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David Y. Ige
Governor

George D. Szigeti
President and Chief Executive Officer

Statement of
George D. Szigeti
Chief Executive Officer
Hawai'i Tourism Authority
on
HB2432 Proposed SD1
Relating to the Transient Accommodations Tax
Senate Committee on Ways and Means
Thursday, April 5, 2018
10:15 a.m.
Conference Room 211

Chair Dela Cruz, Vice-Chair Keith-Agaran and Committee Members:

The Hawai'i Tourism Authority (HTA) opposes HB2432 Proposed SD1, which would impose the Transient Accommodations Tax (TAT) on all fees related to transient accommodations, define resort fees as any charge or surcharge imposed for the use of the transient accommodation's property, services, or amenities, and require that TAT is collected from operators or transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates.

HTA is opposed to measures that increase the cost for residents and visitors to vacation in the Hawaiian Islands. A direct relationship exists between the number of visitors booking nights in transient accommodations and TAT revenues, which are generated by nights spent in transient accommodations. Last year, Hawai'i's visitor industry supported 204,000 jobs and brought \$1.96 billion in tax revenue. It is important to keep in mind the potential effect of deterring visitors from choosing Hawai'i as a destination if the cost of booking nights in transient accommodations were increased. In the global competition for visitors, we cannot afford to make Hawai'i less affordable as a destination.

Mahalo for the opportunity to offer this testimony.



STATE OF HAWAII
DEPARTMENT OF TAXATION
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HONOLULU, HAWAII 96813
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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Thursday, April 5, 2018
Time: 10:15 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 2432, Proposed S.D. 1, Relating to the Transient Accommodations Tax

The Department of Taxation (Department) offers the following comments on H.B. 2432, Proposed S.D. 1, for the Committee's consideration.

SUMMARY

The following is a summary of key points of the bill, which is effective upon approval and applies to taxable years beginning after December 31, 2018.

TAT on Resort Fees

- The definition of "gross rental" or "gross rental proceeds" is amended as including the gross amount collected from the consumer, including booking fees, resort fees, cleaning fees, lodging fees, transient fees, and other fees, but excluding fees for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations.
- "Resort fee" is defined as any charge, whether or not mandatory, imposed by an operator to a transient for the use of the transient accommodation's property, services, or amenities.

TAT on Time Shares

- The definition of "fair market rental value" is amended from one-half percent of the gross daily maintenance fees to an unspecified percent of the gross daily maintenance fees.

TAT on Noncommissioned Transactions

- "Transient accommodations intermediary" replaces the definition of "transient accommodations broker" and is defined as any person who offers, lists, advertises, markets, accepts reservations for, or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans, including travel agencies, tour

packagers, wholesale travel companies, online websites, online travel agencies, online booking agencies, and booking platforms.

- The TAT will be imposed on transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates.
- When transient accommodations are furnished through transient accommodations intermediaries at noncommissioned negotiated contract rates, the TAT will apply to each person with respect to that person's portion of the proceeds.
- Transient accommodations intermediaries will be required to register with the Department.

COMMENTS

Resort Fees

The Department suggests amending the definition of "resort fees" to specify that the fees include *mandatory* charges for the use of the transient accommodation's property, services, or amenities. The bill currently defines "gross rental" as including all fees (including resort fees) collected from consumers, except for fees unrelated to the transient accommodation. If a fee imposed by the operator of a transient accommodation is mandatory, it more than likely will be related to the transient accommodation. For example, resort fees for in-room water and coffee, use of an in-room safe, pool towels, fitness center access, parking, and housekeeping are related to the transient accommodation and are typically mandatory. In contrast, a fee that is optional is usually unrelated to the furnishing of the transient accommodation, such as a fee to participate in a yoga session. Defining resort fees as mandatory fees will provide taxpayers with a bright-line rule that will simplify the analysis of whether a fee is related to the transient accommodation, thereby promoting compliance and easing administration and enforcement. The Department therefore suggests the following amendment to Section 1 of the bill:

"Resort fee" means any mandatory 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.

TAT on Time Shares

The Department notes that currently, the TAT is imposed on resort time share vacation units at the rate of 10.25 percent of the "fair market rental value," which is defined as one-half percent of the gross daily maintenance fees. This bill amends the definition of fair market rental value to an unspecified percent of the gross daily maintenance fees.

