

Honolulu, Hawaii

APR 04 2012

RE: H.B. No. 2078  
H.D. 2  
S.D. 2

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which  
was referred H.B. No. 2078, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require a nonresident owner who operates a transient accommodation to employ a real estate broker, real estate salesperson, or condominium hotel operator as a consumer protection measure;
- (2) Require condominium, community, and other similar associations to supply the Department of Taxation with information on owners who may be leasing their property as a transient accommodation;
- (3) Require the Department of Taxation and the counties to work together to enforce relevant state and county taxes; and
- (4) Allow a nonresident owner to file a yearly tax clearance in lieu of hiring a real estate broker, real estate salesperson, or condominium hotel operator.

Your Committee received testimony in support of this measure  
from the Department of Taxation, Hawaii Tourism Authority,



Department of Planning and Permitting of the City and County of Honolulu, Waikoloa Vacation Rental Management, Exclusive Getaways, Condominium Rentals Hawaii, Resorticahawaii.com Inc., Garden Island Properties LLC, Property Management Hawaii, Inc., and five individuals. Your Committee received testimony in opposition to this measure from the Hawaii Association of REALTORS, Rentals by Owner Awareness Association, Southland Real Estate Group, South Maui Condos Direct Rental Network, Bridges to Paradise Rentals Inc., Sunset Shores Maui, Valley Isle Resort Rental Owners Group, and numerous individuals. Your Committee received comments on this measure from the Hawaii Real Estate Commission.

Your Committee finds that this measure is intended to allow everyone who rents a transient accommodation in the State to have their rental revenues identified, so that tax treatment can be applied equally to all and state tax collection compliance can be maximized. Although some testifiers have asserted that this measure unfairly targets individuals who do not live on the same island as their transient accommodation, your Committee believes this is an incorrect assumption. The intent behind this measure is rooted in current law. Section 521-43(f), Hawaii Revised Statutes, as part of the existing landlord-tenant code, requires an owner who lives without the State or on a different island to designate an agent who resides on the same island where the rental unit is located to act in the owner's behalf.

Section 521-7, Hawaii Revised Statutes, also clearly states that the only exemption from the landlord-tenant code for transient rentals is transient occupancy on a day-to-day basis in a hotel or motel. Since all other transient accommodations are subject to the requirements of the landlord-tenant code, owners of transient accommodations who live without the State or on a different island are already required by law to designate an on-island agent to act on their behalf. Your Committee has heard the concerns raised by a number of individuals regarding the requirement to employ a real estate broker, salesperson, or condominium hotel operator for their transient accommodation. Your Committee has taken these concerns into account and concludes that this requirement should be removed. Amendments are necessary that align the provisions in this measure with existing landlord-tenant law, by requiring any owner who resides without the State or on another island from where the transient accommodation is located to designate an agent residing on the same island where the transient accommodation is located.



Your Committee further finds that designating an on-island agent is an important aspect of consumer protection. A designated agent located on the same island as the rental property is essential in the case of an emergency or natural disaster. An on-island agent is also vital if any questions, concerns, or property issues arise regarding the transient accommodation. Your Committee notes that amendments to this measure are also necessary to clarify the scope and duties of a designated agent. An agent for a transient accommodation cannot perform any duties of a real estate agent or broker without a license and may only take care of one property.

Requiring relevant information about owners and designated agents of owners to be provided to the Department of Taxation will aid in the enforcement of applicable state and county tax laws. This measure will require the Department of Taxation and the counties to work together to further the enforcement of relevant tax laws. Your Committee notes that certain amendments to this measure are necessary to clarify what information must be provided to the Department of Taxation.

Your Committee additionally finds that section 237D-4, Hawaii Revised Statutes, requires anyone engaged in the furnishing of transient accommodations to register with the Department of Taxation. Upon registration, the Department issues the taxpayer a registration identification number. Requiring owners to post their registration identification number on any advertisement or solicitation for a transient accommodation in the State will offer assurances to anyone seeking to rent a transient accommodation that the property is legal and the owner is in compliance with all applicable state and county laws.

Your Committee further finds it is important for the Department of Taxation to include information relating to designated agents, registration identification numbers, and other aspects related to compliance with transient accommodation laws on its website. Having this information on the Department's website will ensure that the requirements of this measure are readily apparent to everyone and accessible from a central location.

Your Committee also finds that certain testimony on this measure and other similar measures have referenced the Department of Taxation's 2009-2010 Annual Report. There have been some misinterpretations regarding this report that need to be clarified. The Department's annual reporting of its cases on



appeal or in litigation has been mischaracterized as a complete listing of the Department's appeals and litigation cases, and consequently has been misconstrued to mean that the parties named in the cases are less compliant than others. It is inaccurate to assume this, just as it is inaccurate to assume that the mere appearance of the taxpayer's name in the case automatically means the taxpayer has not paid its requisite transient accommodations tax.

