1961). Thus, if a "resort fee" really is a piece of the room charge, by any other name, then it's taxable as a room charge.

One of the tests that the Department is now using to figure out if a resort fee is a room charge with another name is whether the charge is "mandatory." If the fee is not part of the room charge, then a guest staying at a hotel should be able to opt out of it.

Transient Accommodations Intermediary Registration

This part of the bill appears reasonable.

Digested 2/15/2019

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

Date: Tuesday, February 19, 2019
Time: 9:30 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 714, S.D. 1, Relating to the Transient Accommodations Tax

The Department of Taxation (Department) offers the following comments on S.B. 714, S.D. 1, for the Committee's consideration.

The following is a summary of the provisions of S.B. 714, S.D. 1, which is effective upon approval and applies to taxable years beginning after December 31, 2019:

- Defines "resort fees" 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" or "gross rental proceeds" to include the gross amount collected from the consumer, including resort fees, but excluding fees unrelated to the transient accommodations like fees for ground transportation, airfare, or meals;
- Increases the base of the transient accommodations tax (TAT) imposed on timeshare occupancy to one hundred percent of the gross daily maintenance fees;
- Rebrands "transient accommodations broker, travel agencies, and tour packagers" as "transient accommodations intermediaries.; and
- Clarifies that any taxpayer liable for taxes under HRS Chapter 237D must comply with the return filing requirements of HRS Chapter 237D.

First, the Department notes that the previous Committee added the word "mandatory" to the definition of "resort fees." The Department notes that its current position is that only fees that are mandatory should be included in the definition of resort fees and subjected to the TAT. Thus, with the addition of the word mandatory, the proposed definition aligns with the Department's current interpretation.

Second, regarding the increase in the base of the TAT applied to timeshare occupancy, the Department notes that timeshare occupancy is subject to a lower TAT burden than other transient accommodations. Currently, the base of tax is only fifty percent of the gross daily maintenance fees rather than the full fair market value of the accommodation. In most cases, fifty percent of the gross daily maintenance fees will be lower than the true market value of the accommodation. Therefore, this provision of the bill will help to level the imposition of tax on the different transient accommodation business models.

Third, the Department notes that replacement of "transient accommodations brokers, travel agencies, and tour packagers" with "transient accommodations intermediaries" as proposed by this bill is nonsubstantive. Nonetheless, this change will require the Department to edit and reprint numerous forms and instructions. In addition, the change may also require currently registered transient accommodations brokers, travel agencies, or tour packagers to re-register as transient accommodations intermediaries. For this reason, the Department recommends against rebranding "transient accommodations brokers, travel agencies, and tour packagers" as "transient accommodations intermediaries."

Finally, the Department respectfully requests that the effective date of this measure be changed to January 1, 2020. By doing this, the changes proposed by the measure will apply to all taxpayers irrespective of each taxpayer's tax year (calendar vs. fiscal).

Thank you for the opportunity to provide comments.

Testimony of

Kelvin Bloom
Aqua-Aston Hospitality, LLC

Before the Senate Committee on Ways and Means

Tuesday, February 10, 2019; 9:30 a.m.
State Capital, Conference Room 211

In Consideration of Senate Bill 380, SD1 and Senate Bill 714, 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** both Senate Bill 380, SD1 and Senate Bill 714, SD1, which now defines "Resort Fee" 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" and seeks to impose the transient accommodations tax on Resort Fees.

Simply modifying the definition of "Resort Fees" to mean "only mandatory charges or surcharges" as opposed to "any" charges or surcharges does not solve the issue. The transient accommodation industry is already the state of Hawaii's highest-taxed industry and greatest economic contributor. Hotel, resort and timeshare guests presently are being taxed at a whopping 10.25 percent, with an additional 4.5 percent general excise tax added to the final charges. These two bills would only add to the fees passed on to our guests.

