
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 237D-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "transient accommodations"
3 to read as follows:

4 "Transient accommodations" mean the furnishing of a room,
5 apartment, suite, or the like which is customarily occupied by a
6 transient for less than one hundred eighty consecutive days for
7 each letting by a hotel, apartment hotel, motel, condominium
8 property regime or apartment as defined in chapter 514A,
9 cooperative apartment, ~~[or]~~ rooming house, or time share unit as
10 provided in section 237D-2, that provides living quarters,
11 sleeping, or housekeeping accommodations, or other place in
12 which lodgings are regularly furnished to transients for
13 consideration."

14 SECTION 2. Section 237-1, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By repealing the definition of "fair market rental
17 value."



1 [~~"Fair market rental value" means an amount equal to one-~~
2 half the gross daily maintenance fees that are paid by the
3 owner, are attributable to the time share unit, and include
4 maintenance costs, operational costs, insurance, repair costs,
5 administrative costs, taxes, other than transient accommodations
6 taxes, and other costs including payments required for reserves
7 or sinking funds. The taxpayer shall use gross daily
8 maintenance fees, unless the taxpayer proves or the director
9 determines that the gross daily maintenance fees do not fairly
10 represent fair market rental value taking into account
11 comparable transient accommodation rentals or other appraisal
12 methods."]

13 2. By repealing the definition of "occupant."

14 [~~"Occupant" means an owner of a resort time share vacation~~
15 plan or other person occupying the resort time share vacation
16 unit."]

17 3. By repealing the definition of "owner."

18 [~~"Owner" means any person who owns a resort time share~~
19 vacation interest; provided that to the extent and for those
20 purposes provided in an agreement of sale, the vendee under the
21 agreement of sale shall be considered the owner of the resort
22 time share vacation interest."]

1 4. By repealing the definition of "plan manager."

2 [~~"Plan manager" means a person who undertakes the duties,~~
3 ~~responsibilities, and obligations of managing a resort time~~
4 ~~share vacation plan or is required to act for a resort time~~
5 ~~share vacation plan under this chapter."]~~

6 5. By repealing the definition of "resort time share
7 vacation interest."

8 [~~"Resort time share vacation interest" means any interest~~
9 ~~in a resort time share vacation unit or plan which entitles the~~
10 ~~owner thereof to the use, occupancy, or possession of a resort~~
11 ~~time share vacation unit on a periodically recurring basis."]~~

12 6. By repealing the definition of "resort time share
13 vacation plan."

14 [~~"Resort time share vacation plan" means any plan or~~
15 ~~program subject to chapter 514E in which the use, occupancy, or~~
16 ~~possession of one or more resort time share vacation units~~
17 ~~circulates among various persons for less than a sixty-day~~
18 ~~period in any year, for any occupant. The term resort time~~
19 ~~share vacation plan includes both resort time share vacation~~
20 ~~ownership plans and resort time share vacation use plans, as~~
21 ~~follows:~~



1 ~~(1) "Resort time share vacation ownership plan" means any~~
 2 ~~arrangement whether by tenancy in common, sale, deed,~~
 3 ~~or by other means, whereby the purchaser receives an~~
 4 ~~ownership interest and the right to use the property~~
 5 ~~for a specific or discernible period by temporal~~
 6 ~~division.~~

7 ~~(2) "Resort time share vacation use plan" means any~~
 8 ~~arrangement, excluding normal hotel operations, whether by~~
 9 ~~membership agreement, lease, rental agreement, license, use~~
 10 ~~agreement, security, or other means, whereby the purchaser~~
 11 ~~receives a right to use accommodations or facilities, or both,~~
 12 ~~in a resort time share vacation unit for a specific or~~
 13 ~~discernible period by temporal division, but does not receive an~~
 14 ~~ownership interest."]~~

15 7. By repealing the definition of "resort time share
 16 vacation unit."

17 ~~["Resort time share vacation unit" means the actual and~~
 18 ~~promised accommodations, and related facilities, which are the~~
 19 ~~subject of a resort time share vacation plan."]~~

20 SECTION 3. Section 237D-2, Hawaii Revised Statutes, is
 21 amended to read as follows:

1 **"§237D-2 Imposition and rates.** (a) There is levied and
2 shall be assessed and collected each month a tax of:

3 (1) Five per cent for the period beginning on
4 January 1, 1987, to June 30, 1994;

5 (2) Six per cent for the period beginning July 1, 1994, to
6 December 31, 1998; and

7 (3) 7.25 per cent for the period beginning on
8 January 1, 1999, and thereafter;

9 on the gross rental or gross rental proceeds derived from
10 furnishing transient accommodations.