TAT on Noncommissioned Transactions

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. 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

The Department notes that HRS section 237D-4 contains two separate provisions regarding

the registration of transient accommodations intermediaries—subsections (a) and (i). Subsection (i) requires transient accommodations intermediaries to register before entering into arrangements to furnish transient accommodations at noncommissioned negotiated contract rates. This provision makes sense because transient accommodations intermediaries are required to pay TAT on their portion of noncommissioned transactions pursuant to the amendments made in Sections 1 and 2 of the bill. Subsection (a), however, requires transient accommodations intermediaries to register before “furnishing” transient accommodations, which is a function of an operator, not an intermediary. The amendment to HRS section 237D-4(a) is therefore superfluous, as operators are already required to register under this section.

If the intent of the amendments to HRS section 237D-4(a) is to require transient accommodations intermediaries to register the addresses of the transient accommodations for which they book or accept reservations, the Department suggests the following amendments to sections HRS 237D-4(a) and (i):

(a) Each operator~~[,]~~ or plan manager~~[, or~~
~~transient accommodations intermediary that has obtained~~
~~prior consent from each operator and plan manager~~
~~working with the transient accommodations intermediary,~~] as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan, shall register with the director the name and physical address of each place of business within the State subject to this chapter. The operator or plan manager shall make a one-time payment as follows:

- (1) \$5 for each registration for transient accommodations consisting of one to five units;
- (2) \$15 for each registration for transient accommodations consisting of six or more units; and
- (3) \$15 for each resort time share vacation plan within the State;

upon receipt of which the director shall issue a certificate of registration 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 operator or plan manager in whose name it is issued and for the transaction of business at the place designated therein. Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.

. . .

(i) Each transient accommodations intermediary, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The transient accommodations intermediary shall provide the physical address of each transient accommodation for which it will enter into an arrangement to furnish the transient accommodation at noncommissioned negotiated contract rates; provided that the transient accommodations intermediary has obtained prior consent from the operator or plan manager to disclose the address of the transient accommodation. The transient accommodations intermediary 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 transient accommodations intermediary 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 transient accommodations intermediary in whose name it is issued.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TRANSIENT ACCOMMODATIONS, Applies Tax to Resort Fees, Attaches Liability to Intermediary, Increases Transient Occupancy Tax

BILL NUMBER: HB 2432, Proposed SD-1

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Imposes the transient accommodations tax on additional hotel resort fees that are calculated separately from the advertised transient accommodation's rate. Because of additional language in the "gross rental" definition excluding fees unrelated to the transient accommodations, this appears to be a technical clarification.

Clarifies that the transient accommodations tax shall be calculated based on the gross rental price paid by a visitor. Specifies that the transient accommodations tax is to be collected from operators or transient accommodations intermediaries that collect whole or partial payment for transient accommodations. Trying to expand the tax base in such a manner may have the unintended effect of discouraging those who would like to bring tourists to Hawaii and take care of them here.

Increases tax on timeshare units by increasing the tax base from half of the gross daily maintenance fee to an unspecified percentage. The definition of the taxable base was adjusted three years ago, and at that time the legislature declined to change the percentage against the Department of Taxation's recommendation. Justification for increasing the percentage now is questionable given that history.

SYNOPSIS: Adds a new definition of "resort fee" to section 237D-1, HRS. 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.

Amends the definition of "gross rental" in section 237D-1, HRS, to explicitly include resort fees.

Also amends the definition of "gross rental" in section 237D-1, HRS, to clarify that it applies to the gross sale or gross charges collected from consumers, including but not limited to booking fees, cleaning fees, lodging fees, transient fees, or any other fees collected, but does not include fees collected for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations.

Changes the definition of "transient accommodations broker" in section 237D-1, HRS, to "transient accommodations intermediary" and defines one as any person or entity, including but not limited to persons who operate or market transient accommodations through wholesale travel companies, online websites, online travel agencies, online booking agencies, or booking platforms, that offers, lists, advertises, or accepts reservations or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans.

Also specifies in that definition that when transient accommodations are furnished at noncommissioned negotiated contract rates, the TAT shall apply to each operator and transient accommodations intermediary with respect to that person's respective portion of the proceeds, and no more.

Amends section 237D-1, HRS, by changing the definition of "fair market rental value" on which timeshares are taxed from half the gross daily maintenance fees to an unspecified percentage of the gross daily maintenance fees.

Amends section 237D-2, HRS, to impose the tax upon every operator or transient accommodations intermediary who arranges transient accommodations at noncommissioned negotiated contract rates.

Amends section 237D-4, HRS, to impose a registration obligation on a transient accommodations intermediary the same as on an operator or plan manager. Also adds a new subsection (i) specifying that each transient accommodations intermediary who markets transient accommodations through a travel agency, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director of taxation.

Makes corresponding changes in nomenclature throughout chapter 237D, HRS.

EFFECTIVE DATE: This Act, upon its approval, shall apply to taxable years beginning after December 31, 2018.

STAFF COMMENTS:

Resort Fee: The amendments relating to "resort fee" appear to be interpretive only. The Department has been administering the tax by focusing on whether the "resort fee" charges are mandatory. The bill dispenses with the mandatory element and focuses on whether the charges are in fact for something unrelated to transient accommodations.

Transient Occupancy Tax Hike: Section 237D-1, HRS, contains the definition of "fair market rental value" against which the TAT rate for timeshare units is applied. The definition ends with the sentence, "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 definition of fair market value of a timeshare unit was indeed adjusted a mere three years ago, by Act 93, SLH 2015. In its consideration of the bill the Conference Committee explained:

Your Committee on Conference finds that a change to the definition of "fair market rental value" is in order because the Department of Taxation has not exercised its discretion to take into account comparable transient accommodation rentals or other appraisal methods. However, the Department of Taxation believes that the scope of the gross daily maintenance fees should be clarified so that there is little question as to what is included and what is not included. The tax is based on the maintenance fees of the time share plan

and does not include charges for optional goods or services such as food and beverage service. The purpose of this change is not intended to expand or reduce the scope of fees included in the gross daily maintenance fees, and as such, fees such as food and beverage, or other recreational rentals, as well as time share units' condominium association assessments should not be included.

Conf. Comm. Rep. No. 75 (on HB 169) (2015). The Conference Committee came to these conclusions in the face of testimony by the Department of Taxation that "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." Department of Taxation, Testimony Before Senate Ways and Means Committee on HB 169 (Mar. 31, 2015). The Department recommended that "fair market rental value" be adjusted to 100%, rather than 50%, of average daily maintenance fee.

If the Department indeed had determined that gross daily maintenance fee grossly understated fair market value, why didn't the Department do something about it as contemplated by the last sentence of the definition in section 237D-1, HRS? The Department didn't bother to support its assertion, the Conference Committee apparently didn't believe the Department for that reason, and the formula in the definition was not adjusted. If that decision is now to be reexamined, it should be based on hard evidence, not on wild hand-waving and unsupported assertions.

Transient Accommodations Intermediaries: The balance of the bill appears to be a reaction to the Hawai'i Supreme Court's decision *In re Travelocity.com, L.P.*, 346 P.3d 157 (Haw. 2015). The Travelocity case dealt with hotel rooms provided under a "merchant model." To illustrate what this model is and what the case held, suppose a hotelier wants to rent out a short-term rental for \$110. An online travel company (OTC) contracts to rent the room for \$100, at which point it becomes the OTC's obligation to pay the \$100 whether or not the OTC is able to find a tourist to put in the room.

Suppose the OTC is successful in finding a tourist, and OTC charges the tourist \$120 (something the hotelier wouldn't know and isn't told).

In this situation, the Department of Taxation assesses the OTC for TAT and GET on the \$120, although the hotelier was paying TAT and GET on the \$100. Our supreme court held that the OTC was not a hotel operator and was not liable for the TAT. The court also held that the OTC was subject to the GET, but that the room was provided at noncommissioned negotiated contract rates, triggering an "income splitting" provision providing that each of the parties involved is to pay the GET on what they keep. Thus, the OTC would pay GET on \$20, which is the spread between the tourist's price (\$120) and the room rent that was paid to the hotelier (\$100).

The concern that this bill seems to address is that TAT is now being paid on only \$100 when the tourist has parted with \$120 for a hotel room.

Stepping back for a second, consider Attorney General Opinion 65-6, from the days before the TAT even existed. There, the Attorney General considered the taxability of a local travel agent

earning money in Hawaii for organizing a tour to the mainland including sending a local tour conductor with the group, and, conversely, a mainland travel agent organizing a tour to Hawaii. The Attorney General held that our GET applied to the local travel agent's commissions, even if they were earned partly because of the local tour conductor's services outside Hawaii; and, conversely, that it did not apply to the mainland travel agent's commissions, even if the mainland agent sent a tour conductor here.

The result appeared to be largely practical: if the state attempted to tax an out-of-state travel agent with no presence or only a fleeting presence within Hawaii, difficult federal constitutional questions would be presented.

That problem still has not gone away even with the technological advancements we now have. If the only connection an OTC has with Hawaii is a software platform used by Hawaii hotels and other customers, questions of practicality and constitutionality will be presented. These questions cannot be legislated away. If we attempt to grab and wring dry the travel agents and tour companies that have set up a branch in Hawaii when we can't do the same to travel agents and tour companies that never set foot on our shores, we run the very practical risk of discouraging those who want to take care of their tourist customers in Hawaii while employing local people, and encouraging those who stay offshore, take our tourists' money, and contribute much less to our culture and economy.

Digested 4/2/2018

Testimony of

Kelvin Bloom
Aqua-Aston Hospitality, LLC

Before the Senate Committee on Ways and Means

Thursday, April 5, 2018, 10:15 a.m.
State Capital, Conference Room 211

In Consideration of
House Bill 2432, SD1
RELATING TO THE TRANSIENT ACCOMMODATIONS TAX

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

I am Kelvin Bloom, Manager of Aqua-Aston Hospitality, LLC, which manages many hotels and resorts in the State of Hawaii. Aqua-Aston **opposes** House Bill 2432, SD1 which would impose the transient accommodations tax on hotel resort fees that are calculated separately from the advertised transient accommodation's room rate.

Tourism is the state's largest revenue producer and the largest single source of private capital for our economy, but it is not an infinitely prosperous, infinitely taxable entity. Lower-priced destinations and long-haul airline flights make travel to other locales easier and less expensive. Hawaii must remain competitive in its pricing to protect its value and appeal in the eyes of the traveler.

Currently, the transient accommodation tax is paid by transient guests on the amount an owner or operator of a hotel charges for furnishing transient accommodations (the "Gross Rental" or "Gross Rental Proceeds"). This bill proposes to include within the definition of Gross Rental or Gross Rental Proceeds, any resort fee charged by the owner or operator of the hotel for additional services or amenities provided to the transient guest. Aqua-Aston understands the desire to raise more revenue without raising taxes on the local constituency, however, imposing an additional tax burden on transient guests by charging a tax on the resort fee will put Hawaii at a disadvantage causing tourism to decline and offsetting any hopes of increasing revenue.

This year, the transient accommodation tax increased to a double-digit tax of 10.25%. Coupled with the Hawaii general excise tax, a transient guest now pays almost 15% in tax for renting accommodations in Hawaii. Higher taxes harm the ability of Hawaii to compete for visitors. Visitors will begin to choose their destinations more carefully avoid the burden of high taxes.

Furthermore, the Uniform System of Accounts for the Lodging Industry (USALI) published by the American Hotel and Lodging Association treats resort fees as Miscellaneous Income separate and apart from the three other revenue categories of Room Revenue, Food and Beverage Revenue and Other Operating Revenue. The purpose of reporting resort fees as Miscellaneous Income is to ensure consistent reporting of revenues and consistent calculations of the average daily rate (ADR) and the revenue per available room (RevPAR).

Testimony of Kelvin Bloom to House Bill 2432, SD1
Relating to the Transient Accommodations Tax
April 3, 2018
Page 2

HB 2432, SD1 seeks to impose an additional tax burden on our visitors, who already currently pay approximately 15% in taxes for their accommodations. Let's not make visiting Hawaii a burden for those who are responsible for driving our economy. For the reasons above, I **oppose** HB 2432, SD1. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Kelvin Bloom". The signature is written in a cursive style with a large initial 'K'.

Kelvin Bloom, Manager



April 3, 2018

Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Senate Ways and Means Committee
Hawaii State Legislature

Dear Senator Dela Cruz, Senator Keith-Agaran and Members of the Ways and Means Committee,

Testimony in Opposition to HB2432 Proposed SD1

The Kohala Coast Resort Association (KCRA) opposes HB2432 Proposed SD1, applying the transient accommodations tax to resort fees. These fees cover a wide variety of services not included in the standard room rental rate (parking, wifi access, health club access, etc.) and vary by property, room type, and negotiated rate (group, preferred member club, etc.).

Therefore they should not be included in the calculation of transient accommodations taxes.

KCRA is a collection of master-planned resorts and hotels situated north of the airport which represents more than 3,500 hotel accommodations and an equal number of resort residential units. This is approximately 35 percent of the accommodations available on the Island of Hawai`i. KCRA member properties annually pay more than \$20 million in TAT and \$20 million in GET.

