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To: The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Economic Development, Tourism, and Technology

Date: Wednesday, March 21, 2018
Time: 2:00 P.M.
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2008, H.D. 1, Relating to Taxation

The Department of Taxation (Department) supports the intent of H.B. 2008, H.D. 1, and offers the following comments for the Committee's consideration.

H.B. 2008, H.D. 1, requires travel agencies and tour packagers to obtain a certificate of registration under chapter 237D of the Hawaii Revised Statutes (HRS) if they enter into arrangements to furnish transient accommodations at noncommissioned negotiated contract rates. Additionally, the bill imposes the transient accommodations tax (TAT) on all travel agencies and tour packagers who arranges transient accommodations at noncommissioned negotiated contract rates and specifies that when transient accommodations are booked at noncommissioned negotiated contract rates, the TAT will be imposed on each person's share of the proceeds. The bill is effective on July 1, 2018 and applies to taxable years beginning after December 31, 2018.

Background

Under current law, the imposition of the TAT on transient accommodations sold through a travel agency or tour packager varies depending on whether the transaction was on a commissioned or noncommissioned basis. In Travelocity.com, L.P. v. Director of Taxation, 135 Hawaii 88 (2015), the Hawaii Supreme Court explained that a "commission" is a "fee paid to an agent or employee for a particular transaction, usually as a percentage of the money received by the transaction." Travelocity, 135 Hawaii at 111 (quoting Black's Law Dictionary 327 (10th ed. 2014) (internal quotations omitted). The court further explained that a "noncommissioned rate" is "an amount of money paid to an entity or person other than an agent or an employee." Travelocity, 135 Hawaii at 111. The court clarified that unlike a commissioned transaction, in which a fee is usually paid as a percentage of the income received, in a noncommissioned transaction, a hotel has no means of knowing what the travel agent's mark-up will be. Id. In sum, when a hotel pays a travel agent for a room on a commission basis, the room rate is readily definable, but in a noncommissioned transaction, the hotel has no means of knowing the travel agent's markup and actual room rate. Id.

When transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates, the TAT is imposed solely on the operator on its share of the proceeds. There is no tax imposed on the travel agency's or tour packager's share of proceeds. In comparison, when transient accommodations are furnished through a travel agency or tour packager on a commissioned basis, the TAT is imposed on the gross proceeds of the operator, including the commission paid to the travel agency or tour packager. Similarly, when transient accommodations are sold directly by the operator, the TAT is imposed on the gross proceeds of the operator. Accordingly, the TAT imposed on a unit will differ depending on whether the unit was sold directly by the operator, sold by a travel agent or tour packager on a commissioned basis, or sold by a travel agent or tour packager on a noncommissioned basis.

For example, if a room is sold for $100 to a guest directly by a hotel, the hotel will owe $10.25 in TAT (10.25 percent of $100). Similarly, if a room is sold for $100 by a travel agency who earns a $20 commission on the transaction, the hotel will owe $10.25 in TAT (10.25 percent of $100). If, however, the same room is sold for $100 by an online travel company (OTC) who has a noncommissioned agreement with the hotel and keeps $20 from the transaction, the hotel will owe $8.20 in TAT (10.25 percent of $80); the $20 kept by the OTC is not subject to TAT. These concepts are illustrated in the following table:

Type of Transaction	Amount Paid by Guest	Amount Kept by Travel Agency	Amount Kept by Operator	TAT Base	TAT Due
Direct sale by hotel	$100	$0	$100	$100	$10.25
Sold by travel agent on commissioned basis	$100	$20	$80	$100	$10.25
Sold by travel agent on noncommissioned basis	$100	$20	$80	$80	$8.20

Comments

The Department appreciates that its proposed amendments were adopted by the House Committee on Tourism. The Department notes, however, that in Section 4 of the bill, a comma has been omitted after the word "operator," which could be interpreted as only requiring operators who enter into arrangements to furnish transient accommodations at noncommissioned rates to be subject to the TAT. The imposition of TAT should apply to (1) all operators regardless of whether there is a direct sale, commissioned sale, or noncommissioned sale and (2) travel agents and tour packagers, but only when the sale is made at noncommissioned rates. In lieu of adding a comma after the word “operator,” and to avoid any confusion, the Department suggests the following clarifying amendment:

> Every [~~operator and every~~] travel agency or tour packager who arranges transient accommodations at noncommissioned negotiated contract rates[~~,~~] and every operator shall pay to the State the tax imposed by subsection (a), as provided in this chapter.

