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# A BILL FOR AN ACT

RELATING TO THE TAXATION OF DESTINATION CLUBS.

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

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

3 1. By adding four new definitions to be appropriately  
4 inserted and to read:

5 "Annual destination club dues apportioned to the State"  
6 means the gross receipts, cash or accrued, of the taxpayer  
7 received in the form of annual membership dues collected under a  
8 destination club membership plan as reasonably apportioned to  
9 the State on the taxpayer's Hawaii income tax return.

10 "Destination club membership plan" means any plan or  
11 program, subject to terms and conditions of a membership  
12 agreement, in which members have no ownership interest in  
13 destination club units, but in which members pay annual  
14 membership dues in exchange for club benefits including, among  
15 other benefits, the right to use or occupy one of several  
16 destination club units, with locations inside and outside of the  
17 State.



1       "Destination club membership plan manager" means the person  
2 or entity who undertakes the duties, responsibilities, and  
3 obligations of managing a destination club membership plan or is  
4 required to act for a destination club membership plan under  
5 this chapter.

6       "Destination club unit" means the actual and promised  
7 accommodations and related facilities that are the subject of a  
8 destination club membership plan."

9       2. By amending the definition of "resort time share  
10 vacation plan" to read:

11       "Resort time share vacation plan" means any plan or  
12 program that is not a destination club membership plan, that is  
13 subject to chapter 514E, and in which the use, occupancy, or  
14 possession of one or more resort time share vacation units  
15 circulates among various persons for less than a sixty-day  
16 period in any year, for any occupant. The term resort time  
17 share vacation plan includes both resort time share vacation  
18 ownership plans and resort time share vacation use plans, as  
19 follows:

20       (1) "Resort time share vacation ownership plan" means any  
21 arrangement whether by tenancy in common, sale, deed,  
22 or by other means, whereby the purchaser receives an



1 ownership interest and the right to use the property  
2 for a specific or discernible period by temporal  
3 division.

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

13 3. By amending the definition of "transient  
14 accommodations" to read:

15 ""Transient accommodations" means the furnishing of a room,  
16 apartment, suite, or the like which is customarily occupied by a  
17 transient for less than one hundred eighty consecutive days for  
18 each letting by a hotel, apartment hotel, motel, condominium  
19 property regime or apartment as defined in chapter 514A or unit  
20 as defined in chapter 514B, cooperative apartment, or rooming  
21 house that provides living quarters, sleeping, or housekeeping  
22 accommodations, or other place in which lodgings are regularly



1 furnished to transients for consideration. "Transient  
2 accommodations" does not mean the furnishing of a destination  
3 club unit."

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

6 "§237D-2 Imposition and rates. (a) There is levied and  
7 shall be assessed and collected each month a tax of:

- 8 (1) Five per cent for the period beginning on January 1,  
9 1987, to June 30, 1994;
- 10 (2) Six per cent for the period beginning on July 1, 1994,  
11 to December 31, 1998;
- 12 (3) 7.25 per cent for the period beginning on January 1,  
13 1999, to June 30, 2009;
- 14 (4) 8.25 per cent for the period beginning on July 1,  
15 2009, to June 30, 2010; and
- 16 (5) 9.25 per cent for the period beginning on July 1,  
17 2010, and thereafter;

18 on the gross rental or gross rental proceeds derived from  
19 furnishing transient accommodations.

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



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

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

10 (e) There is levied and shall be assessed and collected  
11 each year a tax of \_\_\_\_\_ per cent of the annual destination  
12 club dues apportioned to the State.

13 (f) Each destination club membership plan manager shall  
14 pay to the State the tax imposed by subsection (e), as provided  
15 in this chapter. Every destination club membership plan shall  
16 be represented by a destination club membership plan manager who  
17 shall be subject to this chapter."

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

20 "§237D-4 Certificate of registration. (a) Each operator,  
21 destination club membership plan manager, or plan manager as a  
22 condition precedent to engaging or continuing in the business of



1 furnishing transient accommodations [~~or~~], in business as a  
2 resort time share vacation plan, or in business as a destination  
3 club membership plan shall register with the director the name  
4 and address of each place of business within the State subject  
5 to this chapter. The operator, destination club membership plan  
6 manager, or plan manager shall make a one-time payment as  
7 follows:

- 8 (1) \$5 for each registration for transient accommodations  
9 consisting of one to five units;
- 10 (2) \$15 for each registration for transient accommodations  
11 consisting of six or more units; [~~and~~]
- 12 (3) \$15 for each resort time share vacation plan within  
13 the State; and
- 14 (4) \$15 for each destination club membership plan  
15 operating within the State;

16 upon receipt of which the director shall issue a certificate of  
17 registration in such form as the director determines, attesting  
18 that the registration has been made. The registration shall not  
19 be transferable and shall be valid only for the operator,  
20 destination club membership plan manager, or plan manager in  
21 whose name it is issued and for the transaction of business at  
22 the place designated therein.



