

TAXING TIMESHARE OCCUPANCY IN HAWAII*

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INTRODUCTION

STATE AND LOCAL GOVERNMENTS OFTEN LEVY special taxes on tourists in order to generate revenues to benefit residents and to compensate for tourism-induced negative externalities and increased demand for public services. The hotel room occupancy tax is the most widely imposed such tax around the world (Mak, 2005; Mak, 2006). Where it is levied, the hotel room tax is most often an ad valorem tax levied on the rental price of an occupied hotel room. However, the tax is often not automatically applied to the occupancy of timeshare units.

Legislating timeshare occupancy tax in any jurisdiction is complicated by the fact that there may be several types of occupants of timeshare units—the owner occupants, guests who occupy units by exchanging timeshare intervals they own for other timeshare intervals, guests who “pay” with vacation points obtained from timeshare companies, or renters who rent units like hotel or vacation condominium guests.¹

In 2005, rental of U.S. timeshare units generated a modest \$80 million in state and local occupancy taxes.² As the timeshare industry gains importance in the hospitality sector (Upchurch and Gruber, 2002), its potential to generate tax revenues has attracted increased attention from state and local lawmakers across the country.³

Unlike other states, Hawaii levies an occupancy tax on all occupied timeshare units whether the units are occupied by renters, their owners, or exchange (and other nonpaying) guests. However Hawaii’s timeshare occupancy tax is flawed. The state fails to tax timeshare occupancy at “fair market rental value” (FMRV) as current law requires largely because it fails to define the tax base correctly. Hawaii’s experience offers important lessons to other states interested in levying occupancy taxes on timeshare units.

EVOLUTION OF THE TIMESHARE INDUSTRY

Timeshare ownership—also commonly referred to as “vacation ownership” in North America—is

one of the fastest growing sectors in travel and tourism around the world (Pryce and Bruère, 1999). The first timeshare program touted the benefits of owning rather than renting a hotel room (Pryce and Bruère, 1999, p. 16). A major disadvantage of timeshare ownership in the early years was its inflexibility: The buyer was restricted to vacationing in the same place, in the same unit, and at the same time each year. The founding of the timeshare exchange company, RCI, in 1974 substantially mitigated the inflexibility of early timeshare ownership. Since then, institution of a points-based system provides more flexibility.⁴ Timeshare resorts developed on the points-based system—often sold as “vacation club memberships”—operate much like hotels.

Pryce and Bruère (1999, p. 91) observed that “the original real estate concept (of timeshares) has been transformed into a flexible, pre-paid vacation membership concept.”⁵ By 2004, almost half of the timeshares sold in the United States were based on the points-based system rather than based on fixed blocks of time in specific units (Stock, 2004).

History of Timeshares in Hawaii

Hawaii was the first in the United States to develop timeshares by converting a hotel to timeshare ownership. The state began to regulate the industry in 1980 primarily to protect consumers from the aggressive selling practices of timeshare sales agents and developers (State of Hawaii, 1992). By 2000, the 4,603 timeshare units in Hawaii represented an increase of 40 percent from 3,261 units in 1995/1996 and comprised 6 percent of all timeshare units in the United States. In 2000, about 66 percent of the timeshare intervals in Hawaii were ownership units with the purchasers receiving deeded interest (Hobson Ferrarini Associates, 2002, p. 40).⁶ While the first timeshare units in Hawaii were converted from former hotel and condominium units, more recently properties are being built by global hotel brands (e.g. Marriott, Hilton, etc.) specifically as timeshares, frequently in mixed-use resorts that also contain traditional hotel and condominium units. At the end of 2007, the State of Hawaii Department of Business, Economic Development and Tourism (2008) reported 7,997 timeshare units statewide or about 11 percent

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of the total visitor lodging inventory. Hawaii's timeshare inventory continues to rise even as its hotel inventory has declined in recent years.

GENESIS OF THE TIMESHARE OCCUPANCY TAX IN HAWAII

The Hawaii State Legislature enacted its first statewide hotel room tax in 1986 (also known as the transient accommodation tax, or TAT). However, the TAT did not apply to timeshare occupancy. In 1998 the state enacted Act 156. Act 156 raised the TAT to the current level of 7.25 percent and imposed the same rate on the "fair market rental value" (FMRV) of occupied timeshare units, regardless of whether the units were occupied by their owners, exchange guests, or renters.⁷ The administration of the 1998 statute (HRS 237D) extending the TAT to timeshares is relatively complex (see Table 1 below).

Hawaii Revised Statutes HRS 237D requires the owner of a timeshare who rents his unit to pay the TAT equal to 7.25 percent of the gross rental proceeds and pay the general excise tax (4 percent in 1999) on the gross rental proceeds (inclusive of the tax). HRS 237D also requires the timeshare plan manager of a unit to file and pay the "timeshare occupancy tax" (or, TOT) of 7.25 percent of the estimated "fair market rental value" if the unit is occupied by its owner or an exchange or other nonpaying guest. Hence, two separate taxpayers are responsible for paying occupancy taxes to the tax department on a timeshare unit if it is partly rented (TAT) and partly occupied either by the owner or an exchange (or any nonpaying) guest (TOT). Before the passage of Act 156 in 1998, the state did not impose the TAT on timeshare units that were rented out in the open market.

An attempt to extend the TAT to timeshare exchange guests in 2006 (HB1026) failed when

the industry mounted a campaign at the legislature opposing the measure (Zimmerman, 2006).⁸ While Act 156 was vigorously opposed by the timeshare industry, it was strongly supported by the Hawaii Hotel Association.

Ostensibly, Act 156 was to introduce fairness in the treatment of timeshares versus hotel/vacation condominium occupancy. However, the true motivation was the state's pressing need for tax revenues. Throughout the 1990s, visitor arrivals grew at an anemic rate of .4 percent per year; and in 4 of those 10 years, visitor arrivals recorded negative growth (Mak, 2008, Chapters 2 and 3). The overall state economy stagnated for seven years beginning in 1991 (Grandy, 2002). Moreover, the conversion of existing visitor accommodation units to timeshares was eroding the transient accommodation tax base. A tax on timeshare occupancy was expected to generate between \$20 and \$30 million each year (Yuen, 1997).

ANALYSIS OF HAWAII'S TIMESHARE OCCUPANCY TAX BASE

While the "fair market rental value" (FMRV) of a timeshare unit rented in the open market is unambiguous (i.e., it is the market rental price), this terminology becomes ambiguous when a unit is occupied by its owner or an exchange (or other nonpaying) guest. HRS 237D defines the "fair market rental value" as:

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 accommodation taxes, and other costs including payments required for reserves or sinking funds.

Table 1
Summary of HRS 237D on Taxation of Timeshare Occupancy in Hawaii

	<i>TAT on Rented Units</i>	<i>TOT on Owner-Occupied Units</i>
Tax Rate and Base	7.25% on Gross Proceeds	7.25% on "Fair Market Rental Value"
Additional Taxes	4% General Excise Tax + Cost of General Excise Tax License	None
Who Files?	Timeshare Owner	Timeshare Plan Manager

Source: State of Hawaii Department of Taxation (1998).

The current definition greatly understates the fair market rental value.

For example, suppose the interval owner of a timeshare unit purchases it as an investment to be rented for profit. The prevailing rental price would be its fair market rental value. In markets that are highly competitive, the long-run average daily rental price must equal the average daily operating and capital costs. The problem in establishing the fair market rental value when a timeshare unit is not rented for profit is that the rental price is not observed. A good approximation of the rental price is an estimate of the average cost, the sum of operating cost, and the user cost of capital. The user cost of capital is the sum of the interest on the value of the timeshare unit and economic depreciation (Bruce, 1998, pp. 570-571).⁹ The current Hawaii timeshare occupancy tax statute (HRS 237D) defines the fair market rental value as one-half the “gross daily maintenance costs”—which roughly equals one-half of the operating expenses. The user cost of capital is not included in the definition. Thus, HRS 237D understates the fair market rental value of occupied timeshare units that are not rented in the open market.¹⁰

We can also estimate the extent of the understatement. The American Resort Development Association (ARDA) Hawaii Chapter’s 2008 study of the state’s timeshare industry estimates that in 2007 the average daily rate for a rented timeshare unit was \$218 (Hospitality Advisors LLC, 2008). The average daily maintenance fee was \$143.71 (= \$1,006 per week divided by 7 days); one-half of that amount is \$71.85. Thus, in 2007, the statu-

tory average daily timeshare tax base amounted to a mere one-third of the unit’s fair market rental value. Ziobrowski and Ziobrowski (1997, Table 1, p. 376) show a positive correlation between the rental price and the purchase price of a timeshare unit but no strong correlation between the rental price and annual operating costs.¹¹ Hence, operating costs generally are a poor proxy for a timeshare unit’s fair market rental value.

REVENUES GENERATED

Table 2 shows Hawaii’s state tax revenues collected on transient accommodations between calendar years (CY) 1999 and 2007. Note the TAT column aggregates transient accommodation tax collections from rentals of all types of visitor units, including TAT revenues from rented timeshare units; the TOT revenues include only units occupied either by owners or exchange (and other nonpaying) guests.

Table 2 further shows TOT tax collections increased at a faster pace than TAT revenues. For example, TOT revenue series showed no decline following the September 11, 2001 terrorist attacks. By contrast, TAT revenues decreased for two years over this period. Between 2000 and 2001, the number of visitors to Hawaii staying in timeshares increased by 20 percent, while visitor arrivals staying in hotels decreased by 12.4 percent. Between 2001 and 2002, the number of visitors to Hawaii staying in timeshares increased by 11 percent, while the number of visitors staying in hotels increased by only 2.8 percent. Pryce and Bruère

Table 2
TAT and TOT Collections: CY 1999 - CY 2007

<i>Year</i>	<i>TAT Revenues</i>	<i>% Change</i>	<i>TOT Revenues</i>	<i>% Change</i>	<i>Total</i>	<i>% Change</i>
1999	\$151,935,527	—	\$1,431,417	—	\$153,366,944	—
2000	173,440,002	14.2	1,920,499	34.2	175,360,501	14.3
2001	172,581,948	-0.5	2,019,812	5.2	174,601,760	-0.4
2002	159,178,975	-7.8	2,453,711	21.5	161,632,686	-7.4
2003	167,870,116	5.5	2,810,809	14.6	170,680,925	5.6
2004	186,341,527	11.1	3,566,737	26.9	189,908,264	11.3
2005	203,515,764	9.2	3,865,643	8.4	207,381,407	9.2
2006	216,023,150	6.1	4,526,434	17.1	220,549,584	6.3
2007	226,735,412	5.0	5,806,789	13.0	232,542,201	5.4

Source: Unpublished data from the records of the State of Hawaii, Department of Taxation (DoTax) kindly supplied by Titin Sakata of DoTax.

(1999, p. 146) point to the “recession-proof nature of timeshare.”

Table 3 displays data on the number of visitors to Hawaii who stayed in timeshare units, timeshare inventory, and TAT and TOT tax revenues for calendar years (CY) 2000 and 2005-07. Tax revenues collected under the TOT comprised only 2.5 percent (or less) of combined TAT and TOT revenues and are much lower than their respective visitor arrival and timeshare inventory shares in Hawaii. Timeshare resorts typically enjoy higher occupancy than other types of tourist accommodations (ARDA and ARDA-Hawaii, 1997, pp. 2-11.) and are rented at higher average prices.¹²

The TOT revenues displayed in Table 3 do not include all transient accommodation tax revenues collected from timeshare units, as undetermined amounts of tax revenues collected from units rented in the open market are reported in the TAT totals rather than under the TOT column. However, the missing amounts are not likely to be large. In 2000, only 3.5 percent of the intervals were rented (ARDA International Foundation, 2001, Exhibit 3-E). ARDA Hawaii (Hospitality Advisors LLC, 2008) estimated that in 2007, timeshare units that were rented out collected less than \$3 million

in transient accommodation tax (TAT) revenues compared to nearly \$227 million in TAT revenues collected from all transient accommodation rentals.

POLITICS WINS OVER SOUND ECONOMIC ANALYSIS

Why did the 1998 Hawaii Legislature define the “fair market rental value” of occupied timeshare units as 50 percent of “gross daily maintenance fees”? PMCI Hawaii—the local lobby retained by the Hawaii chapter of the American Resort Development Association (ARDA)—explains the outcome as follows:¹³

(Beginning in 1998), there was a virtual certainty that a bill imposing a hotel room tax on timeshare properties would finally pass. The focus of PMCI’s engagement shifted to minimize the impact...on timeshare owners. A nationwide e-mail campaign of timeshare owners and industry leaders was designed and implemented and local timeshare owners were organized to testify in person. As a result of this campaign, PMCI was able to negotiate an acceptable protocol for application of the tax based on a percentage of maintenance fees.

