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C & C OF HONOLULU

TO: MAYOR CALDWELL AND THE CITY COUNSEL  
2014 DEC -8 CITY AND COUNTY OF HONOLULU

SUBJECT: REAL PROPERTY TAX ADVISORY COMM. REPORT  
P. 11, SECTION 5.2 VERIFICATION OF TRANSIENT USE

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2014 NOV 24 P 2: 30

NO TO THEIR RECOMMENDATION: TO DISCLOSE TO THE COUNTY  
THE PRIVATE AND CONFIDENTIAL TRANSIENT ACCOMMODATION TAX  
RETURNS OF TAXPAYERS. CITY COUNCIL  
HONOLULU, HAWAII

- THIS IS EXACTLY THE KIND OF IMPROPER DISCLOSURE HRS  
SECT 237D-13(A) PROHIBITS. THEY RELY ON THIS SECTION,  
#10, CLAIMING IT GIVES THEM AUTHORITY WHEN IT DOES  
JUST THE OPPOSITE. IT WOULD BE ILLEGAL FOR THE STATE  
TO DO SO.
- THIS ISSUE WAS ALREADY RESOLVED AGAINST THE COUNTY IN  
2007 BY THE DEPT. OF TAXATION TESTIMONY OF APRIL 3, 2007  
ATTACHED. THIS TESTIMONY SETS OUT SEVERAL REASONS  
SUCH DISCLOSURE IS DISALLOWED AND DENIED.

*MMS*

ATTACHED: APRIL 3, 2007 TESTIMONY OF DEPT. OF TAXATION  
HRS 237D-13(a)(10)  
REAL PROP. TAX ADVISORY REPORT, P.11, SECT.5.2

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## HOUSE COMMITTEE ON FINANCE

### TESTIMONY REGARDING SB 750 SD 3 HD 1 RELATING TO TRANSIENT ACCOMMODATIONS TAX

April 3, 2007

This bill requires the Department of Taxation (Department) to coordinate with the Hawaii Tourism Authority (HTA) and the various counties to:

- Investigate into current nonresidential transient uses of residential property;
- Report on various developments of transient accommodations tax collections; and
- Analyze the current transient accommodations tax return forms.

The Senate Committee on Tourism & Government Operations made various amendments to the bill.

The Senate Committee on Economic Development & Taxation made various substantive amendments to the bill.

The Senate Committee on Ways & Means made technical, nonsubstantive amendments to the measure.

The Senate passed the measure on third reading.

The Joint House Committee on Tourism & Culture and Economic Development & Business Concerns amended the bill by eliminating provisions requiring the Department to share confidential tax information and requiring HTA and the counties to provide information to the Department; requiring the Department to report on tax statistics and investigation performance; and requiring the counties to develop identification and permitting of vacation rentals.

The Department of Taxation supports the amendments that eliminate the Department's requirement to disclose confidential taxpayer information. However, the Department opposes this measure as burdensome and unnecessary.

The Department supports legislation that is aimed at assuring optimum revenue collections, especially from delinquent or unpaid sources. Though the issue of illegal transient accommodation units has primarily been an issue for the counties, the Department recognizes the shared interest with the counties to assure that transient accommodation providers are in full compliance with the various

laws, including tax laws. However, the Department believes this bill is the wrong vehicle.

The Department has the following comments and concerns—

**AMENDING THE BILL TO MAINTAIN TAXPAYER CONFIDENTIALITY WAS CRITICAL**—The Department supports the recent amendments that eliminated the requirement that the Department share confidential taxpayer information with the counties. The Department holds taxpayer information in confidence as is required by law and to the betterment of the self-reporting tax system.

Presently, HRS § 237D-13 provides the Department with limited ability to discuss taxpayer information with third parties, including other government entities. The Senate Committee on Ways & Means pointed out this provision and asserted that it allows counties to access tax information. However, the Committee did not take into account that in order to obtain specific taxpayer information, there must be a finding of a "material interest." Since Department personnel are subject to criminal liability for improper disclosure, the determination of whether a material interest exists should not be made haphazardly. Moreover, tax information can only be released for "tax purposes only." Again, with criminal liability at stake, the determination of a tax purpose cannot be made haphazardly. With regard to illegal vacation units, the purposes for which counties are seeking tax information is to enforce zoning laws—not tax laws. Thus, the counties have no legitimate tax purpose for taxpayer information.

The Department will be unable to share information of taxpayers that rent property and who do not currently pay transient accommodations tax. During the last audit project, information of non-reporters was obtained from federal tax information. This information cannot be shared with the counties under any circumstances. Any information on non-reporters cannot be shared because the information can only be obtained from federal information; not any state returns.