11 (b) Every operator shall pay to the State the tax imposed
12 by subsection (a) as provided in this chapter.

13 (c) There is levied and shall be assessed and collected
14 each month on [~~the occupant of a resort time share vacation~~
15 ~~unit,~~] every owner of a time share unit under chapter 514E
16 calculated on the rental proceeds when the unit is used as a
17 transient accommodation, a transient accommodations tax of 7.25
18 per cent [~~on the fair market rental value~~].

19 ~~(d) Every plan manager shall be liable for and pay to the~~
20 ~~State the transient accommodations tax imposed by subsection (c)~~
21 ~~as provided in this chapter. Every resort time share vacation~~

1 ~~plan shall be represented by a plan manager who shall be subject~~
2 ~~to this chapter.]"~~

3 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) Each operator [~~or plan manager~~] as a condition
7 precedent to engaging or continuing in the business of
8 furnishing transient accommodations [~~or in business as a resort~~
9 ~~time share vacation plan~~] shall register with the director the
10 name and address of each place of business within the State
11 subject to this chapter. The operator [~~or plan manager~~] shall
12 make a one-time payment as follows:

13 (1) \$5 for each registration for transient accommodations
14 consisting of one to five units; and

15 (2) \$15 for each registration for transient accommodations
16 consisting of six or more units[~~; and~~

17 ~~(3) \$15 for each resort time share vacation plan within~~
18 ~~the State];~~

19 upon receipt of which the director shall issue a certificate of
20 registration in such form as the director determines, attesting
21 that the registration has been made. The registration shall not
22 be transferable and shall be valid only for the operator [~~or~~



1 ~~plan manager~~] in whose name it is issued and for the transaction
2 of business at the place designated therein.

3 The registration, or in lieu thereof a notice stating where
4 the registration may be inspected and examined, shall at all
5 times be conspicuously displayed at the place for which it is
6 issued. Acquisition of additional [~~transient accommodation~~]
7 units after payment of the one-time fee shall not result in
8 additional fees.

9 The registration provided for by this section shall be
10 effective until canceled in writing. Any application for the
11 reissuance of a previously canceled registration identification
12 number shall be regarded as a new registration application and
13 shall be subject to the payment of the one-time registration
14 fee. The director may revoke or cancel any license issued under
15 this chapter for cause as provided by rule under chapter 91."

16 2. By amending subsection (c) to read:

17 "(c) Any person who may lawfully be required by the State,
18 and who is required by this chapter, to register as a condition
19 precedent to engaging or continuing in the business of
20 furnishing transient accommodations [~~or as a plan manager~~]
21 subject to taxation under this chapter, who engages or continues
22 in the business without registering in conformity with this



1 chapter, shall be guilty of a misdemeanor. Any director,
2 president, secretary, or treasurer of a corporation who permits,
3 aids, or abets such corporation to engage or continue in
4 business without registering in conformity with this chapter,
5 shall likewise be guilty of a misdemeanor. The penalty for the
6 misdemeanors shall be that prescribed by section 231-34 for
7 individuals, corporations, or officers of corporations, as the
8 case may be, for violation of that section."

9 SECTION 5. Section 237D-6, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) On or before the last day of each calendar month,
12 every operator taxable[~~, or plan manager liable~~] under this
13 chapter during the preceding calendar month shall file a sworn
14 return with the director in such form as the director shall
15 prescribe together with a remittance for the amount of the tax
16 in the form required by section 237D-6.5. Sections 237-30 and
17 237-32 shall apply to returns and penalties made under this
18 chapter to the same extent as if the sections were set forth
19 specifically in this section."

