HB 169

Amends the definition of fair market rental value. Increases the transient accommodations tax imposed on resort time share vacation units by 1 per cent each year to gradually achieve a rate of 9.25 per cent of the fair market rental value

DAVID Y. IGE
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To: The Honorable Gilbert Kahele, Chair
and Members of the Senate Committee on Tourism and International Affairs

Date: Wednesday, March 18, 2015
Time: 2:45 P.M.
Place: Conference Room 225, 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. H.D. 1 has a defective effective date of July 1, 2020.

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% tax rate, rather than the 9.25% tax 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 timeshare TAT liability being significantly lower than the liability imposed on comparable hotel accommodations.

If the intent of this measure is to impose the tax on the different transient accommodation business models in a consistent manner, 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.

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

Thank you for the opportunity to provide comments.

From:	mailinglist@capitol.hawaii.gov
To:	TSI Testimony
Cc:	darakawa@lurf.org
Subject:	Submitted testimony for HB169 on Mar 18, 2015 14:45PM
Date:	Saturday, March 14, 2015 6:56:14 PM

HB169

Submitted on: 3/14/2015

Testimony for TSI on Mar 18, 2015 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments: The Land Use Research Foundation of Hawaii SUPPORTS the intent of HB 169, RELATING TO TAXATION, which amends the definition of fair market rental value; and increases the transient accommodations tax imposed on resort time share vacation units by 1 per cent each year to gradually achieve a rate of 9.25 per cent of the fair market rental value. Timeshares should pay their fair share of TAT, because they benefit from TAT revenues. (HB169 HD1)

American Resort Development Association
HAWAI'I

March 18, 2015

TO: COMMITTEE ON TOURISM AND INTERNATIONAL AFFAIRS
Senator Gilbert Kahele, Chair
Senator J. Kalani English, Vice Chair

FR: Henry Perez, Chair
ARDA-Hawaii

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

Dear Chair Kalehe and Vice Chair English and members,

The American Resort Development Association (ARDA) Hawaii, the local chapter of the national timeshare trade association, **does <u>not support</u> 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 <u>*occupancy*</u> 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 acknowledges 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, even if we do not support this bill, should it continue to move forward, ARDA respectfully requests that the Committee <u>pass the bill in the House Draft 1 form</u>:

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.

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

GRASSROOT
Institute of Hawaii

March 18, 2015
2:45 PM
Conference Room 225

To: Senate Committee on Tourism & International Affairs
Sen. Gilbert Kahele, Chair
Sen. Kalani English, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: HB 169 -- RELATING TO TAXATION
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB 169, which would gradually raise the transient accommodations tax for resort time share vacation units to 9.25% of fair market rental value.

This bill is yet another example of a tendency on the part of the state government to treat tourist dollars as an infinite resource that can be tapped as needed. At this time, the state should be looking for ways to be attractive to tourists, not raising the cost of visiting Hawaii (and making other, less expensive destinations more attractive in comparison).

The argument has been made that raising this tax is merely an attempt to achieve "fairness" in the industry. However, this not only ignores the differences between time shares and other vacation units, but also misses the greater problem. This "parity" could also be achieved by lowering the tax rate across the board. Instead, the state seeks to overcome issues in budget and spending by raising taxes yet again and ignoring the long-term effect on business and the state's economy.

Considering the centrality of tourism to Hawaii's economic health, any proposal that could have far-reaching effects on the state's ability to attract new visitors and reach new markets must be considered carefully before action is taken. If we continue to raise the cost of tourism in our state, we will see an overall decline in revenues. What is needed is more responsible spending, not regular tax increases.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli'i Akina, Ph.D.
President, Grassroot Institute of Hawaii

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

DATE: March 16, 2015

TO: Senator Gilbert Kahele
Chair, Committee on Tourism and International Affairs
Submitted Via TSItestimony@capitol.hawaii.gov

RE: **H.B. 169, H.D.1 - Relating to Taxation**
Hearing Date: Wednesday, March 18, 2015 at 2:45 p.m.
Conference Room 225

Dear Chair Kahele and Members of the Committee on Tourism and International Affairs,

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 increase 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
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STARWOOD
VACATION OWNERSHIP

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

March 18, 2015

To: Honorable Gilbert Kahele, Chair
Honorable J. Kalani English, Vice Chair
Senate Committee on Tourism and International Affairs

RE: **HB 169 HD1 – Relating to Taxation – Comments**
Conference Room 225; 2:45 PM

Chair Kahele, Vice Chair English 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 continue to 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