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TESTIMONY OF SIMEON R. ACOBA, CHAIR, STATE-COUNTY FUNCTIONS WORKING GROUP, ON HOUSE BILL NO. 169, HOUSE DRAFT 1, RELATING TO TAXATION

House Committee on Finance
February 26, 2015

Chair Luke and Members of the Committee:

I am Simeon R. Acoba, Chair of the State-County Functions Working Group. Thank you for the opportunity to comment on House Bill No. 169, House Draft 1, relating to taxation. This measure, among other purposes, would increase the transient accommodations tax (TAT) imposed on resort time share vacation units.

The Working Group was created by Act 174 (SLH 2014) and administratively placed within the Office of the Auditor. The Working Group, which first convened in October 2014, is comprised of 13 members appointed by the Governor, the Senate President, the Speaker of the House of Representatives, each of the county mayors, and the Chief Justice. The group is assigned the following responsibilities:

1) Evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services; and

2) Submit a recommendation to the Legislature on the 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.

Act 174 requires the Working Group to submit two reports: 1) an Interim Report, which was delivered to the Legislature, Governor, and each of the county mayors, on December 18, 2014; and 2) a Final Report with its findings and recommendations to the same parties 20 days prior to the convening of the 2016 Regular Session.

The Working Group will continue its work through 2015 and shall cease to exist upon the adjournment sine die of the 2016 Regular Session. We note that any TAT legislation passed this year may affect the on-going work of the Working Group. Accordingly, while we take no position on the merits of this bill, we respectfully request your consideration of deferring decisions on TAT legislation introduced this year to the 2nd year of the 28th State Legislature to enable the the Working Group to complete its work. As required by Act 174, the Working Group will report its findings and make recommendations prior to the 2016 Regular Session.

Thank you for the opportunity to offer comments on House Bill No. 169, House Draft 1. I am available for your questions.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Thursday, February 26, 2015
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 169, H.D. 1, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 169, H.D. 1, which helps to alleviate a disparity in the State Tax Law that imposes a lower tax on certain transient accommodations operators and not others.

H.B. 169, H.D. 1 raises the Transient Accommodations Tax (TAT) rate imposed on timeshares under Hawaii Revised Statutes (HRS) section 237D-2(c) from 7.25% to 8.25% for the period beginning July 1, 2015 and ending June 30, 2016, and then from 8.25% to 9.25% beginning July 1, 2016 and thereafter.

Under current TAT law, timeshares are afforded a lower tax burden compared to hotels and other non-timeshare transient accommodation rental operations. While hotels are taxed at a rate of 9.25% of their gross rental income received in exchange for furnishing transient accommodations, timeshares are afforded a discounted tax imposition in two ways.

First, timeshares are subject to a 7.25% rate rather than a 9.25% rate. Second, the rate is imposed on one-half of the daily maintenance fee paid by the owner of the unit, rather than on the full fair market value of the room. One-half of daily maintenance fees in most cases is significantly below the true market value of any accommodation. These two factors result in the TAT liability being significantly lower than comparable hotel accommodations.

If the intent of this measure is to level the imposition of the tax on the different transient accommodation business models, the Department suggests that the base amount on which the TAT is imposed be equal to one hundred percent of the daily maintenance fees. In addition, the Department suggests that the last sentence of the definition of "fair market rental value" not be deleted as this provision allows the Department to impose the TAT fairly when timeshare business models do not charge a daily maintenance fee that appropriately reflects the market value of the accommodation being furnished. Accordingly, the Department suggests that the definition of "fair market rental value", as set forth in section 237D-1, HRS, be amended to read as follows:

"Fair market rental value" means an amount equal to [~~one-half~~] the gross daily maintenance fees that are paid by the owner, are attributable to the time share unit, and include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, and other costs including payments required for reserves or sinking funds. 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.

Annual revenue gain is estimated at $4.0 million in FY 2016 and thereafter.

Thank you for the opportunity to provide comments.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATION, Additional tax on time share units

BILL NUMBER: HB 169, HD-1

INTRODUCED BY: House Committee on Tourism

BRIEF SUMMARY: Amends HRS section 237D-2 to impose tax of 8.25% on the fair market rental of a time share vacation unit between July 1, 2015 and June 30, 2016; and 9.25% on July 1, 2016 and thereafter.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: The legislature by Act 61, SLH 2009, increased the transient accommodations tax (TAT) from 7.25% to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15. The legislature by Act 161, SLH 2013, made the increase in the TAT permanent at 9.25%.

Currently resort time share units are taxed at 7.25% of their fair market value. This measure would impose an additional tax of 1% each year until it reaches 9.25% on July 1, 2016.

Apparently in their rush to raise additional revenues for the general fund by raising the TAT rate on hotel rentals, lawmakers overlooked timeshare rentals which are taxed under a different section of the TAT law than all other hotel rentals. This measure proposes to bring the taxation of time share rentals into line with all other transient accommodation rentals.

Although this may appear to be a move to maintain parity, what is most disconcerting is that while the 9.25% TAT rate was supposed to sunset in 2015, it has now become permanent as lawmakers cited immediate and continuing need for the extra funds. Lawmakers need to impose discipline on their spending of all the money they can get their hands on with the realization that this practice is what got the state into the trouble it is now trying to address. Unfortunately, what policy makers have failed to realize is that the more they extract from the economy in taxes and fees, the more economic performance declines. As economic performance declines, so do tax revenues.

Digested 2/24/15

Testimony of
Gary M. Slovin / Mihoko Ito
on behalf of
Wyndham Vacation Ownership

DATE: February 25, 2015

TO: Representative Sylvia Luke
Chair, Committee on Finance
Submitted Via FINtestimony@capitol.hawaii.gov

RE: **H.B. 169, H.D.1 - Relating to Taxation**
Hearing Date: Thursday, February 26, 2015 at 3:00 p.m.
Conference Room 308

Dear Chair Luke and Members of the Committee on Finance,

We submit this testimony on behalf of Wyndham Vacation Ownership. Wyndham offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham Vacation Ownership has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham and Shell Vacations brands.

Wyndham submits the following **comments** regarding H.B. 169, H.D.1, which seeks to increase the transient accommodations tax on time share vacation units from 7.25% to 9.25%. The transient accommodations tax on time share vacation units, also known as the "transient occupancy tax" or "TOT," is a tax on a percentage of property maintenance fees that are paid by a time share owner.

Wyndham does not support an increase in the transient occupancy tax, but appreciates the amendments that have been made to the measure based upon the industry's testimony. Specifically, the Committee on Tourism amended the measure to phase-in the TOT over a period of several years, as was done for the TAT, and also amended the measure to redefine the definition of "fair market value" based on the industry's testimony. Wyndham recognizes that the transient accommodations tax on hotel rooms ("TAT") was temporarily increased and gradually phased-in several years ago from 7.25% to 9.25%, and that the increase was made permanent in 2013, and believes that the amendments make the bill more equitable.

Thank you for the opportunity to submit comments on this measure.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

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Honolulu, HI 96813
(808) 539-0840

ARDA
American Resort Development Association
HAWAI'I

February 26, 2015

TO: COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

FR: Henry Perez, Chair
ARDA-Hawaii

RE: H.B. 169 HD1 Relating to Taxation
Position: **Not Support**

Dear Chair Luke and Vice Chair Nishimoto and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, **does not support HB 169 HD1**, a bill Relating to Taxation. This bill would raise the taxes paid by timeshare owners for what is more commonly called a "transient occupancy tax" (TOT) by increasing the tax rate from 7.25 percent to 8.25 percent one year, then permanently to 9.25 percent thereafter (7.25% to 8.25% to 9.25%).

Timeshare owners already pay their share of general excise taxes, of real property taxes, and even transient accommodation taxes (TAT) when the rooms are held out like traditional transient accommodations. Hawaii's TOT uniquely assesses time share owners for *occupancy* of property that they already own, based on a calculation of a daily maintenance fee factoring in maintenance costs, operational costs, insurance, and other related expenses.

However, ARDA recognizes that hotels have been paying an increased TAT since 2009. Under 2009's Act 61, the hotels' tax rate was *temporarily* increased from 7.25% to 8.25% for one year, and then increased to 9.25% for 2010 - 2015. The increase was later made *permanent* in 2013's Act 161. Therefore, should this bill move forward, in recognition of an equitable tax rate, ARDA respectfully requests that the Committee pass the bill as amended by the House Tourism Committee:

1. Increase the rate from 7.25% to 8.25% for one year; then increase to 9.25% the following year to provide the same phase-in and gradual increase that was provided to the TAT rate; and

2. Redefine "fair market value" under Haw. Rev. Stat. Section 237D-1, to delete the language where the Department of Taxation (DoTAX) has the power to

determine whether “gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals.” We understand that the DoTAX has not used this mechanism, and may not have the resources to do so. Moreover, because the TAT is assessed based on “gross rental” and it is not calculated based on a “comparable” rental, ARDA respectfully asks for the same treatment.

Thank you for the opportunity to submit testimony.

STARWOOD
VACATION OWNERSHIP
9002 San Marco Court
Orlando, Florida 32819
(407) 418-7271

LATE

February 26, 2015

To: Honorable Sylvia Luke, Chair
Honorable Scott Nishimoto, Vice Chair
House Committee on Finance

RE: **HB 169 HD1 – Relating to the Taxation – Comments**
Conference Room 308; 3:00 PM; Agenda #3

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

Starwood Vacation Ownership ("Starwood") appreciates the opportunity to offer comments on HB 169 HD1, which increases the transient accommodations tax imposed on resort time share vacation units by 1% each year to gradually achieve a rate of 9.25% of the fair market rental value. Starwood does not support an increase in transient accommodations taxes imposed on resort time share vacation units; however, should this measure move forward, the current HD1 which includes an amendment to phase-in the tax increase and redefine "fair market value" is preferred.

Currently, timeshare owners pay general excise taxes, real property taxes, and transient accommodations taxes when rooms are used as traditional transient accommodations. The transient accommodations tax on timeshare units is also known as the "transient occupancy tax," which is a tax based on a percentage of daily maintenance fees, and paid my time share owners. Starwood does not support the transient occupancy tax, but is aware of the increase in transient accommodations taxes that hotels pay. Therefore, we respectfully ask that the Committee keep the language that is in the HD1.

Thank you for the opportunity to testify on HB 169 HD1.

Robin Suarez
Vice President/General Counsel
Starwood Vacation Ownership

LATE

OUTRIGGER
ENTERPRISES GROUP
Hospitality • Retail • Development

HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair

2/26/2015
Rm. 308, 3:00 PM

HB 169 HD 1
Relating to Taxation

Chair Luke & Members of the Finance Committee, my name is Max Sword, here on behalf of Outrigger Enterprises Group, to offer our comment regarding HB 169, HD 1.

While we are advocates of the fair application of taxes to maintain a level playing field within an industry, we are at the same time not advocates of any new taxes.

With that being said, if this bill is to be passed out we would support what is being proposed by ARDA & Wyndham as well as the language in HD 1, on a phasing in of the tax increase over the course of a couple of years.

Mahalo for allowing me to testify.

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