

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 Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Thursday, March 28, 2019
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 380, S.D. 1, Relating to the Transient Accommodations Tax

The Department of Taxation (Department) supports S.B. 380, S.D. 1, and offers the following comments for the Committee's consideration.

S.B. 380, S.D. 1, amends the definition of “gross rental” or “gross rental proceeds” in Hawaii Revised Statutes section 237D-1, to clarify that resort fees, defined as any mandatory charge or surcharge imposed by an operator, owner, or representative for the use of the transient accommodation’s property, services, or amenities, are included in gross rental proceeds and are therefore subject to the transient accommodations tax (TAT). The bill is effective on July 1, 2019.

Resort fees, also known as amenity fees and facility fees, are fees that are added to the nightly rate of transient accommodations. The components of resort fees vary greatly between transient accommodations, but often include amenities that were previously built into the nightly rate, such as in-room water and coffee, use of an in-room safe, access to pools and pool towels, access to fitness centers, parking, and housekeeping. This bill will clarify that these fees are subject to the TAT.

The Department supports S.D. 1 as 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.

Finally, the Department respectfully requests that the effective date of the measure be changed to January 1, 2020 to allow the Department sufficient time to make the necessary form and instructions changes.

Thank you for the opportunity to provide testimony in support of this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Applies Tax to Resort Fees

BILL NUMBER: SB 380, SD-1

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

EXECUTIVE SUMMARY: 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.

SYNOPSIS: Adds a new definition of "resort fee" to section 237D-1, HRS. Resort fee is defined 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" in section 237D-1, HRS, to explicitly include resort fees.

EFFECTIVE DATE: July 1, 2019.

STAFF COMMENTS: 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.

Digested 2/15/2019



March 26, 2019

Representative Sylvia Luke, Chair
House Finance Committee
Hawaii State Legislature

Testimony in Opposition to Senate Bill 380 SD1

Dear Chair Luke and Members of the House Finance Committee:

Thank you for the opportunity to offer this testimony regarding Senate Bill 380 SD1, which proposes to impose the Transient Accommodations Tax on mandatory resort fees. The Kohala Coast Resort Association opposes this bill.

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, which will increase to 4.5 percent in January 2020) 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 Ellison Onizuka Kona International Airport at Keahole 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,

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

Stephanie Donoho
Administrative Director



LATE

Testimony of

Mufi Hannemann
President & CEO
Hawaii Lodging & Tourism Association

House Committee on Finance

Senate Bill 380 SD1: Relating to the Transient Accommodations Tax

Chair Luke, and members of the Committee:

Thank you for the opportunity to offer this testimony regarding Senate Bill 380, 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 this measure, 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. A prime example of this is the targeted increase to the Hotel and Resort real property tax (RPT) rate being proposed by the Caldwell administration. This \$1.00 (per \$1,000) increase is only being proposed for the Hotel and Resort class out of all the business real property tax classifications. With annual increases in property valuations, and the proposed \$1.00 (per \$1,000) tax increase, an average medium-sized hotel (250-275 rooms) would see their real property tax payment jump by 33%.

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. Recently, the Hawai'i Tourism Authority has reported a slowdown in hotel performance, stating that this past February was in fact the worst monthly performance in about a decade. As February tends to be best month of the year for Hawai'i's hotel industry, tourism experts speculate an overall dampening in the industry's performance this year. 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 have brought in an estimated \$135.7 million in transient accommodations taxes for the year 2018. The report further stated that TAT revenues from TVRs would 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 this measure.

Mahalo.