20 SECTION 6. Section 237D-7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**§237D-7 Annual return.** On or before the twentieth day of
2 the fourth month following the close of the taxable year, every
3 person who has become liable for the payment of the taxes under
4 this chapter during the preceding tax year shall file a return
5 summarizing that person's liability under this chapter for the
6 year, in such form as the director prescribes. The operator [~~or~~
7 ~~plan manager~~] shall transmit with the return a remittance
8 covering the residue of the tax chargeable to the operator [~~or~~
9 ~~plan manager~~], if any, to the office of the appropriate state
10 district tax assessor designated in section 237D-8. The return
11 shall be signed by the taxpayer, if made by an individual, or by
12 the president, vice-president, secretary, or treasurer of a
13 corporation, if made on behalf of a corporation. If made on
14 behalf of a partnership, firm, society, unincorporated
15 association, group, hui, joint adventure, joint stock company,
16 corporation, trust estate, decedent's estate, trust, or other
17 entity, any individual delegated by the entity shall sign the
18 same on behalf of the taxpayer. If for any reason it is not
19 practicable for the individual taxpayer to sign the return, it
20 may be done by any duly authorized agent. The department, for
21 good cause shown, may extend the time for making the return on
22 the application of any taxpayer and grant such reasonable



1 additional time within which to make the return as the
2 department may deem advisable.

3 Section 232-2 applies to the annual return, but not to a
4 monthly return."

5 SECTION 7. Section 237D-7.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§237D-7.5 Federal assessments; adjustments of gross**
8 **rental, gross rental proceeds [~~, or fair market rental value~~];**
9 **report to the department.** (a) Any person required to report to
10 the department by section 235-101(b), also shall report to the
11 department any change, correction, adjustment, or recomputation
12 of gross rental, or gross rental proceeds [~~, or fair market~~
13 ~~rental value~~] subject to the tax imposed by this chapter. This
14 report shall be made in the form of a return amending the
15 person's gross rental, gross rental proceeds [~~, or fair market~~
16 ~~rental value~~] as previously reported on a return filed with the
17 department for the taxable year. If no return has been filed
18 with the department for the taxable year, a return shall be
19 filed and shall take into account any change, correction,
20 adjustment, or recomputation of gross rental, or gross rental
21 proceeds [~~, or fair market rental value~~]."



1 SECTION 8. Section 237D-8.6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237D-8.6 Reconciliation; form requirement.** [~~(a)~~] On or
4 before the twentieth day of the fourth month following the close
5 of the taxable year, every person who has become liable for the
6 payment of taxes under this chapter during the preceding taxable
7 year and who has furnished transient accommodations which were
8 exempt, for any portion of the taxable year, from the tax
9 imposed under this chapter, shall file a reconciliation for
10 transient accommodations as prescribed by the director
11 indicating the amount of gross income that was subject to such
12 tax and the amount that was subject to the general excise tax
13 imposed under chapter 237.

14 [~~(b) On or before the twentieth day of the fourth month~~
15 ~~following the close of the taxable year, every plan manager who~~
16 ~~has become liable for the payment of taxes under this chapter~~
17 ~~during the preceding taxable year shall file a reconciliation~~
18 ~~indicating the period of time that the owner of a resort time~~
19 ~~share vacation unit was subject to the general excise tax or the~~
20 ~~tax under section 237D-2(a).~~]"

21 SECTION 9. Section 237D-9, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) If any operator [~~or plan manager~~] fails to make a
2 return as required by this chapter, the director shall make an
3 estimate of the tax liability of the operator [~~or plan manager~~]
4 from any information the director obtains, and according to the
5 estimate so made, assess the taxes, interest, and penalty due
6 the State from the operator [~~or plan manager~~], give notice of
7 the assessment to the operator [~~or plan manager~~], and make
8 demand upon the operator [~~or plan manager~~] for payment. The
9 assessment shall be presumed to be correct until and unless,
10 upon an appeal duly taken as provided in section 237D-11, the
11 contrary shall be clearly proved by the person assessed, and the
12 burden of proof upon such appeal shall be upon the person
13 assessed to disprove the correctness of assessment."