Table 3
Timeshare Visitors, Plant Inventory and Tax Revenues: CY 2000 and 2005-2007

<i>Year</i>	<i># of Timeshare Visitors</i>	<i># of Timeshare Units</i>	<i>TAT Revenues</i>	<i>TOT Revenues</i>
2007				
Number	656,504	7,997	\$226,735,412	\$5,806,789
% of state total	8.9%	10.9%*	97.5%**	2.5%**
2006				
Number	630,726	6,592	\$216,023,150	\$4,526,434
% of state total	8.5%	9.1%*	97.9%**	2.1%**
2005				
Number	539,706	6,429	\$203,515,764	\$3,865,643
% of state total	7.3%	8.9%*	98.1%**	1.9%**
2000				
Number	293,316	4,603	\$173,440,002	\$1,920,499
% of state total	4.2%	6.4%*	98.9%**	1.1%**

Note: *These represent percentages of all visitor lodging (including hotel room and condo) units.

**These represent percentages of total TAT + TOT revenues.

Sources: Timeshare visitors from the State of Hawaii (2007a, p. 11; 2002, p. 6); and Monthly Visitor Statistics (State of Hawaii, 2007b). Timeshare inventory for 2005-2007 from the State of Hawaii, Department of Business, Economics Development and Tourism (DBEDT) (2008) and from Minh-Chau Chun, Tourism Specialist at DBEDT, dated June 18, 2008. For 2000, from American Resort Development Association International Foundation (2001), pp. 4-8. TAT and TOT revenues are unpublished data from the records of the State of Hawaii, Department of Taxation (DoTax) kindly supplied by Titin Sakata of DoTax.

ARDA (2005) claims that this political victory “limited the amount when finally enacted from about \$24 per day to about \$6 per day.” This amounts to taxing timeshare occupancy at 25 percent of fair market rental value. HRS 237D provides for adjustment in the calculation of the “fair market rental value” if “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 by other appraisal methods.” However, due to the political clout of the timeshare industry, it is obvious that those involved in the negotiation expected occupancy of timeshares to be taxed at below fair market rental value. To date, no attempt has been made to remedy the error.

CONCLUSION AND LESSONS

Timeshare occupants in Hawaii and across the country enjoy preferential treatment in the form of low tax rates under existing transient occupancy tax laws. If preferential treatment induces consumers to substitute timeshares for hotel rentals, the current laws result in the unintended consequence of eroding the hotel occupancy tax base. The preferential tax treatment of timeshares also creates economic inefficiency by inducing more resources than are optimal to be directed to timeshare development.¹⁴

Tourist destinations impose transient occupancy taxes for a variety of reasons, among them to appropriate economic benefits for the residents of the host communities. Entry and departure taxes and hotel occupancy taxes are the most frequently imposed taxes to appropriate gains from tourism (Bird, 1992). Owners of timeshares argue that they should not have to pay timeshare occupancy taxes because they already pay property taxes and maintenance fees (Zimmerman, 2006). Similarly, the President and CEO of ARDA has argued that timeshare exchange guests should not have to pay occupancy taxes in places they visit because “exchangers own timeshares and already pay real estate taxes in the communities in which they own their intervals.” (Lodging Hospitality, 2005). Hawaii’s TAT and TOT are levied on personal consumption. Mak (2008, Chapter 4) argues that the enactment of the TAT in 1986 was a sound policy decision. By contrast, property taxes levied on hotels and timeshare units represent taxation of capital. An owner of a timeshare unit who occupies his own unit is both an investor and consumer; he

can be a pure investor by buying the timeshare interval and renting his unit out for profit.¹⁵ On both horizontal and vertical equity grounds,¹⁶ the consumption tax on timeshare occupancy, arguably, should be levied on all units whether occupied by owners, exchange guests, or renters. Pryce and Bruère (1999, p. 57) note that from the standpoint of the major hotel companies that have entered the industry, “timeshare is really just another way of packaging and pricing a hospitality product.”

Hawaii’s experience demonstrates it is possible to tax all timeshare occupants. However, Hawaii’s current approach to taxing timeshare occupancy is flawed. Most importantly, Act 156 fails to bring parity to the taxation of timeshares versus other transient accommodations. Instead, it produces a system that generates very modest amounts of tax revenues at high compliance and administrative costs. The state should redesign the tax to reduce its high cost of compliance and collection. Currently, a unit that is partly rented and partly occupied by the owner or exchange guest requires two separate tax filings. Moreover, the data required to estimate “average daily maintenance fees” are costly to compile. The current TOT is virtually impossible to enforce as the timeshare plan manager is only required to report an aggregate estimate for maintenance fees without providing specifics. Auditing out-of-state timeshare owners is also impractical.¹⁷ In sum, Hawaii’s current system of taxing timeshare occupancy is too complicated.

Ideally, fair market rental values of timeshare units that are not rented are estimated from actual rental prices of comparable units. That is not easy where the rental market is thin. One solution might be a per diem tax as proposed in the South Carolina General Assembly, with a 2-tier price—for example, \$10 per day for one bedroom (and smaller) units and \$15 per day for two bedroom (and larger) units—on all occupied units. The tax is collected from the occupant at the time of check-in or check-out.¹⁸ The initial per diem values, if desired, can be calibrated to collect roughly the same (average) amount of tax revenues per day as would be collected on hotel or vacation condominium rental units.

Consider the following three objectives of timeshare tax policy: (1) maximize returns to timeshare owners, (2) maximize net government revenues (i.e., revenues minus expenditures), and (3) maximize total social benefits minus social costs. The three objectives do not necessarily lead to a single

coherent tax policy. Ultimately, tax policy depends on policymakers' prioritization of these objectives.

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Notes

- ¹ Rezak (2002, p. 252) found that nationally nearly two-thirds of all occupancy in the typical timeshare unit is not the timeshare owner; also Miner (2000, p. 4).
- ² ARDA (2006a). There were 176,232 timeshare units at 1,615 resorts in the United States in 2007; Florida (30.4 percent), California (6.7 percent), and South Carolina (6.5 percent) led the states in the number of timeshare units.
- ³ In addition to the growing interest in the taxation of timeshare occupancy, some jurisdictions are examining the manner property taxes are levied on timeshare units as well. For example, in Taney County, Missouri a dispute recently surfaced on whether timeshares should be assessed as commercial or residential property.
- ⁴ It also has some negatives. See Pryce and Bruère (1999, p. 79).
- ⁵ The evolution of the points-based system obviously poses a threat to the exchange companies (Pryce and Bruère, 1999, p. 83).
- ⁶ There are several types of right-to-use timeshares including the vacation lease, the vacation license, and club membership.
- ⁷ It is noteworthy that a survey conducted by the FTA (2008) reports a 4 percent tax rate for Hawaii on "hotels, motels, lodging houses"; the correct rate is 11.417 percent (=4.167 GET + 7.25 TAT) of a unit's daily rental price.
- ⁸ ARDA (2006b) claims that it saved timeshare owners from paying a 4-fold increase in timeshare accommodation taxes. Accessed at http://www.arda.org/AM/Template.cfm?Section=Done_lately_2006_PDF
- ⁹ Another option is to find actual rental prices of comparable units. More on this below.
- ¹⁰ The 1997 timeshare occupancy tax ordinance (Ord. 356 §3, 1997) enacted by the city of Angel Camp, California also employed the average cost approach. <http://www.thetimesharebeat.com/global/sikes213.htm>
- ¹¹ They note (p. 377) that "...there was no significant correlation between the price of the timeshares and their respective annual maintenance fees." Both Ziobrowski and Ziobrowski (1997) and Rezak (2002) also find very little variation in maintenance fees among timeshare units of different sizes.
- ¹² The average daily rental price of timeshare units in 2007 (among ARDA Hawaii members) was \$218; the average daily rental price of all transient accom-

modation units in Hawaii in 2007 was \$200 (State of Hawaii, 2008, Table 7.35).

- ¹³ Accessed at http://www.pmcihawaii.com/pages/cs_ARDA.html
- ¹⁴ The growing timeshare inventory (relative to hotel properties) in Hawaii has also decreased the demand for the services of travel wholesalers (Seiden, 2008).
- ¹⁵ Crotts and Ragatz (2002, p. 234) found in their nationwide survey that more than 10 percent of the timeshare owners purchased them for "investment or resale potential." However, Ziobrowski and Ziobrowski (1997) argue that timeshares are unprofitable investments.
- ¹⁶ Hawaii's timeshare owners on average are generally more affluent than the general tourist population; they also stay longer and travel with a larger party. ARDA and ARDA-Hawaii (1997, p. 3-1); and PKF Hawaii (2002).
- ¹⁷ In 2000, 99 percent of Hawaii's timeshare owners were not residents of Hawaii. And as one Orlando/Orange County tax auditor noted, it is difficult to track timeshare rentals to collect the appropriate amount of taxes as there are "so many private transactions that go on." Barker (2006)
- ¹⁸ It has been shown that the current timeshare occupancy tax, though levied on the provider, is shifted to the occupant (Kwak and Mak, 2008).

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