Additionally, to clarify that the $15 registration fee in Section 2 of the bill is a one-time fee that applies to each travel agency or tour packager, and is not a fee that is assessed per transient accommodation, the Committee may consider the following amendments:

> **§237D- Certificate of registration for travel agency and tour packager.** Each travel agency or tour packager, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The travel agency or tour packager shall make a one-time payment of $15 [~~for each registration, upon~~] to register with the director. Upon receipt of [~~which~~] the registration payment, the director shall issue a certificate of registration to the travel agency or tour packager in a form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the travel agency or tour packager in whose name it is issued.

Finally, the Department notes that is able to administer this measure with its current effective date. Thank you for the opportunity to provide comments.

TRAVEL TECH
The Travel Technology Association

Testimony of Stephen Shur, President of the Travel Technology Association, in Strong Opposition to H.B. 2008: Applying the Transient Accommodations Tax to Travel Agent Service Fees and Imposing a $15 Per Hotel Registration Fee on Travel Agents

My name is Stephen Shur, and I am the President of the Travel Technology Association. My organization represents companies like Expedia, Priceline, Orbitz, Booking.com, TripAdvisor, and many others.

Our industry is responsible for booking hundreds of thousands of room nights in Hawaii annually. We are in strong opposition to any proposal that would impose new and burdensome taxes on the fees charged by travel agents, both online and in Hawaii. These new taxes will be passed-on to the consumer in the form of higher room rates, thereby harming Hawaii's tourism economy.

A recent study by TripAdvisor's TripIndex found that Hawaii was the 2nd most expensive destination in America. Leisure travelers are hyper sensitive to price and these increases will put Hawaii out of reach for many families.

In addition, the provision in H.B. 2008 that would require travel agents and tour operators to pay a $15 fee per registration (per hotel?) is particularly discriminatory and egregious. No other state in America imposes such fees and such a requirement is an unnecessary and harmful provision. If the state wants to ensure that the proper taxes are being collected and remitted by travel agents, the state already has the ability to do so through audits and administrative proceedings. Such discriminatory registration fees will only serve as a disincentive for travel agents to partner with Hawaii hotels to help them market their rooms to the world.

One of the biggest myths in our industry is that online travel agents buy rooms in bulk at wholesale rates and resell them at retail rates. This is simply not true.

When a traveler books a room via a travel agent, either online or in Hawaii, the total amount the traveler pays for the room includes:

1. the room rate set by the hotel,

2. all applicable taxes based on that room rate, and
3. a service fee charged by the travel agent (online or in the community)

Further, Hawaii hotels willingly and enthusiastically partner with my members to help market unsold rooms. And they benefit tremendously from their participation with online travel sites. Online travel agents market Hawaii hotels to the world.

- OTAs market Hawaii hotels to the world but are never responsible for unsold rooms.
- The hotel controls the inventory and sets the price.
- The terms wholesale and retail have no meaning in the travel agency arena.
- There is only one room rate and that is what the hotel requires to allow a guest in the room on a given night.
- Taxes on hotel rooms in Hawaii are based on the amount the hotel requires to allow someone to occupy a room on a given night. That is the basis for the calculation of the tax.
- Hotels have many rates on any given night. If a traveler has a AAA or AARP discount, for example, the tax is based on that discounted rate.
- OTAs do not operate hotels. Online travel agents are just that, travel agents. They connect travelers with hotels and charge the traveler a service fee for the service they provide (the ability to search for, compare and book a hotel room).
- The playing field between hotels and OTAs is not "uneven". OTAs are a valued marketing channel for large hotel chains and independent hotels.
- Hilton CEO said this in an article April 7,2016: "**The OTAs are a good partner for us to be able to access customers that we might not otherwise be able to access."**
    - https://skift.com/2016/04/07/hilton-ceo-heaps-praise-on-his-good-partners-the-online-travel-agencies/
- For independent hotels, the value of OTAs is even greater.
    - By partnering with OTAs, independent hotels get to compete for travelers with the major hotel chains when their property shows up on a comparison screen next to Marriott and Hilton.