14 SECTION 10. Section 237D-10, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§237D-10 Overpayment; refunds.** Upon application by an
17 operator [~~or plan manager~~], if the director determines that any
18 tax, interest, or penalty has been paid more than once, or has
19 been erroneously or illegally collected or computed, the tax,
20 interest, or penalty shall be credited by the director on any
21 taxes then due from the operator [~~or plan manager~~] under this
22 chapter. The director shall refund the balance to the operator



1 ~~[or plan manager]~~ or the operator's ~~[or plan manager's]~~
2 successors, administrators, executors, or assigns in accordance
3 with section 231-23. No credit or refund shall be allowed for
4 any tax imposed by this chapter, unless a claim for such credit
5 or refund is filed as follows:

6 (1) If an annual return is timely filed, or is filed
7 within three years after the date prescribed for
8 filing the annual return, then the credit or refund
9 shall be claimed within three years after the date the
10 annual return was filed or the date prescribed for
11 filing the annual return, whichever is later.

12 (2) If an annual return is not filed, or is filed more
13 than three years after the date prescribed for filing
14 the annual return, a claim for credit or refund shall
15 be filed within:

- 16 (A) Three years after the payment of the tax; or
- 17 (B) Three years after the date prescribed for the
18 filing of the annual return,
19 whichever is later.

20 Paragraphs (1) and (2) are mutually exclusive. The preceding
21 limitation shall not apply to a credit or refund pursuant to an
22 appeal, provided for in section 237D-11.

1 As to all tax payments for which a refund or credit is not
2 authorized by this section (including, without prejudice to the
3 generality of the foregoing, cases of unconstitutionality), the
4 remedies provided by appeal or by section 40-35 are exclusive."

5 SECTION 11. Section 237D-12, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§237D-12 Records to be kept; examination.** Every operator
8 [~~and plan manager~~] shall keep in the English language within the
9 State, and preserve for a period of three years, suitable
10 records of gross rental, or gross rental proceeds [~~, or fair~~
11 ~~market rental value~~] relating to the business taxed under this
12 chapter, and such other books, records of account, and invoices
13 as may be required by the department, and all such books,
14 records, and invoices shall be open for examination at any time
15 by the department or the Multistate Tax Commission pursuant to
16 chapter 255, or the authorized representative thereof."

17 SECTION 12. Section 237D-14, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§237D-14 Collection by suit; injunction.** The department
20 may collect taxes due and unpaid under this chapter, together
21 with all accrued penalties, by action in assumpsit or other
22 appropriate proceedings in the circuit court of the judicial



1 circuit in which the taxes arose. After delinquency shall have
2 continued for sixty days, or if any person lawfully required so
3 to do under this chapter shall fail to apply for and secure a
4 certificate as provided by this chapter for a period of sixty
5 days after the first date when the person was required under
6 this chapter to secure the certificate, the department may
7 proceed in the circuit court of the judicial circuit in which
8 the transient accommodations [~~or in which occupants of resort~~
9 ~~time share vacation units~~] are taxed, to obtain an injunction
10 restraining the further furnishing of transient accommodations
11 [~~or the operation of the resort time share vacation plan~~] until
12 full payment shall have been made of all taxes and penalties and
13 interest due under this chapter, or until such certificate is
14 secured, or both, as the circumstances of the case may require."

15 SECTION 13. Section 514E-3, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§514E-3 Taxation.** (a) The plan manager, if any, shall
18 collect and pay real property [~~and transient accommodations~~]
19 taxes due on the time share units or occupants under the plan
20 manager's authority as the agent of the owners of the individual
21 units or temporal divisions thereof. The liability of the
22 individual owners of the units, or temporal division thereof,



1 for real property taxes, shall be primary to all parties except
2 the plan manager. The right to contest or appeal any real
3 property [~~or transient accommodations tax~~] assessment shall
4 apply to the plan manager and any person having an interest in a
5 time share unit.

6 (b) The acquisition agent and sales agent shall maintain
7 records pertaining to the general excise tax of any independent
8 contractors employed by them, their addresses and commissions
9 paid during each calendar year. The plan manager shall maintain
10 records of the general excise [~~and transient accommodations~~
11 ~~taxes~~] tax due and owing with respect to any occupants or time
12 share units under the plan manager's management. The records
13 for any year shall be retained for at least two years and be
14 available for inspection by the director or the director of
15 taxation."

16 SECTION 14. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 15. This Act shall take effect on July 1, 2006.

HB1026, SD1

Report Title:

Transient Accommodations Tax

Description:

Repeals TAT on resort time share vacation ownership plans.
Imposes TAT on time share units when used as transient
accommodations. (SD1)

