



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: SB382 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) 382 SD1 which 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.

The tax rate for timeshare owners has already been increased three times in the last three years by approximately 40% already. 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.

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, Hawaii'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.

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.



February 17, 2019

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

Testimony in Opposition to Senate Bill 382 SD1 Amending the Formula for Applying the TAT on Timeshares

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 382 SD1. The Kohala Coast Resort Association opposes this bill.

According to the Hawaii Tourism Authority, in 2017, Hawaii'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. This calculates to about \$47 million in general excise (GET), transient accommodation (TAT), and TOT, which reflects a 23% increase for state taxes. While figures for 2018 are still being calculated, during the first three quarters of the year, timeshare occupancy had almost reached the same levels as overall 2017 visitation. 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.

It is important to state that 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.**

Moreover, the tax rate for timeshare owners has already been increased three times in the last three years by approximately 40% already. 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.

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.

Hawaii County raised the resort / hotel property class by 10.4% last year. Government bodies at the state and county level cannot continue to target the same industry again and again without impacting that industry. Visitors will decide to go elsewhere if the costs are perceived to be too high.

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. Per our 2016 Economic Impact Report, KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

We encourage your opposition to this measure.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho
Administrative Director

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: TRANSIENT ACCOMMODATIONS, Increase Transient Occupancy Tax

BILL NUMBER: SB 382, 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.

SYNOPSIS: 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 an unspecified percentage of the gross daily maintenance fees.

EFFECTIVE DATE: January 1, 2020.

STAFF COMMENTS: Section 1 of the bill recites that the tax formula for levying taxes on timeshare units has not been adjusted since the state began taxing timeshares in 1998, and that the existing tax formula for timeshares significantly underestimates the fair market value of many timeshare units.

The premises behind the bill, as recited above, appear to be questionable.

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.

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. 382, S.D. 1, Relating to Taxation

The Department of Taxation (Department) offers the following comments on S.B. 382, S.D. 1, for the Committee's consideration.

S.B. 382, S.D. 1, changes the base of the transient accommodations tax (TAT) imposed on timeshare occupancy by changing the definition of "fair market rental value" from fifty percent of the gross daily maintenance fees paid by the owner to an unspecified percentage of the gross daily maintenance fees. The bill is effective January 1, 2020.

Timeshare occupancy is subject to a lower TAT burden compared with other transient accommodations because 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.

The Department notes that it can administer the provisions of this bill with the current effective date.

Thank you for the opportunity to provide comments.