Applying new taxes to the fees charged by travel agents will have the opposite of the intended effect of raising revenue. Travel agents are the engine that help steer travelers to Hawaii. 30% of all hotel bookings in the US are via online travel agents and the number is even higher for international travelers. Taxing online and community travel agents will serve as a disincentive for them to steer travelers to the state.

Leisure travelers are hyper sensitive to price. These taxes will ultimately be passed on to the consumer in the form of higher room rates. Priceline.com found that when the room rate is increased by 1%, there is a 2% reduction in bookings. Raising room rates in Hawaii through higher taxes will have a ripple effect through the state's economy as leisure travelers choose to visit other states to save money, or not travel at all.

On average, 25% of rooms booked on OTAs are in-state bookings, which means Hawaii residents will be paying more for hotels. Small businesses who benefit from travel and tourism will be negatively impacted by these taxes as well as fewer travelers stay in Hawaii.

What is being considered here with this legislation is the imposition of a new tax on service fees in Hawaii.

This is bad for Hawaii tourism. If even just a small percentage of travelers choose to stay in California, for example, for a lower cost room or not travel at all, any revenue gained by a tax on travel agent fees will be small compared to the tax revenue lost when a traveler doesn't visit Hawaii and spend their money on goods and services.

The proposal is particularly bad for Hawaii travel agents, tour operators, wedding and event planners who charge their clients fees for booking hotel rooms and already pay tax on the service fees (income) they charge their clients. Recently, Marriott announced that they are cutting commissions to travel agents. This means that travel agents will now be charging their clients a service fee. These fees would be subject to the tax imposed by H.B. 2008. Hawaii travel agents, wedding planners, tour operators and event planners already pay tax on their income. This would amount to a double tax on these Hawaii small businesses.

It has been said that when you tax something, you get less of it. In this case, we are talking about hotel bookings in Hawaii.

The opportunity cost of this tax is high. It's not about raising revenue. It's not about closing a loophole that doesn't exist. It's not about leveling any playing field. It's simply a new tax on services and a disincentive for travel agents, both online and in Hawaii to steer people to Hawaii hotels.

This new tax on services is a job killer, a small business killer and a burden on Hawaii businesses and citizens. I urge you to reject this proposal.

Thank you.

Stephen Shur
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HB-2008-HD-1
Submitted on: 3/19/2018 1:40:55 PM
Testimony for ETT on 3/21/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Bobbie Singh-Allen	Testifying for Independent Lodging Industry Association	Oppose	No

Comments:

March 19, 2018

Senate Committee on Economic Development, Tourism, and Technology

On behalf of the Independent Lodging Industry Association and over 5,000 independent hotel members nationwide, including the beautiful state of Hawaii, respectfully urge you to **Oppose HB 2008. Do not place an occupancy tax on services that benefit local lodges, inns and service providers in Hawaii. HB 2008 would create a new tax in Hawaii.**

HB 2008 would create a new tax on the service customers use to book rooms in Hawaii, increasing the cost of tourism in the state.

Independent hotel owners rely on travel agents and online travel companies to help sell hotel rooms that would otherwise go unsold. Because they lack the marketing infrastructure of large hotel chains, independent hotel companies often find it helpful to partner with travel agents and online travel companies—particularly during slower travel seasons. In this way, owners of independent hotels can reach out-of-state visitors throughout the world who might never hear of these properties but for the marketing reach of their online partners.