We encourage your opposition to this measure.

Sincerely,

A handwritten signature in black ink that reads "Stephanie P. Donoho". The signature is written in a cursive, flowing style.

Stephanie Donoho
Administrative Director



Testimony of: Michael Jokovich
Area Vice President and General Manager
Andaz Maui at Wailea Resort
On
HB 2432 Proposed SD1
Relating to the Transient Accommodation Tax

Committee on Ways and Means
Thursday April 5, 2018, 10:15am

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

My name is Michael Jokovich, Area Vice President and General Manager of the Andaz Maui at Wailea Resort.

On behalf of the Maui Hotel & Lodging Association, I ask that you oppose SB 2432 Proposed SD1, which imposes the transient accommodations tax on resort fees that are calculated separately from the advertised transient accommodation's rate. Clarifies that the transient accommodations tax shall be calculated based on the gross rental. Amends the formula for the amount of transient accommodations tax to be collected from time shares by increasing the base on which time share occupancy is taxed from one-half of the gross daily maintenance fees are paid by the owner and are attributable to the time share unit to an unspecified per cent. Specifies that the transient accommodations tax is to be collected from transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates in the same manner as transient accommodation operators. Applies to taxable years beginning after December 31, 2018,

The MHLA is concerned with two sections of this Bill:

- 1) By changing the language in 237D-1 to add "resort fees" to "gross rental proceeds" is not appropriate as resort fees are for services or products provided to the guest sometimes through a third-party vendor. While the proposed SD1 does provide some limitations for transportation and excursions we would like to request that additional fees not related to accommodations be added such as: water activity gear (e.g. snorkeling equipment, stand-up paddleboards); parking. The resort fee typically includes a bundle of services that would cost more individually if they were not grouped. Hotel surveys have revealed that guests prefer an all-inclusive resort fee rather than being charged for each service used.
- 2) Proposed language amending the formula for TAT to be collected from Timeshares will unfairly impact a very specific portion of Hawaii property owners who choose to visit our state on an annual basis and contribute to Hawaii's economy. Timeshare units, when not used by their owners, and rented on a transient basis by non-owners, or used for marketing purpose by developers are already subject to the exact same TAT rates as hotel units. Timeshare owners are Hawaii property owners who have made a long-term commitment to Hawaii by owning Hawaii real estate. They and their guests are dependable,



consistent, and stable visitors who bring substantial tax dollars to Hawaii and continue to come even during economic downturns. They pay a yearly maintenance fee including real property taxes, GET, and other fees. No other owner of real property in Hawaii is required to pay an occupancy tax to stay in real property that they already own.

Thank you for the opportunity to testify.

Best Regards,

Michael Jokovich
Area Vice President Hawaii
and General Manager

ANDAZ MAUI AT WAILEA RESORT
3550 Wailea Alanui Drive, Wailea, HI 96753



April 5, 2018

TO: Senate Committee on Ways and Means
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

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

RE: HB2432 Proposed SD1- OPPOSE

Dear Chairman Dela Cruz, Vice Chairman Keith-Agaran and distinguished members of the Senate Committee on Ways and Means,

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 and to hold booking platforms liable for the content posted by our clients.

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.

Online travel companies 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 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. This fee is not related to the accommodations.

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 some 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.

Finally, this bill would reiterate that advertisements for transient accommodations must include the tax registration number of the operator or plan manager and a local contact's name, phone number, and electronic mail address. We hold firm in our contention that this provision is unenforceable due to the protections provided to internet advertising platforms under the Communications Decency Act. The provision of this information is and should be the responsibility of the operators of the transient accommodations and not the responsibility of booking platforms or travel agencies.

This expansion of the TAT will make visiting Hawai'i even more expensive than it is today. The TAT was increased last year from 9.25% to 10.25%. We have worked hard to market Hawai'i as a desirable destination for potential visitors, but this expansion of the TAT would make Hawai'i less competitive as a travel destination.

It will also make it far, far less attractive to online businesses which market travel destinations around the world by cutting deeply into the compensation they receive for booking services. Through the GET burden on booking income, Hawai'i already imposes more tax on online agents than most other destinations. If TAT were added, transactions involving travel to Hawai'i would become far less profitable than transactions involving similar destinations. Economics dictate that online companies promote profitable destinations. This bill unintentionally undermines Hawai'i's market position.

Thank you for the opportunity to share this testimony