

# Maui County's Time Share Real Property Tax Litigation (2013 -2024)

PRESENTED DECEMBER 12, 2024  
BY MARCY MARTIN, AAS & BRIAN BILBERRY, ESQ.

IAAO ANNUAL  
**LEGAL**   
**SEMINAR**  
NAVIGATING CHANGE



- One of four counties in the State of Hawaii
- Second largest in physical size
- Population 164,264
- Average daily visitor census 55,524
  - 25% of the population are visitors





- About 75,000 taxable parcels
- \$73.3 billion in assessed value
- \$587.3 million in annual real property tax revenue



# 12 Tax Rate Classifications

## Commercial

### FY 2024-25 TAX RATES

CLASSIFICATION	PER \$1,000 OF VALUE	% of VALUE
COMMERCIAL	\$6.05	0.61%
INDUSTRIAL	\$7.05	0.71%
AGRICULTURAL	\$5.74	0.57%
CONSERVATION	\$6.43	0.64%
HOTEL / RESORT	\$11.75	1.18%
TIMESHARE	\$14.60	1.46%



# 12 Tax Rate Classifications

The tax burden is shifted from residents to visitors

	<u>PERCENT OF VALUE</u>	<u>PERCENT OF TAXES</u>
<b>VISITOR LODGING</b>	37%	61%
<b>LONG-TERM RESIDENTIAL USE</b>	54%	32%
<b>COMMERCIAL</b>	9%	7%
	100%	100%

## Tax rate classification can be appealed.

- Tax rate classification appeals are common
- There are more value appeals in the higher tax rate classes

# How are time shares defined?

## State law Hawaii Revised Statutes HRS 514-E: subject to a time share plan:

"Time share plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty day period in any year, for any occupant. The term time share plan shall include both time share ownership plans and time share use plans, as follows:

- (1) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed or by other means, whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.
- (2) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

"Time share unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.





# Newer Developments

- Large branded projects: Hilton, Westin, Marriott, Hyatt, Worldmark
- Entire project time share
  - May or may not be condominiumized
- Resort atmosphere
  - Restaurants
  - Pool wait staff
  - On-site concessions



Per Maui County Code:

**Real property is valued in its entirety to the owner thereof.**

- As if one owner (term fee simple is not used in the code)
  - Intervals (or portions of real property are not assessed)
  
- The plan manager is listed as the owner.
  - The plan manager appeals
  - The plan manager pays the taxes (not interval owners)

Per Maui County Code:

**Real property is valued using the cost and market approaches to value.**

- Income approach is precluded by law.
- Individual condominiums units are valued using comparable whole unit sales.
- Building block “interval sales” are not used for assessment purposes.

# History of Tax Classification

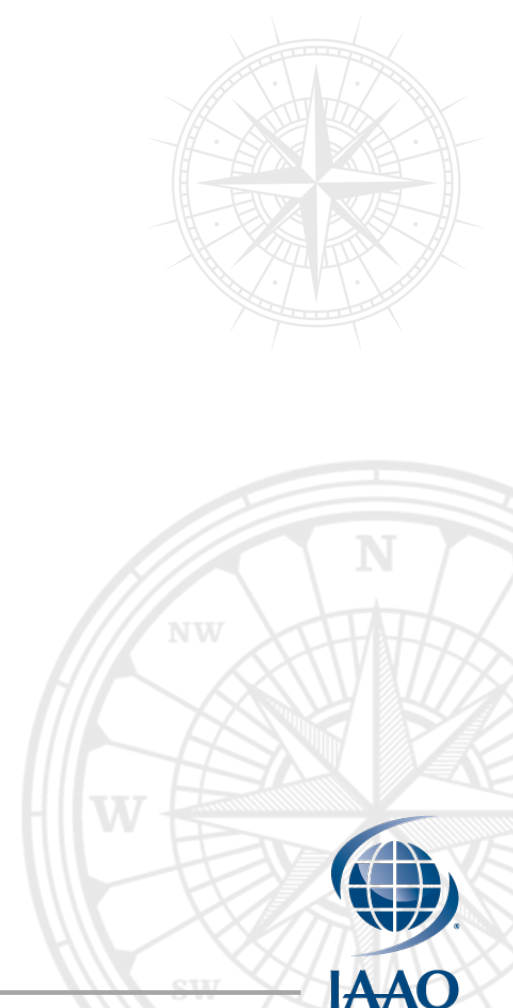
- -1996 Most classified as Apartment – rate similar to a non-owner-occupied residential rate \$4.75 / .48%
- 1997 - 2004 Classified as Hotel and Resort – rate similar to hotels \$8.30 / .83%
- 2005 – present Classified as Time share \$14.6 / 1.5%

# Taxes on Appeal

Time intervals differ based upon interval time of the year and unit characteristics.

- County assesses real property taxes to the plan manager
- County does not assess individual intervals
- The plan manager recoups real property taxes from interval owners in maintenance fees
- Averaging based upon broad categories can result in regressive real property tax assessments

Unit Type	Assessment	Hotel / Resort Tax	Time share Tax	Taxes on appeal	1/50 of taxes on appeal	What an individual owner pays
1 Bedroom, no view	700,000	\$8,225	\$10,220	-\$1,995	-\$39.90	Plan manager determines
2 Bedroom, oceanfront view	2,500,000	\$29,375	\$36,500	-\$7,125	-\$142.50	Plan manager determines
Average					-\$91.20	



# Taxes on Appeal

Taxes on appeal for the three projects:

Year	Count	Taxes in Dispute	Projects
2020	413	\$821,110	West Maui
2021	949	\$2,557,028	West Maui, ORV, ORVN
2022	950	\$2,808,316	West Maui, ORV, ORVN
2023	538	\$2,846,349	ORV,ORVN
	2,850	<b>\$9,032,802</b>	

# Time Share Economy

- 1,849 time share units have been constructed since 1997
- 1,350 time share units have been constructed since 2005

YEAR BUILT	NUMBER OF UNITS	ASSESSED VALUE	AVERAGE ASSESSED VALUE
1970	6	\$4,323,000	\$720,500
1972	4	\$4,101,800	\$1,025,450
1974	211	\$192,958,100	\$914,493
1975	55	\$48,675,500	\$885,009
1976	13	\$10,675,400	\$821,185
1977	45	\$43,811,300	\$973,584
1978	1	\$883,400	\$883,400
1981	425	\$544,169,400	\$1,280,399
1982	203	\$225,654,500	\$1,111,599
1983	7	\$1,769,600	\$252,800
1984	58	\$53,196,800	\$917,186
1988	413	\$299,431,100	\$725,015
1989	81	\$59,961,000	\$740,259
1990	20	\$24,074,300	\$1,203,715
1991	84	\$65,758,800	\$782,843
2000	220	\$55,519,000	\$252,359
2003	279	\$512,740,300	\$1,837,779
2006	335	\$706,053,200	\$2,107,621
2008	71	\$160,931,200	\$2,266,637
2009	35	\$144,416,400	\$4,126,183
2014	131	\$304,313,600	\$2,323,005
2015	390	\$437,078,300	\$1,120,714
	3,087	3,900,496,000	\$1,263,523



# *Hawai'i State Constitution*

*Article VIII, Section 3* of the Hawai'i State Constitution was amended at the **1978 Constitutional Convention of Hawai'i**, to provide as follows:

The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that *all functions, powers and duties relating to the taxation of real property shall all be exercised exclusively by the counties*, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions. (Emphasis added).



# *Establishment of “Time Share” Tax Classification*

**2004** – Maui County Council passed **Ordinance No. 3227** amending Maui County Code § 3.48.305.

“[L]and shall be classified upon a consideration of its highest and best use, into the following general classes:  
1 - Improved residential; 2 - Unimproved residential; 3 - Apartment; 4 - Hotel and resort; **5 – Time share**; 5 6 - Commercial; 6 7 - Industrial 7 8 - Agricultural; 8 7 - Conservation; and 9 10 - Homeowner. (Effective January 1, 2005).



# Complaint for “Damages”

*Ocean Resort Villas Vacation Owners Association,  
et al. v. County of Maui, Civil No. 13-1-0848(2) (2013)*

- Filed in Circuit Court rather than Tax Appeal Court.
- “Time share” class is *unconstitutional*.
- Establishment of “Time share” tax class was *illegal*.
- Complaint in state circuit court seeking tax refunds as “damages.”

# *Dismissal of Complaint for Lack of Jurisdiction*

*OCEAN RESORT VILLAS, ET AL. V. COUNTY OF MAUI*, 147 Hawai‘i 544, 465 P.3d 991 (2020)

Supreme Court of Hawai‘i: Circuit Court lacked subject matter jurisdiction to hear “controversies with respect to taxes.”

# *Appeal to Tax Appeal Court (2021)*

*IN THE MATTER OF THE TAX APPEAL OF WEST MAUI RESORT PARTNERS LP, ET AL.*, consolidated cases 1CTX-21-0000071, et seq. and 1CTX-210000569, et seq.

- Taxpayer again alleged *unconstitutionality* and *illegality*.
- Tax Appeal Court ruled that “Time share” classification is rationally related to *a legitimate policy purpose* to disincentivize proliferation of time share; and
- Maui County Council considered a broad spectrum of impacts that resulted from the developing time share industry, how development was changing population centers, and also modifying where tax revenues could be generated for the business of the County.

# *Municipal Tax Classification Prerogatives*

*IN THE MATTER OF THE TAX APPEAL OF WEST MAUI RESORT PARTNERS LP, ET AL.*, consolidated cases 1CTX-21-0000071, et seq. and 1CTX-210000569, et seq.

The Tax Appeal Court concluded that in establishing the “Time share” tax classification, Maui County appropriately considered:

- *Actual use* of time share real property;
- *Highest and best* use of real property as timeshare; and
- Real property as subject to a registered *time share plan*.

# *State Supreme Court Appeal: Time Share Appellants' Arguments*

*WEST MAUI RESORT PARTNERS LP, ET AL. V. COUNTY OF MAUI, 547 P.3d 454 (2024)*

- Time share real property tax is an ***unconstitutional*** tax on a transient accommodation and duration of a visitor's stay;
- Time share" class is ***unconstitutional*** violation of equal protection;
- Establishment of "Time share" tax class was ***illegal***.

# *State Supreme Court Appeal: Maui County Counter Arguments*

*West Maui Resort Partners LP, et al. v.  
County of Maui, 547 P.3d 454 (2024)*

- Real property tax is an *ad valorem* tax;
- The “Time Share” classification was reasonably tailored to the legitimate policy aims of (1) collecting more tax revenue from time share properties for their use of county services and infrastructure impacts, and (2) disincentivizing conversions from hotel to time share use and construction of new timeshares.

# *State Supreme Court Decision*

## *WEST MAUI RESORT PARTNERS LP, ET AL. V. COUNTY OF MAUI, 547 P.3d 454 (2024)*

- “Time share” tax classification and rate acted as a real property tax, not a transient accommodation tax;
- Time share units were not required to be assigned to a real property tax classification solely according to their actual use;
- Hawai‘i State Constitution broadly authorized municipal authority(ies) to classify different property types based on reasonable policy consideration other than use.



# State Supreme Court Decision

## *WEST MAUI RESORT PARTNERS LP, ET AL. V. COUNTY OF MAUI, 547 P.3d 454 (2024)*

“[T]he County may use real property taxation *to generate revenue* and is *not limited as to how it uses that revenue for various costs*. Article VIII, section 3 of the Hawai‘i Constitution was specifically designed to *‘grant the counties full control over their finances, ... [and] further the democratic ideal of home rule, and allow the counties flexibility in addressing their unique local needs.’*[citation]. Generating revenue needed for infrastructure costs *or other items in the County’s budget* is not an improper policy purpose.” (emphasis added).

# Mahalo!

IAAO ANNUAL  
**LEGAL SEMINAR**  
NAVIGATING CHANGE



**IAAO**