The lodging industry has suffered in this weakened economy. Online Travel Companies (OTCs) such as Expedia, Booking.com, and others are playing a vital role in boosting room sales in these difficult times. The heads OTCs put in beds often is the difference between profitability or loss for many hotel operators

This, in turn, means that **proposals to raise taxes on travel agents and online travel companies threaten to cause disproportionate harm on the small business owners who operate independent hotels.**

Independents can't match large corporate hotel's marketing war chests, thus they rely heavily on OTCs to compete with branded hotels. Without a robust OTC channel, independent hoteliers will be put at a competitive disadvantage with chain hotels. It’s critical that OTCs not be marginalized as it would diminish the ability of independent hotels to compete effectively.

Hotels, with the help of Online Travel Companies, boost the local economy by supporting jobs and increasing tourism. When people travel, many supporting businesses benefit. Every effort must be made to stimulate the economy and job growth.

For the sake of tourism and the small business owners who operate independent hotels in the state, I urge you to oppose any efforts to tax interactive travel services and HB 2008.

Thank you very much for your attention to this matter. If I can answer any questions about this bill or its impact on our membership, please do not hesitate to contact me.

Respectfully yours,

Bobbie Singh-Allen

Bobbie Singh-Allen, J.D.

Executive Vice President

California Lodging Industry Association

Executive Director

Independent Lodging Industry Association

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About Us:

The Independent Lodging Industry Association (ILIA) is a national association with over 5,000 members nationwide. It was founded in 2010 by the California Lodging Industry Association (CLIA). CLIA was established over 70 years ago by a group of independent hotel owners and operators. Over the past several decades, independent hotels, independently owned franchised hotels, and owners have been impacted by decisions being made out of the halls of State Capitols to Washington, D.C. Chain hotels have dominated the policy making process. ILIA will level the playing field and allow independent hotels a seat at the table. For more information, please contact me at: bobbie@independentlodging.org or 916-826-2075.

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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March 19, 2018

Senator Glenn Wakai, Chair
Committee on Economic Development, Tourism, and Technology
Hawaii Senate
Honolulu, HI

RE: ***Opposition to HB 2008 – Creating a New Tax on Travel Agents and Websites***

Dear Chairs Wakai and members of the committee,

We encourage you to not advance HB 2008 as it imposes a new tax on services provided by travel agents and online travel companies. HB 2008 imposes a new tax on the fees these travel agents charge for researching, comparing, and booking rooms for travelers.

Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But under HB 2008, this approach would backfire since the new service tax would be paid *only* by Hawaiians– *not by travelers* from out-of-state.

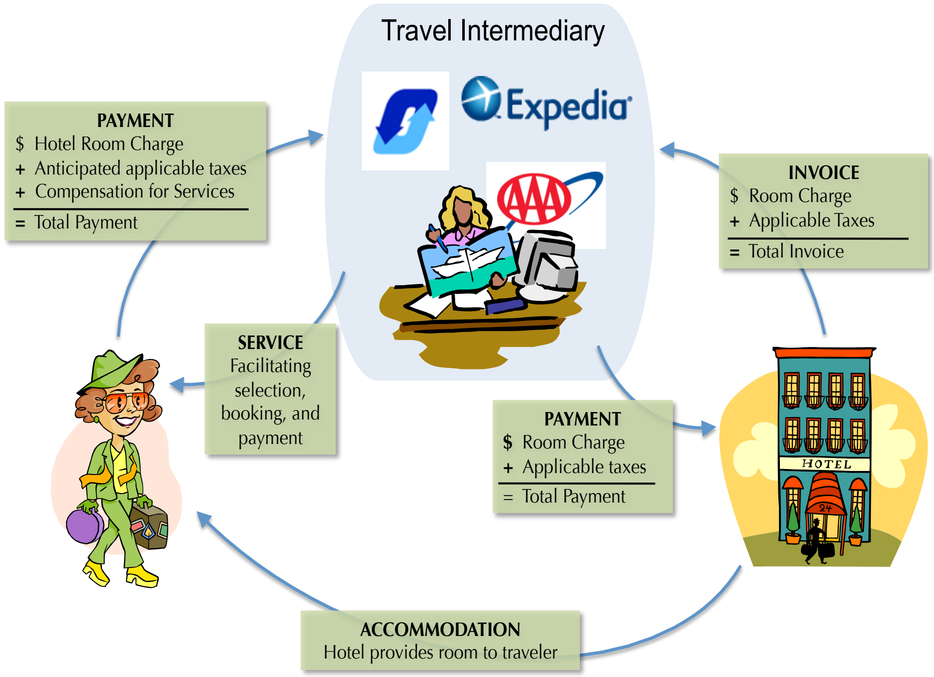
Imposes a new tax on Hawaiians

Today, Hawaii does not impose sales tax or lodging tax on service fees charged by travel agents. These service fees compensate travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel. But HB 2008 would impose a new tax on these service fees provided by travel agents and online travel companies, a tax that is passed on to your constituents.