The transient accommodation tax was not established for the purpose of replenishing the state's coffers. It was established specifically to fund tourism marketing, the convention center, and county services that support tourism. Yet, every year the revenue generated by the transient accommodation tax is being funneled toward uses other than tourism marketing, the convention center or county services that support tourism. This must stop! The practice of using the transient accommodation industry to foot the bill for new mandates and to balance the state budget, with the only overarching justification being that government needs money, is a dangerous pattern which will ultimately destroy Hawaii's growth as a tourist destination.

The Hawaii Tourism Authority is already reporting some slowing in visitor arrivals. Economists are cautioning about a general slowdown in the economy that will certainly have a measurable effect on tourism. These factors should give pause to any tax proposals which will impact a highly competitive, price-sensitive industry like tourism. A better alternative would be to push legislation which will curb the operation of illegal transient vacation rentals that are currently avoiding payment of the transient accommodation and general excise tax.

I thank you for the opportunity to testify against these measures.

Kohala Coast
RESORT ASSOCIATION

February 17, 2019

Senator Donavan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran
Senate Ways and Means Committee
Hawaii State Legislature

Testimony in Opposition to Senate Bill 380 SD1 and Senate 714 SD1
Relating to the Transient Accommodations Tax

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

Thank you for the opportunity to offer this testimony regarding Senate Bill 380 SD1 and Senate Bill 714 SD1, which proposes to impose the Transient Accommodations Tax on resort fees. These measures define resort fees as "any charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of transient accommodations, property, services, or amenities." The Kohala Coast Resort Association opposes both of these bills.

The definition of "resort fees" in both of these measures mirror that of Senate Bill 2699 S.D. 2, H.D. 1, C.D. 1. (2018) which was vetoed by the Governor last year, as it was vaguely crafted and created an unreasonably ambiguous expansion of the TAT that could have potentially been imposed on just about any business activity in a hotel.

Traditionally, the TAT has not been applied to the resort fees 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, wi-fi, shuttle services, etc. Many lodging properties have decided to recover some of the costs of guest amenities through a 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. 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.

From the hospitality industry's perspective, the TAT was not established for this purpose and places yet another financial burden on what is already the state's highest-taxed industry, and greatest economic contributor. Hotel, resort, and timeshare guests presently are being taxed at a whopping 10.25 percent, with an additional 4.25 percent general excise tax (on Hawaii Island) added to the final charges. This proposal would only add to the fees passed on to our guests.

Legislators promised that the TAT would revert back to 7.75 percent in 2015, but that promise was not kept. In fiscal year 2013, the general fund allocation from the TAT was 41.9 percent, five years later it ballooned to 52.3 percent, and in fiscal year 2018 it grew to 60.4 percent, a development far removed from the original intent of the TAT, which was to fund tourism marketing, the convention center, and county services that support tourism.

The visitor industry is the economic driver for our economy. According to the Hawai'i Tourism Authority, it generates more than 200,000 jobs, and now raises $545 million through the TAT alone, a tax that was just raised at the

beginning of last year to fund the Honolulu Rail Project, as it is levied solely on the hotel, resort, and timeshare industry.

Meanwhile, the hospitality industry continues to experience the increasing costs of doing business in terms of employee payroll and benefits, construction and maintenance, utilities, and higher county property taxes—all of which must be passed on to our guests. This does not take into account a pending proposal to increase the state's minimum wage.

And to further complicate matters, Hawaii Island and the properties along Kohala Coast are still suffering from last year's Kilauea eruption.

Lastly, we believe the Legislature must make a stronger push to enact tax legislation on the individual vacation rental units throughout the state. By Airbnb's estimates alone, if this tax had been applied fairly and equitably, the state would already be collecting more than the fees generated by this proposed tax on resort fees.