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

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

14           (b) A destination club membership plan manager for a  
15 destination club membership plan that began operating in the  
16 State prior to October 1, 2014, shall register no later than  
17 December 31, 2014; provided that subsection (d) shall not apply  
18 to the destination club membership plan manager until January 1,  
19 2015.

20           ~~[(b)]~~ (c) If the license fee is paid, the department shall  
21 not refuse to issue a registration or revoke or cancel a  
22 registration for the exercise of a privilege protected by the



1 First Amendment of the Constitution of the United States, or for  
2 the carrying on of interstate or foreign commerce, or for any  
3 privilege the exercise of which, under the Constitution and laws  
4 of the United States, cannot be restrained on account of  
5 nonpayment of taxes, nor shall section 237D-14 be invoked to  
6 restrain the exercise of such a privilege, or the carrying on of  
7 such commerce.

8 [~~e~~] (d) Any person who may lawfully be required by the  
9 State, and who is required by this chapter, to register as a  
10 condition precedent to engaging or continuing in the business of  
11 furnishing transient accommodations, as a destination club  
12 membership plan manager, or as a plan manager subject to  
13 taxation under this chapter, who engages or continues in the  
14 business without registering in conformity with this chapter,  
15 shall be guilty of a misdemeanor. Any director, president,  
16 secretary, or treasurer of a corporation who permits, aids, or  
17 abets such corporation to engage or continue in business without  
18 registering in conformity with this chapter, shall likewise be  
19 guilty of a misdemeanor. The penalty for the misdemeanors shall  
20 be that prescribed by section 231-34 for individuals,  
21 corporations, or officers of corporations, as the case may be,  
22 for violation of that section."





1 SECTION 4. Section 237D-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237D-7 Annual return. On or before the twentieth day of  
4 the fourth month following the close of the taxable year, every  
5 person who has become liable for the payment of the taxes under  
6 this chapter during the preceding tax year shall file a return  
7 summarizing that person's liability under this chapter for the  
8 year, in such form as the director prescribes. The operator or  
9 plan manager shall transmit with the return a remittance  
10 covering the residue of the tax chargeable to the operator or  
11 plan manager, if any, to the office of the appropriate state  
12 district tax assessor designated in section 237D-8. The  
13 destination club membership plan manager shall transmit with the  
14 return a remittance covering the full amount of the tax  
15 chargeable to the destination club membership plan manager, if  
16 any, to the office of the appropriate state district tax  
17 assessor designated in section 237D-8. The return shall be  
18 signed by the taxpayer, if made by an individual, or by the  
19 president, vice-president, secretary, or treasurer of a  
20 corporation, if made on behalf of a corporation. If made on  
21 behalf of a partnership, firm, society, unincorporated  
22 association, group, hui, joint adventure, joint stock company,



1 corporation, trust estate, decedent's estate, trust, or other  
2 entity, any individual delegated by the entity shall sign the  
3 same on behalf of the taxpayer. If for any reason it is not  
4 practicable for the individual taxpayer to sign the return, it  
5 may be done by any duly authorized agent. The department, for  
6 good cause shown, may extend the time for making the return on  
7 the application of any taxpayer and grant [~~such~~] reasonable  
8 additional time within which to make the return as the  
9 department may deem advisable.

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

12 SECTION 5. Section 237D-7.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) Any person required to report to the department by  
15 section 235-101(b), also shall report to the department any  
16 change, correction, adjustment, or recomputation of gross  
17 rental, gross rental proceeds, annual destination club dues  
18 apportioned to the State, or fair market rental value subject to  
19 the tax imposed by this chapter. This report shall be made in  
20 the form of a return amending the person's gross rental, gross  
21 rental proceeds, annual destination club dues apportioned to the  
22 State, or fair market rental value as previously reported on a



1 return filed with the department for the taxable year. If no  
2 return has been filed with the department for the taxable year,  
3 a return shall be filed and shall take into account any change,  
4 correction, adjustment, or recomputation of gross rental, gross  
5 rental proceeds, annual destination club dues apportioned to the  
6 State, or fair market rental value."

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

9 "(a) If any operator, destination club membership plan  
10 manager, or plan manager fails to make a return as required by  
11 this chapter, the director shall make an estimate of the tax  
12 liability of the operator, destination club membership plan  
13 manager, or plan manager from any information the director  
14 obtains, and according to the estimate so made, assess the  
15 taxes, interest, and penalty due the State from the operator,  
16 destination club membership plan manager, or plan manager, give  
17 notice of the assessment to the operator, destination club  
18 membership plan manager, or plan manager, and make demand upon  
19 the operator, destination club membership plan manager, or plan  
20 manager for payment. The assessment shall be presumed to be  
21 correct until and unless, upon an appeal duly taken as provided  
22 in section 237D-11, the contrary shall be clearly proved by the



1 person assessed, and the burden of proof upon ~~such~~ appeal  
2 shall be upon the person assessed to disprove the correctness of  
3 assessment."

4 SECTION 7. Section 237D-10, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§237D-10 **Overpayment; refunds.** Upon application by an  
7 operator, destination club membership plan manager, or plan  
8 manager, if the director determines that any tax, interest, or  
9 penalty has been paid more than once, or has been erroneously or  
10 illegally collected or computed, the tax, interest, or penalty  
11 shall be credited by the director on any taxes then due from the  
12 operator, destination club membership plan manager, or plan  
13 manager under this chapter. The director shall refund the  
14 balance to the operator, destination club membership plan  
15 manager, or plan manager or the operator's, destination club  
16 membership plan manager's, or plan manager's successors,  
17 administrators, executors, or assigns in accordance with section  
18 231-23. No credit or refund shall be allowed for any tax  
19 imposed by this chapter, unless a claim for such credit or  
20 refund is filed as follows:

21 (1) If an annual return is timely filed, or is filed  
22 within three years after the date prescribed for



1 filing the annual return, then the credit or refund  
2 shall be claimed within three years after the date the  
3 annual return was filed or the date prescribed for  
4 filing the annual return, whichever is later.

5 (2) If an annual return is not filed, or is filed more  
6 than three years after the date prescribed for filing  
7 the annual return, a claim for credit or refund shall  
8 be filed within:

9 (A) Three years after the payment of the tax; or

10 (B) Three years after the date prescribed for the  
11 filing of the annual return,

12 whichever is later.

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

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

20 SECTION 8. Section 237D-12, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§237D-12   Records to be kept; examination.   Every  
2   operator, destination club membership plan manager, and plan  
3   manager shall keep in the English language within the State, and  
4   preserve for a period of three years, suitable records of gross  
5   rental, gross rental proceeds, annual destination club dues  
6   apportioned to the State, or fair market rental value relating  
7   to the business taxed under this chapter, and [~~such~~] any other  
8   books, records of account, and invoices as may be required by  
9   the department, and all [~~such~~] of the books, records, and  
10   invoices shall be open for examination at any time by the  
11   department or the Multistate Tax Commission pursuant to chapter  
12   255, or the authorized representative thereof."

13           SECTION 9.   Section 237D-14, Hawaii Revised Statutes, is  
14   amended to read as follows:

15           "§237D-14   Collection by suit; injunction.   The department  
16   may collect taxes due and unpaid under this chapter, together  
17   with all accrued penalties, by action in assumpsit or other  
18   appropriate proceedings in the circuit court of the judicial  
19   circuit in which the taxes arose.   After delinquency shall have  
20   continued for sixty days, or if any person lawfully required [~~se~~  
21   ~~to do~~] under this chapter shall fail to apply for and secure a  
22   certificate as provided by this chapter for a period of sixty



1 days after the first date when the person was required under  
2 this chapter to secure the certificate, the department may  
3 proceed in the circuit court of the judicial circuit in which  
4 the transient accommodations, destination club membership plan,  
5 or in which occupants of resort time share vacation units are  
6 taxed, to obtain an injunction restraining the further  
7 furnishing of transient accommodations, operation of the  
8 destination club membership plan, or the operation of the resort  
9 time share vacation plan until full payment shall have been made  
10 of all taxes and penalties and interest due under this chapter,  
11 or until [~~such~~] the certificate is secured, or both, as the  
12 circumstances of the case may require."

13 SECTION 10. Chapter 237D, Hawaii Revised Statutes, is  
14 amended by amending its title to read as follows:

15 "CHAPTER 237D

16 TRANSIENT ACCOMMODATIONS, RESORT TIME SHARES, AND DESTINATION  
17 CLUBS TAX"

18 SECTION 11. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect on July 1, 2030;  
21 provided that sections 1 and 2 shall take effect retroactive to  
22 January 1, 2014.



**Report Title:**

Destination Club Membership Plan; Taxation

**Description:**

Establishes a tax on annual destination club dues apportioned to the State. Requires destination club membership plan managers to register with the Department of Taxation and keep records of annual destination club dues apportioned to the State.

Effective July 1, 2030. (HB1900 HD1)

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