Nearly all travel agents and travelers rely upon online services to research, compare, and book reservations

From our work on this issue in states and at NCSL, it's clear there is some misunderstanding about travel reservation services and taxes. The chart below shows the flow of services, taxes, and payments in a typical transaction where a traveler uses a travel agent or online travel company to research and book a hotel reservation.

As shown in the chart, travel agents and online travel companies are providing a *service* to travelers. These services include comparisons of rates and amenities at multiple hotels, plus facilitation in making the reservation, processing the payment, and sending charges and applicable taxes to the hotel operator. Clearly, this facilitation service is distinct from the room provided by the hotel where the traveler eventually stays.



Creates a new tax on travel service fees that would only apply when *Hawaiians* book their travel

The new tax imposed on booking service fees by HB 2008 would impact only Hawaii's citizens and businesses. That's because of the rules for determining the source jurisdiction for taxable services – when a tourist uses a travel service, the reservation service fee is sourced to the traveler's home location – not to the traveler's destination.

For example, say two tourists are booking a hotel room in Hawaii. One lives in San Francisco, the other in Hilo. The California tourist would *not* pay the tax created by HB 2008 when they booked through a travel agent since they received their online booking services outside of Hawaii.[1] But, the tourist living in Hilo who books through a travel agent *would* pay the tax created by HB 2008.

This new tax would therefore only apply to services provided to Hawaii-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Hawaiian hotels.

Will cost Hawaii travel agents hundreds of dollars

HB 2008 would penalize Hawaii travel agents with a registration fee for every hotel with which they engage. Even a "small" tax of $15 per hotel can add up quickly.

Take for example the Hawaiian travel agent working with 100 hotels. HB 2008 would impose a tax of $1,500 on that Hawaiian travel agent. Now is not the time to impose these new taxes on your constituents.

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[1] Note that the out-of-state tourist still pays the Hawaiian occupancy tax when they book the room.

Allows tax collectors to levy their occupancy tax on more than just hotel rooms

Hawaii travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. But HB 2008 allows Honolulu tax collectors to impose their occupancy taxes on all kinds of goods and services when included in travel packages:

- taxi from the airport to the hotel
- food served at a hotel restaurant
- tours of Pauhai Crater

This new tax on service fees would only be collected by Hawaii-based travel websites

The requirement to collect this new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Hawaii.

As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Hawaii hotel operator. But out-of-state travel agents would not be required to collect this new tax on service fees for providing reservation services at the time that travelers book their hotel.

Minimal revenue generated

For reasons explained above, every state, city, and county that has enacted a similar new tax has failed to gain the anticipated tax revenue.

First, as discussed above, the service taxes could not be imposed on any out-of-state traveler. Second, Hawaii tax collectors do not have authority to force out-of-state travel agents to collect these new service taxes since states can only impose collection obligations on businesses with a physical presence.

So, when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Hawaii's travel agencies and travel websites.

Avoid the conflation of travel services and lodging providers

By maintaining the true distinction between travel service providers and hotel operators, you can help Hawaii's travel and tourism industry focus on serving travelers and creating jobs – not on collecting nominal new taxes from the state's own citizens.

Instead of passing HB 2008 we suggest amending it to clarify when an occupancy tax applies. We suggest substituting the existing bill text with this language from Missouri law:

> "Any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations, whether imposed as a hotel tax, occupancy tax, or otherwise, *shall apply solely to amounts actually received by the operator of a hotel*, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.
>
> *Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel*, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility. ...

