
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 three new definitions to be appropriately
4 inserted and to read:

5 "Destination club membership plan" means any plan or
6 program, subject to terms and conditions of a membership
7 agreement, that is not registered under chapter 514E, and in
8 which members have no ownership interest in destination club
9 units, but in which members pay annual membership dues in
10 exchange for club benefits including, among other benefits, the
11 right to use or occupy one of several destination club units,
12 with locations inside and outside of the State.

13 "Destination club membership plan manager" means the person
14 or entity who undertakes the duties, responsibilities, and
15 obligations of managing a destination club membership plan or is
16 required to act for a destination club membership plan under
17 this chapter.



1 "Destination club unit" means the actual and promised
2 accommodations and related facilities that are the subject of a
3 destination club membership plan."

4 2. By amending the definition of "fair market rental
5 value" to read:

6 "Fair market rental value" means an amount equal to one-
7 half the gross daily maintenance fees that are paid by the
8 owner, are attributable to the time share unit^[7] or destination
9 club unit, as applicable, and include maintenance costs,
10 operational costs, insurance, repair costs, administrative
11 costs, taxes, other than transient accommodations taxes, and
12 other costs including payments required for reserves or sinking
13 funds. The taxpayer shall use gross daily maintenance fees,
14 unless the taxpayer proves or the director determines that the
15 gross daily maintenance fees do not fairly represent fair market
16 rental value taking into account comparable transient
17 accommodation rentals or other appraisal methods. In addition
18 to living accommodations, furniture, and fixtures, fair market
19 rental value includes services included with the unit, including
20 but not limited to laundry, transportation, and food services."

21 SECTION 2. Section 237D-2, Hawaii Revised Statutes, is
22 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 January 1,
4 1987, to June 30, 1994;

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

7 (3) 7.25 per cent for the period beginning on January 1,
8 1999, to June 30, 2009;

9 (4) 8.25 per cent for the period beginning on July 1,
10 2009, to June 30, 2010; and

11 (5) 9.25 per cent for the period beginning on July 1,
12 2010, and thereafter;

13 on the gross rental or gross rental proceeds derived from
14 furnishing transient accommodations.

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

17 (c) There is levied and shall be assessed and collected
18 each month, on the occupant of a resort time share vacation
19 unit, and upon the destination club plan manager for each of its
20 Hawaii destination club units occupied during the month, a
21 transient accommodations tax of 7.25 per cent on the fair market
22 rental value.



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

6 (e) Each destination club membership plan manager shall
7 pay to the State the tax imposed by subsection (c), as provided
8 in this chapter. Every destination club membership plan shall
9 be represented by a destination club membership plan manager who
10 shall be subject to this chapter."

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

13 **"§237D-4 Certificate of registration.** (a) Each operator,
14 destination club membership plan manager, or plan manager as a
15 condition precedent to engaging or continuing in the business of
16 furnishing transient accommodations [~~or~~], in business as a
17 resort time share vacation plan, or in business as a destination
18 club membership plan shall register with the director the name
19 and address of each place of business within the State subject
20 to this chapter. The operator, destination club membership plan
21 manager, or plan manager shall make a one-time payment as
22 follows:



- 1 (1) \$5 for each registration for transient accommodations
- 2 consisting of one to five units;
- 3 (2) \$15 for each registration for transient accommodations
- 4 consisting of six or more units; [~~and~~]
- 5 (3) \$15 for each resort time share vacation plan within
- 6 the State; and
- 7 (4) \$15 for each destination club membership plan
- 8 operating within the State;

9 upon receipt of which the director shall issue a certificate of
 10 registration in such form as the director determines, attesting
 11 that the registration has been made. The registration shall not
 12 be transferable and shall be valid only for the operator,
 13 destination club membership plan manager, or plan manager in
 14 whose name it is issued and for the transaction of business at
 15 the place designated therein.

16 The registration, or in lieu thereof a notice stating where
 17 the registration may be inspected and examined, shall at all
 18 times be conspicuously displayed at the place for which it is
 19 issued. Acquisition of additional transient accommodation units
 20 or destination club units after payment of the one-time fee
 21 shall not result in additional fees.

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

8 (b) A destination club membership plan manager for a
9 destination club membership plan that began operating in the
10 State prior to October 1, 2014, shall register no later than
11 December 31, 2014; provided that subsection (d) shall not apply
12 to the destination club membership plan manager until January 1,
13 2015.

14 [~~(b)~~] (c) If the license fee is paid, the department shall
15 not refuse to issue a registration or revoke or cancel a
16 registration for the exercise of a privilege protected by the
17 First Amendment of the Constitution of the United States, or for
18 the carrying on of interstate or foreign commerce, or for any
19 privilege the exercise of which, under the Constitution and laws
20 of the United States, cannot be restrained on account of
21 nonpayment of taxes, nor shall section 237D-14 be invoked to



1 restrain the exercise of such a privilege, or the carrying on of
2 such commerce.

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

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

20 "**§237D-7 Annual return.** On or before the twentieth day of
21 the fourth month following the close of the taxable year, every
22 person who has become liable for the payment of the taxes under



1 this chapter during the preceding tax year shall file a return
2 summarizing that person's liability under this chapter for the
3 year, in such form as the director prescribes. The operator or
4 plan manager shall transmit with the return a remittance
5 covering the residue of the tax chargeable to the operator or
6 plan manager, if any, to the office of the appropriate state
7 district tax assessor designated in section 237D-8. The
8 destination club membership plan manager shall transmit with the
9 return a remittance covering the full amount of the tax
10 chargeable to the destination club membership plan manager, if
11 any, to the office of the appropriate state district tax
12 assessor designated in section 237D-8. The return shall be
13 signed by the taxpayer, if made by an individual, or by the
14 president, vice-president, secretary, or treasurer of a
15 corporation, if made on behalf of a corporation. If made on
16 behalf of a partnership, firm, society, unincorporated
17 association, group, hui, joint adventure, joint stock company,
18 corporation, trust estate, decedent's estate, trust, or other
19 entity, any individual delegated by the entity shall sign the
20 same on behalf of the taxpayer. If for any reason it is not
21 practicable for the individual taxpayer to sign the return, it
22 may be done by any duly authorized agent. The department, for



1 good cause shown, may extend the time for making the return on
2 the application of any taxpayer and grant [~~such~~] reasonable
3 additional time within which to make the return as the
4 department may deem advisable.

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

7 SECTION 5. 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 6. 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 7. 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, or fair market rental value
6 relating to the business taxed under this chapter, and [~~such~~]
7 any other books, records of account, and invoices as may be
8 required by the department, and all [~~such~~] of the books,
9 records, and invoices shall be open for examination at any time
10 by the department or the Multistate Tax Commission pursuant to
11 chapter 255, or the authorized representative thereof."

12 SECTION 8. Section 237D-14, Hawaii Revised Statutes, is
13 amended to read as follows:

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



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

12 SECTION 9. Chapter 237D, Hawaii Revised Statutes, is
 13 amended by amending its title to read as follows:

14 "CHAPTER 237D

15 TRANSIENT ACCOMMODATIONS, RESORT TIME SHARES, AND DESTINATION

16 CLUBS TAX"

17 SECTION 10. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 11. This Act shall take effect on July 1, 2030;
 20 provided that sections 1 and 2 shall take effect retroactive to
 21 January 1, 2014.



Report Title:

Destination Club Membership Plan; Taxation

Description:

Establishes a transient accommodations tax on annual destination club plan managers based on fair market rental value of destination club units. 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. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

