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

Date: Wednesday, February 6, 2019  
Time: 3:00 P.M.  
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: S.B. 382, Relating to Taxation

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

S.B. 382 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 applies to taxable years beginning after December 31, 2019.

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, but requests Section 4 to be amended to read:

SECTION 4. This Act, upon its approval, shall be effective January 1, 2020.

Thank you for the opportunity to provide comments.



TO: Senator Glenn Wakai, Chair  
Senator Brian Taniguchi, Vice-Chair  
Members of the Energy, Economic Development and Tourism Committee

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

RE: SB382 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 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.

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 4<sup>th</sup> 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 more so 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.

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. 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.



Imanaka Asato  
A LIMITED LIABILITY LAW COMPANY

February 5, 2019

Senator Glenn Wakai, Chair  
Senator Brian Taniguchi, Vice Chair  
Members of the Senate Committee on Energy, Economic  
Development and Tourism  
Thirtieth Legislature  
Regular Session of 2019

**RE: SB 382 - Relating to Taxation**  
**Hearing date: February 6, 2019 at 3:00 pm**

Aloha Chair Wakai, Vice Chair Taniguchi and Members of the Committees on Energy, Economic Development and Tourism,

Thank you for allowing me to submit testimony on behalf of Marriott Vacations Worldwide Corporation ("MVWC") in OPPOSITION to SB 382 - Relating to Taxation. MVWC is a global leader in the time share industry with ten resort properties in Hawaii. Time share is an important and stabilizing part of the tourism industry throughout Hawaii. Time share unit owners have made a long-term commitment to our state by purchasing and owning real property here. Statistics have shown that these owners are consistent and dependable visitors who bring substantial tax dollars to the state and continue to return to the islands even during periods of economic downturn.

SB 382 would increase the time share occupancy tax base from its current formula of 50% of the gross daily maintenance fees paid by the owner for their unit.

MVWC is deeply concerned about the significant negative impacts that SB 382 may have on the time share industry. This bill would substantially increase the transient occupancy tax time share owners pay. Time share owners already contribute significantly to public facilities and government services through the payment of state and local taxes, without posing the same tax collection problems that other transient accommodations such as home rentals do. In fact, according to the Hawaii Tourism Authority, in 2016, Hawaii's time share industry generated about \$72 million in real property, general excise, transient accommodations and transient occupancy taxes.

In addition, the transient accommodations tax on time share has already increased from 7.25% to 10.25% since 2015. No state other than Hawaii even charges a transient accommodations tax on time share. Increasing the cost of owning a time share in Hawaii even more will cause the viability of this important sector of the tourism industry to decline and drive prospective visitors to choose to purchase and vacation elsewhere.

For these reasons, MVWC opposes SB 382. Mahalo for the opportunity to testify.

Imanaka Asato, LLLC

Michael L. Iosua, on behalf of  
Marriott Vacations Worldwide Corporation



# Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

SB 382

**Relating To Taxation**

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

**Wednesday, February 6, 2019, 3:00 pm**

**Conference Room 414**

Dear Chair Wakai, Vice Taniguchi and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **opposed** to **SB 382**, which amends the formula for the amount of transient accommodations tax to be collected from time shares by increasing the base on which time share occupancy is taxed from one-half of the gross daily maintenance fees paid by the owner and are attributable to the time share unit to an unspecified per cent of the gross daily maintenance fees paid by the owner of the time share and are attributable to the time share unit. Applies to taxable years beginning after 12/31/2019.

MHLA believes this Bill will unfairly impact a very specific portion of Hawaii property owners who choose to visit our state on an annual basis and contribute to Hawaii's economy.

Timeshare units when not used by their owners and rented on a transient basis by non-owners or used for marketing purposes by developers are already subject to the exact same TAT rates as hotel units.

Timeshare owners are Hawaii property owners who have made a long-term commitment to Hawaii by owning Hawaii real estate. They and their guests are dependable, consistent, and stable visitors who bring substantial tax dollars to Hawaii and continue to come even during economic downturns. 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.

