



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1257

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB2699 SD2 HD1 CD1, without my approval and with the statement of objections relating to the measure.

SB2699 SD2 HD1 CD1

RELATING TO THE TRANSIENT
ACCOMMODATIONS TAX

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2018

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2699

Honorable Members
Twenty-Ninth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2699, entitled "A Bill for an Act Relating to the Transient Accommodations Tax."

The purpose of this bill is to ensure that Transient Accommodations Tax (TAT) is imposed on resort fees charged by hotels and other transient accommodations. Section 1 of this bill amends the definition of "gross rental proceeds" to include resort fees and adds a definition of "resort fee." "Resort fee" is defined as: "any 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."

Section 2 of this bill authorizes the Department of Taxation to issue administrative rules further defining "resort fee" and "gross rental proceeds" and clarifies that the bill does not prevent the Department of Taxation from collecting TAT on resort fees prior to the issuance of administrative rules.

This bill is objectionable because it creates the potential for a large and ambiguous expansion of the TAT and also undermines the Department of Taxation's current interpretation of the TAT.

The current draft of the bill does not properly reflect the Department of Taxation's current position. The qualifier "mandatory" in the definition of "resort fee" was removed and would allow an overzealous interpretation of that term. Such an interpretation would subject charges to the TAT even if those charges were unrelated to the letting of the transient accommodation. This may include discretionary charges such as those for long-distance telephone calls, movie rentals, room service, and any other charge to the occupant of a transient accommodation. The potential for such a

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2699
Page 2

large and ambiguous expansion of the TAT, which directly affects the state's largest industry, was not fully contemplated during the legislative process and may lead to many unintended consequences.

Furthermore, by omission of the word "mandatory," this bill simultaneously undermines the Department of Taxation's current position and leaves the agency with no guidance toward a new position.

The Department of Taxation's current position is clear; its position is that only mandatory resort fees are subject to the TAT. By its exclusion of the word "mandatory," this bill undermines that interpretation. During the 2018 Legislative Session the proposed definition of "resort fee" was amended numerous times to both include and exclude the qualifier "mandatory." The final bill omits "mandatory," therefore it could be argued that the bill overturns the Department of Taxation's position that only mandatory resort fees are subject to the TAT. Even though the bill may overturn the Department of Taxation's current position, it offers no guidance toward a new position. This bill's definition of "resort fee" does not limit what may be included in "resort fee" in any way. Therefore, the bill leaves full interpretation of the definition of "resort fee" to the Department of Taxation while simultaneously undermining its current interpretation.

The lack of clarity inherent in this bill will lead to ambiguity, confusion, and unintended consequences within the TAT.

For the foregoing reasons, I am returning Senate Bill No. 2699 without my approval.

Respectfully,



DAVID Y. IGE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 237D-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Resort fee" means any charge or surcharge imposed by an
6 operator, owner, or representative thereof to a transient for
7 the use of the transient accommodation's property, services, or
8 amenities."

9 2. By amending the definition of "gross rental" or "gross
10 rental proceeds" to read:

11 "Gross rental" or "gross rental proceeds" means the gross
12 receipts, cash or accrued, of the taxpayer received as
13 compensation for the furnishing of transient accommodations and
14 the value proceeding or accruing from the furnishing of such
15 accommodations, including resort fees, without any deductions on
16 account of the cost of property or services sold, the cost of
17 materials used, labor cost, taxes, royalties, interest,
18 discounts, or any other expenses whatsoever. Every taxpayer



1 shall be presumed to be dealing on a cash basis unless the
2 taxpayer proves to the satisfaction of the department of
3 taxation that the taxpayer is dealing on an accrual basis and
4 the taxpayer's books are so kept, or unless the taxpayer employs
5 or is required to employ the accrual basis for the purposes of
6 the tax imposed by chapter 237 for any taxable year in which
7 event the taxpayer shall report the taxpayer's gross income for
8 the purposes of this chapter on the accrual basis for the same
9 period.

10 The words "gross rental" or "gross rental proceeds" shall
11 not be construed to include the amounts of taxes imposed by
12 chapter 237 or this chapter on operators of transient
13 accommodations and passed on, collected, and received from the
14 consumer as part of the receipts received as compensation for
15 the furnishing of transient accommodations. Where transient
16 accommodations are furnished through arrangements made by a
17 travel agency or tour packager at noncommissionable negotiated
18 contract rates and the gross income is divided between the
19 operator of transient accommodations on the one hand and the
20 travel agency or tour packager on the other hand, gross rental
21 or gross rental proceeds to the operator means only the



1 respective portion allocated or distributed to the operator, and
2 no more. For purposes of this definition, where the operator
3 maintains a schedule of rates for identifiable groups of
4 individuals, such as kamaainas, upon which the accommodations
5 are leased, let, or rented, gross rental or gross rental
6 proceeds means the receipts collected and received based upon
7 the scheduled rates and recorded as receipts in its books and
8 records."

9 SECTION 2. The department of taxation shall adopt rules
10 pursuant to chapter 91, Hawaii Revised Statutes, to further
11 define the definitions added or amended by this Act; provided
12 that this Act shall not be construed to prevent the department
13 of taxation from levying, assessing, or collecting taxes
14 resulting from the imposition of resort fees prior to the
15 adoption of these rules.

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2018.

APPROVED this day of , 2018

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai‘i, Regular Session of 2018.


President of the Senate


Clerk of the Senate

SB No. 2699, SD 2, HD 1, CD 1

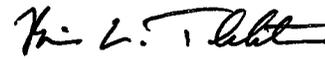
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives