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

Date: Thursday, February 21, 2019  
Time: 10:00 A.M.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 198, S.D. 1, Relating to Transient Accommodations Tax

The Department of Taxation (Department) offers the following comments on S.B. 198, S.D. 1, for the Committee's consideration.

S.B. 198, S.D. 1, 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 an unspecified amount, 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 appreciates the Senate Committees on Public Safety, Intergovernmental, and Military Affairs, and Energy, Economic Development, and Tourism's adoption of its suggestion that the surcharge 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.~~

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.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: TRANSIENT ACCOMMODATIONS, Allow Counties to Surcharge TAT

BILL NUMBER: SB 198, SD-1

INTRODUCED BY: Senate Committees on Energy, Economic Development, and Tourism and Public Safety, Intergovernmental, and Military Affairs

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 upon establishment of a registration process to verify compliance by a transient accommodation operator or plan manager with each applicable county land use ordinance. 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. The surcharge shall not affect the amounts remitted to a county under section 237D-6.5, HRS.

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. 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 2/19/2019



The Senate  
The Thirtieth Legislature  
Regular Session of 2019

To: Committee on Ways and Means

Date: February 21, 2019

Place: Conference Room 211  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

**RE: SB Bill 198 S.D. 1, Relating to Transient Accommodation Tax**

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

Rental By Owner Awareness Association, RBOAA, would like to offer our COMMENTS:

This Bill authorizes the Counties to place a Transient Accommodation Tax surcharge on transient accommodation operators. **Our concern with this Bill is that its language does not conform to that used in Hawaii Revised Statutes.**

HRS 237D-1 states: "Gross rental" or "gross rental proceeds" means the gross receipts, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations or entering into arrangements to furnish transient accommodations and the value proceeding or accruing from the furnishing of transient accommodations or entering into arrangements to furnish transient accommodations without any deductions on account of the cost of property or services sold, the cost of materials used, labor cost, taxes, royalties, interest, discounts, or any other expenses whatsoever."

However, SB198 SD1 does not conform to this definition of TAT tax upon the receipts. Instead it places a surcharge on "value of all written contracts." It states:

(c) The county surcharge on transient accommodations tax, if adopted, shall be imposed on the gross rental, gross rental proceeds, and fair market rental value of all written contracts that require the passing on of the taxes imposed under this chapter;

This presents a conflict of calculation if an operator calculates their TAT liability on receipts to determine but then must use a different instrument of a written contract to calculate the surcharge. A surcharge should be calculated using the same methods.

Additionally, the wording of "written contract," is confusing in that it seems to eliminate any operator from the liability for a TAT surcharge who does not use a written contract and instead offers only a receipt. We respectfully request that the standard HRS 237D-1 language of receipt be inserted in place of written contract.

Secondly, this version of the Bill provides for the establishment of a registry to verify compliance by transient accommodation operators with land use ordinances. RBOAA supports full compliance with land use ordinances but has concern that the counties are not equipped to comply with a registry of every operator. For example, the 2018 Visitor Plant Inventory noted: *"most of the Individually Advertised Vacation Rental Units were **located within the state's resort areas**. It is likely that most of these units have historically been available as visitor units ..."*

The report's data findings is "most" units are located within the state's resort areas. The number of units is not proliferating, rather the report concludes that "most of these units have historically been available as visitor units." In summary, units are not proliferating nor are most out of zone compliance. To date, the counties do not register or require a permit for operators who rent in resort zoned areas. Since the majority of operators are in resort zones the counties would have to establish a registry for thousands of operators who are already legal for land use compliance. This likely, would take a year or more to establish.

Noting the above concerns, RBOAA is generally supportive of SB 198 S.D.1. We appreciate the opportunity to provide feedback.”

Sincerely,

Alicia Humiston  
President,  
Rentals by Owner Awareness Association

**LATE**

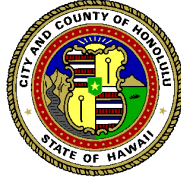
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February 20, 2019

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair  
and Members of the Committee on Ways and Means  
The Senate  
State Capitol, Conference Room 211  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee on Ways and Means.

**SUBJECT: S.B. No. 198, S.D. 1**  
**Relating to the Transient Accommodations Tax**

S.B. No. 198, S.D. 1, proposes 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 by December 31, 2019, the establishment of a registration process to verify compliance by transient accommodations operators or plan managers with applicable county land use ordinances, and public hearing requirements.

The City and County of Honolulu **supports** this measure.

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

The Honorable Donovan M. Dela Cruz, Chair  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair  
and Members of the Committee on Ways and Means  
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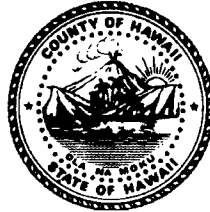
services such as beach cleaning and maintenance and maintenance and enhancement of parks, municipal golf courses, bike paths, and other amenities that make Hawaii a premier tourism destination. Basic infrastructure used by tourists and public safety services such as ocean safety, police, fire, and emergency 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 additional resources to the counties to address these needs. This surcharge should not affect the amounts remitted to the counties under section 237D-6.5, HRS.

As enactment of S.B. No. 198, H.D. 1 may result in additional revenues being realized by the counties above and beyond those revenues currently provided to the counties via the TAT, the City and County of Honolulu supports this measure. 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 S.B. No. 198, S.D. 1.



Harry Kim  
Mayor



Wil Okabe  
Managing Director

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Deputy Managing Director

## County of Hawai'i Office of the Mayor

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February 20, 2019

Senator Donovan M. Dela Cruz, Chair  
Committee on Ways and Means

Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Committee on Ways and Means

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

**RE: SB 198, SD1 Relating to the Transient Accommodations Tax (Authorizing a County Surcharge on the TAT)**

Thank you for the opportunity to testify in support of SB 198, SD1, which would authorize each County to impose a surcharge on the State's transient accommodations tax.

We appreciate the innovative approach this bill bring 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 this bill 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.

The most important provision of SB 198, SD1, for which we are most appreciative, is that "This surcharge on transient accommodations tax shall not affect the amounts remitted to a county under section 237D-6.5." This is in marked contrast to other bills that are circulating (e.g., HB 631 and SB 1376) which would eliminate the annual allocation to the counties of \$103M.

Having recognized the benefits of SB 198, SD1 we still do have two concerns.

First, the bill provides that

*"...in the case of a person engaged in the business of furnishing transient accommodations in more than one county, **the taxpayer** shall determine, through apportionment or other means, that portion of the surcharge on transient accommodations tax attributable to business conducted in each county."*

This seems to allow each taxpayer potentially to choose that jurisdiction which imposes the lowest surcharge. That surely is not what is intended, and we ask that language which was changed between SB 198 and SB 198, SD1 be restored:

*"...in the case of a person engaged in the business of furnishing transient accommodations in*

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*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."*

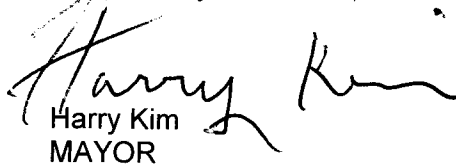
This change may have been made because we raised concerns over a different section of the bill:

*"(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. 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."*

I apologize if we created confusion, but this will become an important issue if counties adopt different rates for their surcharge (or no surcharge at all).

Second, we have not been able to calculate how much revenue would be generated if a new County TAT surcharge were imposed, but we believe that revenue from this Island would probably not match up well when compared to other counties. Therefore we would ask that a high cap be considered as this bill makes its way through the legislative process.

Respectfully Submitted,

  
Harry Kim  
MAYOR