KCRA is a collection of master-planned resorts and hotels situated north of the airport which represents more than 3,500 hotel and timeshare 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,

Stephanie Donoho
Administrative Director

SB-714-SD-1
Submitted on: 2/18/2019 6:27:19 PM
Testimony for WAM on 2/19/2019 9:30:00 AM

LATE

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

Comments:

LATE

HAWAI'I LODGING & TOURISM ASSOCIATION

Testimony of

Mufi Hannemann
President & CEO
Hawaii Lodging & Tourism Association

Senate Committee on Ways & Means

Senate Bill 380 SD1 and Senate Bill 714 SD1: Relating to the Transient Accommodations Tax

Chair Dela Cruz, and members of the Committee:

Thank you for the opportunity to offer this testimony regarding Senate Bill 380 SD1 and Senate Bill 714 SD1, which proposes to impose the Transient Accommodations Tax on resort fees.

The Hawai'i Lodging & Tourism Association is the largest private sector visitor industry organization in the islands with 700 members, 170 of which are hotels with 51,000 rooms and nearly 40,000 employees.

The HLTA opposes these measures, for these reasons:

Traditionally, the TAT has not been 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, wi-fi, shuttle services, and so forth. 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. Additionally, hotels do collect and remit to the state the general excise tax on these resort fees.

From the hospitality industry's perspective, the TAT was not established for this purpose and places yet another financial burden on what is already the state's highest-taxed industry and greatest economic contributor. Hotel, resort, and timeshare guests presently are being taxed at a whopping 10.25 percent, with an additional 4.5 percent general excise tax added to the final charges. This proposal would only add to the fees passed on to our guests.

The visitor industry is the economic driver for our economy. According to the Hawai'i Tourism Authority, it generates more than 215,000 jobs, and now raises $545 million through the TAT alone, a tax that was just raised at the beginning of last year to finance the City and County of Honolulu's rail project. Also last year, the legislature introduced a measure that would have further tapped Hawai'i's lodging industry to help fund education through a constitutional amendment. This practice of the hospitality industry footing the bill for new mandates and to balance the state budget, with the only overarching justification given that government needs the money, is a dangerous pattern with no end in sight. An industry can only bear so much before competitive pressures affect its viability.

Meanwhile, the hospitality industry continues to experience the increasing costs of doing business in terms of employee payroll and benefits, construction and maintenance, utilities, and higher county property taxes—all of which must be passed on to our guests. This does not take into account a pending proposal to increase the state's minimum wage.

More specifically and recently, the hospitality industry on Kaua'i and Hawai'i Island are still suffering from last year's flood and Kilauea eruption, respectively. While the tourism economy is slowly recovering on those islands, it will take many more months before the industry is back to its pre-disaster status. Then, late last year, one of our major hotel chains experienced a prolonged labor strike that not only affected our visitor counts but will ultimately increase the cost of business for that enterprise. The Hawai'i Tourism Authority has reported some slowing in visitor arrivals, while economists are cautioning us about a general slowdown in the economy that will certainly have a measurable effect on tourism. These factors should give pause to any tax proposals that will impact a highly competitive, price-sensitive industry like tourism.

Further evidence shows that the hotel and resort industry aren't reaping the benefits of the recent growth in visitor numbers. According to HTA, the 2018 hotel occupancy rate was 0.4% lower than the previous year, while the number of TVRs penetrating the visitor industry has been on the climb. The 2018 HTA Visitor Plant inventory states that hotel rooms decreased by 2% (945 rooms) from 2017 to 2018, encompassing 43,857 units (54.3% of all accommodations), while known transient vacation rentals increased by 3.3% to 13,082 units (16.2% of the market). However, amongst the identifiable TVR's, many in the community believe there are an abundance of illegal rentals flying under the radar, a study by the Hawaii Appleseed Center for Law and Economic Justice claims that between 2017 and 2018 there were approximately 23,000 TVRs in the state.

In addition to increasing TVR numbers, an HTA report from December 2016 stated that vacation rentals, if regulated, should bring in an estimated $135.7 million in transient accommodations taxes for the year 2018. The report further stated that TAT revenues from TVRs should grow to $172.4 million by 2022. Therefore, we believe that a stronger push to enact tax legislation regarding the tax collection and enforcement of illegal TVRs would generate far more than the additional revenue you are seeking through this resort fee taxation proposal.

For these many reasons, we oppose these measures.

Mahalo.