> *This section is intended to clarify that taxes imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in the statutes authorizing such taxes*."[2]

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,
Carl Szabo
Vice President and General Counsel, NetChoice
NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

[2] Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).

March 21, 2018

TO: Senate Committee on Economic Development, Tourism, and Technology
The Honorable Glenn Wakai, Chair
The Honorable Brian T. Taniguchi, Vice Chair

FROM: Amanda Pedigo, Vice President, Government and Corporate Affairs Expedia, Inc.

RE: HB2008, HD1 RELATING TO TAXATION -- **OPPOSE**

Dear Chair Wakai, Vice Chair Taniguchi, and distinguished members of the Senate Committee on Economic Development, Tourism, and Technology,

I represent the Expedia family of companies providing online travel booking to the world. **We oppose this bill's effort to extend Transient Accommodations Tax (TAT) collection beyond the furnishing of the accommodations.** The bill does not create "parity;" rather, it greatly harms the interests of brokers—online and on ground—that facilitate non-commissioned transactions for lodging by imposing that large tax on the services we render, instead of the actual cost of the accommodations a traveler occupies. The fees collected by transient accommodations brokers are not compensation for accommodations; rather, they are for online services that hotel owners do not provide, including quality ratings, bundle packages (air, hotel, car rental), the ability to comparison shop, and 24/7 customer support. This expansion of the TAT tax base would result in a higher total cost to visitors and undermine competition.

We also have concerns with the bill's introduction. It seems to imply that *Travelocity.com, L.P. v. Director of Taxation, 135 Hawaii 88, 346 P.3d 157 (2015)* changed the law. It did not. The Supreme Court simply confirmed the current law in the face of the State's effort to expand it in ways the legislature never contemplated.

Online travel agencies provide a critical service to travelers, our hotel partners, and the destinations we market. Hotels voluntarily use our services because we market their property on a global platform helping them reach new travelers and fill rooms that would otherwise remain vacant. For example, an out-of-state visitor planning a trip to Maui might assume there is a Hyatt or Westin nearby, and there is. They could call the hotel chains' 24-hour reservation line and take care of their booking. But, there is a much smaller chance that they would have heard of the Haiku Plantation Inn without the help of an on online travel agency that displays multiple properties in response to a geographic search, or without calling a brick-and-mortar travel agent to help make recommendations on where to stay. In exchange for providing these search and facilitation services, we charge a fee to the traveler.

Expedia, Inc. platforms shine an international spotlight on Hawai`i's small businesses. We connect them to a world of potential travelers on 200 travel booking sites in more than 75 countries, allowing Hawaii's small businesses to transact business in foreign languages and currencies, and to be displayed side-by-side with tome of the biggest hotel chains in the world. This model helps travelers, helps hotels, and helps the many other tourism-related industries, which are vital to a state's economy, like restaurants, museums, arts venues, transportation companies, and others.

We have worked hard to market Hawai`i as a desirable destination for potential visitors, but this expansion of the TAT would make Hawaii less competitive as a travel destination. **Hawai`i already imposes more tax on online agents than most other destinations**. If this bill passes, our tax burden would more than triple and transactions involving travel to Hawai`i would become **far** less profitable than transactions involving similar destinations.

We also have concerns with the registration process in Section 2. Should HB2008, HD1 move forward, we believe it should be clarified to ensure that the registration requirement only applies to the travel company and not to each property listed by each travel company.

If TAT is imposed on the services travel agents provide for Hawai`i-bound travelers, it becomes difficult for Hawai`i to remain a competitive destination. Hawai`i will become far, far less attractive to online businesses, which are agnostic about the travel destinations they market around the world. Traditional and online travel services that are economically rational will choose to promote other destinations and urge travelers to visit other, tax-friendly destinations. No business person would do otherwise. Economics dictate that online companies promote profitable destinations. This bill is a big step toward undermining Hawai`i's market position. We therefore request that HB1800, HD1 bill be held.

Thank you for the opportunity to share this testimony.

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HB-2008-HD-1
Submitted on: 3/19/2018 9:15:23 AM
Testimony for ETT on 3/21/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: