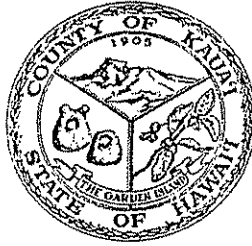


**COUNTY COUNCIL**

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JoAnn A. Yukimura, Vice Chair  
Tim Bynum  
Dickie Chang  
KipuKai Kualii  
Nadine K. Nakamura  
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**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kauai, Hawaii 96766

April 5, 2012

Honorable Jay Furfaro, Council Chair  
Kauai County Council  
Lihu'e, Hawaii 96766

Dear Chair Furfaro and Councilmembers:

This is to request the public release of the County Attorney's opinion dated January 24, 2012, regarding Transient Vacation Rentals with Homeowner's Exemption, which release was discussed and approved during executive session item ES-536 at the March 28, 2012 Council Meeting.

Thank you for your attention to this matter.

Sincerely,

TIM BYNUM  
Councilmember

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January 24, 2012

TO: Tim Bynum, Councilmember  
VIA: Jay Furfaro, Council Chair  
FROM: Jennifer S. Winn, Deputy County Attorney  
SUBJECT: Transient Vacation Rentals with Homeowner's Exemption  
Our File No. 12-0039

I received your request regarding the referenced subject.

Section 5A-11.4(a), Kaua'i County Code ("KCC"), permits a homeowner's exemption for real property that is the taxpayer's principal home. Given this, a taxpayer may still get the homeowner's exemption if his home is rented part of the year as a transient vacation rental or a portion of his home is rented so long as the property remains his principal home. For example, one may use his property nine months of the year as his principal home and rent it for three months and still receive the homeowner's exemption.

However, a person who rents his home as a transient vacation rental does not receive the homestead tax rate pursuant to Section 5A-8.1, KCC.<sup>1</sup> The ordinance specifically says that the homestead tax rate does not apply to land which is used for residential rental purposes whether for long term or short term or for commercial, income producing purposes.

With this in mind, please see the answers below to your specific questions.

1. *Since a homeowner's exemption is available to people who occupy the property as a full-time residence, how can they concurrently use it as a TVR?*

The ordinance does not require that people occupy the property as a full-time residence, but rather that it is the person's principal home. They may be able to receive a homeowner's exemption while using the property as a TVR as noted above.

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<sup>1</sup> Section 5A-6.4, KCC, come June 1, 2012.

Tim Bynum, Councilmember  
Via: Jay Furfaro, Council Chair  
Page 2  
January 24, 2012

*Are the two uses mutually exclusive? No.*

2. *Since the TVR ordinance states that if you have one full year of no vacation rentals use, you have abandoned the use and lose your TVR status, wouldn't having a homeowner's exemption be evidence of the full year abandonment of TVR use?*

Not necessarily, based on the above.

3. *Given the passage of new legislation that authorizes the taxation of TVRs, can a homeowner operate a TVR and still be entitled to a homeowner's exemption for the same property?*

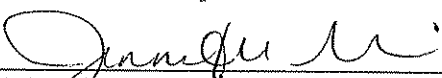
Yes.

The new legislation in Ordinance 920 (Section 5A-6.4) provides for a new tax classification for vacation rentals starting June 1, 2012. This allows Council to set tax rates separately for vacation rentals. Tax rates are different from exemptions. The new legislation does not concern exemptions as they relate to TVRs.


Please note TVRs already do not get the homestead tax rate based on the current law. Instead, they are taxed according to their highest and best use (normally as zoned).

4. *If you can have both in the same year, can you propose legislation that would prohibit a property owner from having both a TVR and a homeowner's exemption for the same property?*

My suggestion is to amend Section 5A-11.4(a), KCC, and add that no exemption shall be allowed for properties with TVRs.

  
\_\_\_\_\_  
JENNIFER S. WINN  
Deputy County Attorney

APPROVED:

  
\_\_\_\_\_  
ALFRED B. CASTILLO, JR.  
County Attorney