Thank you for the opportunity to testify.



February 5, 2019

Senator Glenn Wakai, Chair  
Senator Brian Taniguchi, Vice Chair  
Members of the Senate Committee on Energy, Economic  
Development and Tourism  
Thirtieth Legislature  
Regular Session of 2019

**RE: SB 382 - Relating to Taxation**  
**Hearing date: February 6, 2019 at 3:00 pm**

Aloha Chair Wakai, Vice Chair Taniguchi and Members of the Committees on Energy, Economic  
Development and Tourism,

Thank you for allowing me to submit testimony on behalf of Soleil Management Hawaii, LLC  
("Soleil") in OPPOSITION to SB 382 - Relating to Taxation. Soleil is a condominium association and  
vacation ownership resort management company providing a full spectrum of management services to  
customers in Hawaii. Soleil has 17 properties throughout Hawaii and has been doing business in the state  
for 20 years.

SB 382 will likely increase the time share occupancy tax base from its current formula of 50% of  
the gross daily maintenance fees paid by the owner for their unit. SB 382 will have significant adverse  
effects on time shares and the tourism industry in general. In most cases, the new formula will  
substantially increase the transient occupancy tax time share owners pay for staying in what is essentially  
their own unit. Time share owners already contribute significantly to public facilities and government  
services through the payment of state and local taxes. In fact, according to the Hawaii Tourism Authority,  
in 2016, Hawaii's time share industry generated about \$72 million in real property, general excise,  
transient accommodations and transient occupancy taxes.

In addition, the transient accommodations tax on time share has already increased from 7.25% to  
10.25% since 2015. No state other than Hawaii even charges a transient accommodations tax on time  
share, treating time share units more similarly to residential property. Increasing the cost of owning a  
time share in Hawaii even more will cause the viability of this important sector of the tourism industry to  
decline and drive prospective visitors to choose to purchase and vacation elsewhere.

For these reasons, Soleil opposes SB 382. Thank you very much for the opportunity to testify.

Imanaka Asato, LLLC

Kimberley W. Yoshimoto, on behalf of  
Soleil Management Hawaii, LLC

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Increase Transient Occupancy Tax

BILL NUMBER: SB 382

INTRODUCED BY: DELA CRUZ, KEITH-AGARAN, KIDANI, S. Chang, Gabbard, Nishihara, Shimabukuro, Wakai

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 three years ago, and at that time the legislature declined to change the percentage against the Department of Taxation's recommendation. Justification for increasing the percentage now is questionable given that history.

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: Taxable years beginning after December 31, 2019.

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.

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."

The premises behind the bill, as recited above, appear to be questionable. The definition of fair market value of a timeshare unit was indeed adjusted four years ago, by Act 93, SLH 2015. In its consideration of the bill 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 Conference Committee came to these conclusions in the face of testimony by the Department of Taxation 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 recommended that "fair market rental value" be adjusted to 100%, rather than 50%, of average daily maintenance fee.

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? The Department 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. If that decision is now to be reexamined, it should be based on hard evidence, not on wild hand-waving and unsupported assertions.

Digested 2/4/2019



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February 5, 2019

**LATE**

*Kelly King*

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

FROM: Kelly T. King  
Council Chair

SUBJECT: **HEARING OF FEBRUARY 6, 2019; TESTIMONY IN SUPPORT OF SB 382, RELATING TO TAXATION**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to update the formula for calculating the amount of transient accommodation tax, or TAT, owed by time share owners to better reflect economic and industry changes that have occurred since the Legislature first established the initial time share tax formula in 1998.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. As noted in the bill, the existing tax formula for time shares significantly underestimates the fair market rental value of many time share units. This discrepancy unfairly burdens others who are subject to the TAT and the State and county agencies that rely on TAT revenue.
2. This measure can help to reinstitute the tax equity between the hotel and time share markets that the Legislature appropriately sought more than 20 years ago.

For the foregoing reasons, I **support** this measure.