Testimony from the Department of Taxation clarifies that a review of the case description in the 2009-2010 Annual Report reveals that most of these cases involve the applicability of the general excise tax, income tax, or both. The main issue is whether the general excise tax applies to the gross receipts received by the management company for an interval ownership (time share) project, or whether a general excise tax exemption available to condominium associations is applicable. In other words, the main issue in the report is concerned with the appropriate tax rate on maintenance fees owed by time share owners - a completely different set of facts and circumstances than what is being addressed in this measure.

Your Committee also notes that transient accommodations management companies tend to hire professional accounting firms or staff who are familiar with the intricacies of chapter 237D, Hawaii Revised Statutes, the transient accommodations tax law. Individual owners, unless they are accountants or have a tax-related background, may not be well-versed about the transient accommodations tax or the State's intricate tax laws. For example, Hawaii is one of only three states that are excise tax-based. It is your Committee's hope that this explanation will help clarify the mischaracterization of the 2009-2010 Annual Report's applicability to this measure.

Your Committee has amended this measure by:

- (1) Requiring any owner who resides without the State or on another island from where the transient accommodation is located to designate an agent residing on the same island where the transient accommodation is located, as required pursuant to subsection 521-43(f), Hawaii Revised Statutes;
- (2) Specifying the scope and duties of a designated agent for a transient accommodation;



- (3) Deleting the requirement for a nonresident owner who operates a transient accommodation located in the nonresident owner's private residence to employ a real estate broker, salesperson, or condominium hotel operator;
- (4) Clarifying that the owner of a transient accommodation shall furnish the name, address, and contact information of the designated agent, rather than information about a real estate broker, salesperson, or condominium hotel operator, to an appropriate association or certain nongovernmental entities;
- (5) Requiring an owner to notify and provide updated information to the appropriate association or nongovernmental entity within sixty calendar days of any change in the name, address, and contact information of the designated agent;
- (6) Clarifying that specific nongovernmental entities shall provide certain relevant information to the Department of Taxation by December 31 of each year, or within sixty calendar days of any change in the relevant information or ownership of the transient accommodation;
- (7) Clarifying that each county shall provide certain relevant information to the Department of Taxation by December 31 of each year, or within sixty calendar days of any change in the relevant information or ownership of the transient accommodation;
- (8) Deleting the requirement for the Department of Taxation to issue a separate registration identification number for each nonresident owner who may be leasing property as transient accommodations;
- (9) Deleting the provision that allowed a nonresident owner to file a yearly tax clearance in lieu of hiring a real estate broker, real estate salesperson, or condominium hotel operator;
- (10) Clarifying that the name and phone number of the designated agent for each transient accommodation shall be included in any transient accommodation contract or



written rental agreement and shall be prominently posted in the transient accommodation;

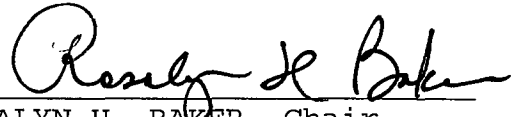
- (11) Requiring the registration identification number issued pursuant to section 237D-4, Hawaii Revised Statutes, to be displayed conspicuously in all advertisements and solicitations on websites regarding transient accommodations for which the registration number is issued;
- (12) Requiring an advertisement for an owner's transient accommodation to include the name and phone number of a designated agent, in certain situations;
- (13) Requiring the Department of Taxation to post on its website certain information to ensure the requirements of this measure are readily apparent and accessible to the public;
- (14) Clarifying that noncompliance will subject a person or entity to the existing penalties under section 231-35, Hawaii Revised Statutes, with exceptions;
- (15) Clarifying that the payment of any penalty assessed under this measure shall be in addition to the requirements under section 237D-9, Hawaii Revised Statutes;
- (16) Deleting the definition of "nonresident owner" and inserting a definition of "relevant information";
- (17) Amending the purpose section to reflect the amended purpose of the measure; and
- (18) Changing the effective date from July 1, 2013, to July 1, 2012.

Your Committee notes that this amended measure ensures that everyone who operates a transient accommodation in the State is in full compliance with existing transient accommodations tax laws, clarifies that the existing consumer protections of the landlord-tenant code extend to transient accommodations, and represents a meaningful solution to the current problem of unregulated transient accommodations operating in Hawaii.



As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2078, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 2078, H.D. 2, S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,



ROSALYN H. BAKER, Chair



**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

\*Only one measure per Record of Votes