

JAN 28 2009

A BILL FOR AN ACT

RELATING TO THE TAXATION OF ONLINE TRAVEL COMPANIES.

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

1 SECTION 1. Chapter 231, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§231- Online transient accommodations facilitators;
5 nexus presumptions. Notwithstanding any law to the contrary, an
6 online transient accommodations facilitator that has its
7 commercial domicile in another state is presumed to be
8 systematically and regularly engaging in business in this State
9 and taxable under chapters 235, 237, and 237D, if during any
10 year it receives income from engaging in online transient
11 accommodations facilitation services or activities in this
12 State, the online transient accommodations facilitator:

- 13 (1) Obtains or solicits business with twenty or more
14 persons within this State; or
15 (2) The sum of the value of its income, gross proceeds,
16 gross rental, or gross rental proceeds, as defined



1 under chapters 235, 237, or 237D, attributable to
2 sources in this State, equals to or exceeds \$100,000."

3 SECTION 2. Section 237-18, Hawaii Revised Statutes, is
4 amended by amending subsection (g) to read as follows:

5 "(g) Where transient accommodations are furnished through
6 arrangements made by a travel agency [~~or~~], tour packager, or
7 online transient accommodations facilitator at noncommissioned
8 negotiated contract rates and the gross income is divided
9 between the operator of transient accommodations on the one hand
10 and the travel agency, [~~or~~] tour packager, or online transient
11 accommodations facilitator on the other hand, the tax imposed by
12 this chapter shall apply to each such person with respect to
13 such person's respective portion of the proceeds, and no more.

14 As used in this subsection, the words "transient
15 accommodations" [~~and "operator"~~], "operator" and "online
16 transient accommodations facilitator" shall be defined in the
17 same manner as they are defined in section 237D-1."

18 SECTION 3. Section 237D-1, Hawaii Revised Statutes, is
19 amended by adding two new definitions to be appropriately
20 designated and to read as follows:

21 "Furnish" (including any tense of the term used
22 interchangeably) means any furnishing of transient



1 accommodations, including actual furnishing, supplying,
2 providing, facilitating, and equipping through whatever means
3 useful in the context. To furnish includes facilitating the
4 furnishing or facilitating the actual furnishing of transient
5 accommodations through any means, including electronic means
6 such as the Internet or electronic mail.

7 "Online transient accommodations facilitator" means any
8 managing agent, booking agent, room seller or room reseller, or
9 any other entity, agent, or contractee that sells, resells,
10 reserves, or facilitates the selling or reselling of transient
11 accommodations, or performs the services of a travel agent of
12 any type or character online or through the Internet."

13 SECTION 4. Section 237D-2, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§237D-2 Imposition and rates. (a) There is levied and
16 shall be assessed and collected each month a tax of:

17 (1) Five per cent for the period beginning on January 1,
18 1987, to June 30, 1994;

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

21 (3) 7.25 per cent for the period beginning on January 1,
22 1999, and thereafter;



1 on the gross rental or gross rental proceeds derived from
2 furnishing transient accommodations.

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

5 (c) There is levied and shall be assessed and collected
6 each month on the occupant of a resort time share vacation unit,
7 a transient accommodations tax of 7.25 per cent on the fair
8 market rental value.

9 (d) Every plan manager shall be liable for and shall pay
10 to the State the transient accommodations tax imposed by
11 subsection (c) as provided in this chapter. Every resort time
12 share vacation plan shall be represented by a plan manager who
13 shall be subject to this chapter.

14 (e) There is levied and shall be assessed and collected
15 monthly from any online transient accommodations facilitator a
16 transient accommodations tax of 7.25 per cent of the gross
17 rental or gross rental proceeds derived from furnishing
18 transient accommodations; provided that where transient
19 accommodations are furnished through arrangements made by an
20 online transient accommodations facilitator and the gross rental
21 or gross rental proceeds are divided between the operator of
22 transient accommodations on the one hand and the online



1 transient accommodations facilitator on the other hand, the tax
2 imposed under this section shall only apply with respect to the
3 online transient accommodations facilitator's respective portion
4 of the proceeds, and no more.

5 Notwithstanding the requirement that an online transient
6 accommodations facilitator levy, assess, and remit tax under
7 this section monthly, if an online transient accommodations
8 facilitator is taxable in this State by reason of section
9 231- , the online transient accommodations facilitator may
10 petition the director to allow the levy, assessment, and
11 remitting of tax on a basis other than monthly, for good cause.

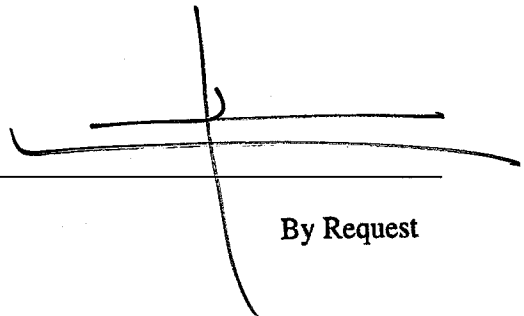
12 For purposes of this subsection, the term "good cause"
13 includes any basis necessary to comply with the Constitution of
14 the United States of the Constitution of the State of Hawaii."

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act, upon its approval, shall take effect
18 retroactively to January 1, 2009.

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INTRODUCED BY: _____


By Request



Report Title:

Transient Accommodations Tax; General Excise Tax; Taxation of
Online Travel Companies

Description:

Assesses the transient accommodations tax and the general excise
tax on online travel companies that facilitate transient
accommodations over the Internet.