The Department's ability to release taxpayer information, such as specific addresses or locations, is very limited because releasing the address, as was required in prior drafts of this bill, obviously identifies the taxpayer.

The Department appreciates the amendment that allows the Department to accept tips from third parties; however, the Department notes that the ability to receive information from third parties exists under current law. Essentially, information regarding this legislation will only flow one direction, from the counties to the Department.

**INCREASED SCRUTINY MAY DRIVE TAXPAYERS UNDERGROUND**—The Department points out that after its last audit project with HTA, the Department concluded that, in general, those that rent transient accommodations are tax compliant. The Department fears that any increased scrutiny could potentially backfire and drive otherwise tax compliance individuals "underground." Taxpayers that are forced "underground" can have a direct impact on collections.

**THE NECESSITY OF THIS BILL IS QUESTIONABLE**—The Department believes that this legislation is unnecessary. One issue that arose in prior committees was the status of the Department's efforts with the HTA regarding the audits of transient accommodations providers, including bed and breakfasts.

The HTA employed a consultant to search the Internet for advertisements for bed and breakfast operators and vacation rentals in Hawaii. HTA provided the results of this search to the Department. HTA's consultant located 1,452 advertisements for bed and breakfast operators and 6,902 advertisements for vacation rentals. Many advertisements were redundant because many operators and renters advertise on more than one website.

After correlating HTA's information with the Department's files and other information that was available, the Department initiated 123 audits on bed and breakfast operators that the Department believed were not properly reporting Hawaii taxes. The Department also initiated 182 audits on vacation renters.

Of the 305 combined cases, the Department has closed 68 audits and assessed \$1,473,219 in delinquent taxes.

**THIS BILL CORRECTLY PLACES THE ONUS OF IDENTIFYING RENTALS ON THE COUNTIES**—The issue of "illegal" transient accommodations is primarily a county issue. The recent complaints received by neighborhoods where transient accommodations are of great concern relates to zoning violations—not tax violations. As stated above, the Department concluded that, for the most part, transient accommodations providers are tax compliant. Whether the structure is zoning compliant is another matter. Zoning laws are strictly a matter for the county. The Department supports that this legislation shifts the onus of identifying and investigating the location of the suspect rentals on the counties. The counties should not be using the tax system to police its zoning laws. Nonetheless, the Department is more than willing to assist in order to assure maximum revenue. Though, as stated above, the Committee must be cognizant that increased scrutiny on these rentals may drive otherwise tax compliant taxpayers underground.

**SPECIFIC MULTI-AGENCY TASKFORCE, RESOURCES**—Furthermore, if the Committee is considering the Department to dedicate resources to targeting the residential vacation rental and transient accommodations tax enforcement, the Department would need additional resources that can be used to focus on this one area of tax collections with the assistance of other entities. The Committee provided the Department with an appropriation. The Department had previously requested an appropriation in the amount of approximately \$980,000 in order to staff an investigative office, auditors, and other facilities needs in order to comply with this legislation. In addition, the bill now requires the Department to prepare additional reports to the Legislature and requests an appropriation to handle this request.

However, as discussed, the Department questions whether this legislation is necessary. The Department does not believe there is substantial non-compliance with *tax obligations*

Based upon the foregoing, the Department opposes this bill and requests that it be held as burdensome and unnecessary.

Department of Taxation Testimony  
SB 750 SD 3 HD 1  
April 3, 2007  
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Thank you for the opportunity to testify.

Respectfully submitted



KURT KAWAFUCHI  
Director of Taxation

5 .2 VERIFICATION OF TRANSIENT USE

We recommend requesting that the Department of Taxation require information on TMKs on TAT returns

The TAT returns, i.e. TA-1 and TA-2, would be a good resource for DBFS if it could include information on the taxpayer's transient or long-term rentals, and second home use. If these forms were changed to include the Tax Map Keys for each property reported on those returns and an appropriate information sharing agreement could be concluded with the Department of Taxation, it would enhance the ability of DBFS to enforce our present tax classification laws. The Commission notes that transient accommodations tax return information is presently authorized to be disclosed to the county tax officials under HRS §237D-13a10.

**DISCUSSION: THIS IS INCORRECT. HRS SECT. 237D-13A10 IN FACT SAYS THE OPPOSITE. IT WOULD BE UNLAWFUL FOR THE STATE TO DISCLOSE THIS VERY CONFIDENTIAL AND PRIVATE TAX INFORMATION!!!! (Attached)**

**HRS Section 237D-13 Disclosure of returns unlawful; destruction of returns.**

(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to willfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or of any state or territory; and
- (11) The Multistate Tax Commission or its authorized representative.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section 237D-6, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.