July 11, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker
and Members of the House
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

I am transmitting herewith HB1850 HD1 SD3 CD1, without my approval, and with the statement of objections relating to the measure.

HB1850 HD1 SD3 CD1 RELATING TO TAXATION

Sincerely,

David Y. Ige
Governor, State of Hawaii
EXECUTIVE CHAMBERS
HONOLULU
July 11, 2016

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1850

Honorable Members
Twenty-Eighth Legislature
State of Hawai‘i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai‘i, I am returning herewith, without my approval, House Bill No. 1850, entitled "A Bill for an Act Relating to Taxation."

The bill authorizes transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using the brokers' services. This measure further includes a sunset provision on this authority of December 31, 2021, subject to future legislative review.

When viewed from the single lens of enforcement of taxes owed to the state by operators of vacation rentals, this measure does provide a mechanism to achieve that goal. However, the use of an intermediary system, such as the tax accommodations brokers as tax collection agents, also provides a shield for owners who do not presently comply with, nor would they be required to in the future, county ordinances that either limit the numbers of vacation rentals or place other restrictions upon their use within the various counties.

Further, I do believe that this arrangement will encourage owner-occupants to choose transient accommodation renters at a time when affordable rental housing within our State is severely stressed and homelessness remains a critical statewide concern. The Department of Human Services homeless coordinator and staff have been actively engaged in statewide recruitment of rental property owners to offer housing to low-income working families and individuals who lack affordable housing options. This type of outreach program has proven successful in other jurisdictions seeking to increase their rental housing inventory.
For the foregoing reasons, I am returning House Bill No. 1850 without my approval.

Respectfully,

[Signature]

DAVID Y. IGE
Governor of Hawai‘i
A BILL FOR AN ACT

RELATING TO TAXATION.

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

SECTION 1. The legislature finds that, under certain circumstances, allowing a private person to act as a tax collection agent is likely to ease the burden of collecting taxes. Section 237-9(e), Hawaii Revised Statutes, allows a person engaged in network marketing, multi-level marketing, or other similar business to enter into an agreement with the department of taxation to act as a tax collection agent on behalf of its direct sellers. The legislature finds that similarly, allowing a transient accommodations broker to act as a tax collection agent on behalf of providers of transient accommodations that utilize the services of the transient accommodations broker may facilitate the collection of transient accommodations taxes and general excise taxes.

The limited purpose of this Act is to enable a transient accommodations broker to register as a tax collection agent with respect to transient accommodations taxes and general excise taxes for its operators and plan managers in a manner that recognizes the dynamic changes occurring in the transient accommodations industry.
accommodations sector. This Act is not intended to preempt or otherwise limit the authority of counties to adopt, monitor, and enforce local land use regulations, nor is this Act intended to transfer the authority to monitor and enforce such regulations away from the counties.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Transient accommodations broker as tax collection agent. (a) The director may permit a transient accommodations broker to register as a tax collection agent on behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including but not limited to any violation of this chapter or rules adopted pursuant thereto, violation of any prior tax collection
agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

Execution of a tax collection agreement shall not be a requirement for registration as a transient accommodations broker tax collection agent.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker submits to the director a completed and signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department.

The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection agent shall be issued separate licenses under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. A registered transient accommodations
broker tax collection agent shall file with the department monthly or other periodic returns as required by section 237-30. The required reporting information shall include, but not be limited to gross transient accommodations rentals, exemptions, and taxable income, from the registered transient accommodations broker tax collection agent's business activity.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in subsection (h); provided that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall be deemed licensed under this chapter, provided that the licensure shall
apply solely to the business activity conducted directly through
the registered transient accommodations broker tax collection
agent from the date of registration until the registration is
canceled as provided in subsection (h). For purposes of any
other business activity, the operators and plan managers are
subject to all requirements of title 14 as if this section did
not exist.

(d) Under this section, a registered transient
accommodations broker tax collection agent shall assume all
obligations, rights, and responsibilities imposed by this
chapter upon its operators and plan managers with respect to
their business activities conducted directly through the
registered transient accommodations broker tax collection agent
from the date of registration until the registration is canceled
as provided in subsection (h).

(e) A transient accommodations broker tax collection agent
shall be personally liable for the taxes imposed by this chapter
that are due and collected on behalf of operators and plan
managers, if taxes are collected, but not reported or paid,
together with penalties and interest as provided by law.
(f) All returns and other information provided by a registered transient accommodations broker tax collection agent, including the application for registration as a transient accommodations broker tax collection agent or any tax collection agreement, shall be confidential and disclosure thereof shall be prohibited as provided in section 237-34; provided that no disclosure of returns or information provided by the transient accommodations broker tax collection agent with respect to its operators and plan managers shall be made pursuant to section 237-34(b)(9), (10) or (11).

(g) A registered transient accommodations broker tax collection agent shall notify all of its operators and plan managers in the State that it has been designated to collect, report, and pay over the tax imposed by this chapter on their behalf.

The director may require the transient accommodations broker tax collection agent, as a condition of obtaining a license, to furnish with an annual return, a list including the federal tax identification number of all operators and plan managers for the taxable year to whom the transient accommodations broker tax collection agent has provided
information returns required under the Internal Revenue Code, and any other information that is relevant to ensure proper payment of taxes under title 14.

A transient accommodations broker tax collection agent shall provide the names or addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager.

(h) The registration provided for under this section shall be effective until canceled in writing.

A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and each of its operators and plan managers furnishing transient accommodations in the State not later than ninety days prior to the effective date of cancellation.

The director may cancel a transient accommodations broker tax collection agent's registration under this section for any cause, including but not limited to any violation of this chapter or rules adopted pursuant thereto, or for violation of any applicable tax collection agreement, by delivering written
notice of cancellation to the transient accommodations broker tax collection agent not later than ninety days prior to the effective date of cancellation.

(i) All registered transient accommodations broker tax collection agents shall:

(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notify the operator or plan manager that the subject property is required to be in compliance with applicable land use laws prior to retaining the services of the transient accommodations broker; and

(2) Require the operator or plan manager to attest that the subject property is in compliance with applicable land use laws.

(j) Nothing contained in this section shall limit the authority of the department under section 231-7 to conduct audits, investigations, and hearings, and to issue subpoenas. This shall include the authority to obtain transaction-level data for specific transactions from a transient accommodations broker tax collection agent.
(k) In addition to all other reporting requirements under title 14, each transient accommodations broker tax collection agent shall report annually to the director on an aggregate basis the following:

(1) The total number of operators and plan managers by county on whose behalf the transient accommodations broker tax collection agent collected and remitted taxes imposed by this chapter; and

(2) The total taxes by county imposed by this chapter so collected and remitted.

(1) For the purposes of this section:

"Operator" has the same meaning as in section 237D-1.

"Plan manager" has the same meaning as in section 237D-1.

"Transient accommodations broker" has the same meaning as in section 237D-1."

SECTION 3. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Transient accommodations broker as tax collection agent. (a) The director may permit a transient accommodations broker to register as a tax collection agent on
behalf of all of its operators and plan managers by entering into a tax collection agreement with the director or by submitting a transient accommodations broker tax collection agent registration statement to the director.

The director may deny an application for registration as a transient accommodations broker tax collection agent under this section for any cause authorized by law, including but not limited to any violation of this chapter or rules adopted pursuant thereto, violation of any prior tax collection agreement, or failure to meet minimum criteria that may be set forth by the department in rules adopted pursuant to chapter 91.

Execution of a tax collection agreement shall not be a requirement for registration as a transient accommodations broker tax collection agent.

The director shall issue a certificate of registration or letter of denial within thirty days after a transient accommodations broker submits to the director a completed and signed transient accommodations broker tax collection agent registration statement, in a form prescribed by the department. The registration shall be valid only for the transient accommodations broker tax collection agent in whose name it is
issued, and for the website or platform designated therein, and shall not be transferable.

A registered transient accommodations broker tax collection agent shall be issued separate certificates of registration under this chapter with respect to taxes payable on behalf of its operators and plan managers in its capacity as a registered transient accommodations broker tax collection agent and, if applicable, with respect to any taxes payable under this chapter for its own business activities. A registered transient accommodations broker tax collection agent shall file with the department monthly or other periodic returns as required by section 237D-6, reporting information including, without limitation, gross rentals or gross rental proceeds, exemptions or deductions, taxable proceeds, and taxes, each separated by taxation district.

(b) In addition to its own responsibilities under this chapter, a registered transient accommodations broker tax collection agent shall report, collect, and pay over the taxes due under this chapter on behalf of all of its operators and plan managers from the date of registration until the registration is canceled as provided in subsection (h); provided
that the registered transient accommodations broker tax collection agent's obligation to report, collect, and pay taxes on behalf of all of its operators and plan managers shall apply solely to transient accommodations in the State arranged or booked directly through the registered transient accommodations broker tax collection agent.

(c) The registered transient accommodations broker tax collection agent's operators and plan managers shall be deemed registered under this chapter; provided that the registration shall apply solely to the business activity conducted directly through the registered transient accommodations broker tax collection agent from the date of registration until the registration is canceled as provided in subsection (h). For purposes of any other business activity, the operators and plan managers are subject to all requirements of title 14 as if this section did not exist.

(d) Under this section, a registered transient accommodations broker tax collection agent shall assume all obligations, rights, and responsibilities imposed by this chapter upon its operators and plan managers with respect to their business activities conducted directly through the
registered transient accommodations broker tax collection agent
from the date of registration until the registration is canceled
as provided in subsection (h).

(e) A transient accommodations broker tax collection agent
shall be personally liable for the taxes imposed by this chapter
that are due and collected on behalf of operators and plan
managers, if taxes are collected, but not reported or paid,
together with penalties and interest as provided by law.

(f) All returns and other information provided by a
registered transient accommodations broker tax collection agent,
including the application for registration as a transient
accommodations broker tax collection agent or any tax collection
agreement, shall be confidential and disclosure thereof shall be
prohibited as provided in section 237D-13; provided that no
disclosure of returns or information provided by the transient
accommodations broker tax collection agent with respect to its
operators and plan managers shall be made pursuant to section
237D-13(a)(9), (10) or (11).

(g) A registered transient accommodations broker tax
collection agent shall notify all of its operators and plan
managers in the State that it has been designated to collect,
report, and pay over the tax imposed by this chapter on their behalf.

The director may require the transient accommodations broker tax collection agent, as a condition of obtaining a license, to furnish with an annual return, a list including the federal tax identification number of all operators and plan managers for the taxable year to whom the transient accommodations broker tax collection agent has provided information returns required under the Internal Revenue Code, and any other information that is relevant to ensure proper payment of taxes under title 14.

A transient accommodations broker tax collection agent shall provide the names or addresses of any of its operators and plan managers to the director when such a request is made through a lawful and valid administrative process or upon waiver by the operator or plan manager.

(h) The registration provided for under this section shall be effective until canceled in writing.

A registered transient accommodations broker tax collection agent may cancel its registration under this section by delivering written notice of cancellation to the director and
each of its operators and plan managers furnishing transient accommodations in the State not later than ninety days prior to the effective date of cancellation.

The director may cancel a transient accommodations broker tax collection agent's registration under this section for any cause, including but not limited to any violation of this chapter or rules adopted pursuant thereto, or for violation of any applicable tax collection agreement, by delivering written notice of cancellation to the transient accommodations broker tax collection agent not later than ninety days prior to the effective date of cancellation.

(i) All registered transient accommodations broker tax collection agents shall:

(1) Prior to placing an advertisement, including an online advertisement, on the availability of a property for lease or rent on behalf of an operator or plan manager, notify the operator or plan manager that the subject property is required to be in compliance with applicable land use laws prior to retaining the services of the transient accommodations broker; and
(2) Require the operator or plan manager to attest that the subject property is in compliance with applicable land use laws.

(j) Nothing contained in this section shall limit the authority of the department under section 231-7 to conduct audits, investigations, and hearings, and to issue subpoenas. This shall include the authority to obtain transaction-level data for specific transactions from a transient accommodations broker tax collection agent.

(k) In addition to all other reporting requirements under title 14, each transient accommodations broker tax collection agent shall report annually to the director on an aggregate basis the following:

(1) The total number of operators and plan managers by county on whose behalf the transient accommodations broker tax collection agent collected and remitted taxes imposed by this chapter; and

(2) The total taxes imposed by this chapter so collected and remitted."

SECTION 4. Section 237D-4, Hawaii Revised Statutes, is amended by amending section (c) to read as follows:
"(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

(1) The registration identification number or an electronic link to the registration identification number of [the] either:

(A) The operator or plan manager issued pursuant to this section; [and] or

(B) The transient accommodations broker tax collection agent registered under section 237D- , if applicable; and

(2) The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit."

SECTION 5. By January 1, 2017, the director of taxation shall make available to transient accommodations brokers a form of application for registration as a transient accommodations broker tax collection agent under the new section of chapter
237, Hawaii Revised Statutes, added by section 2 of this Act, and under the new section of chapter 237D, Hawaii Revised Statutes, added by section 3 of this Act.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2016; and shall be repealed on December 31, 2021, and shall not apply to taxable years beginning after December 31, 2021; provided that section 237D-4, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

APPROVED this day of , 2016

GOVERNOR OF THE STATE OF HAWAII