

JAN 24 2013

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

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

1 SECTION 1. The purpose of this Act is to clarify that
2 resort fees imposed by hotels or other transient accommodations
3 are subject to the transient accommodations tax.

4 The transient accommodations tax is imposed on gross rental
5 proceeds derived from furnishing transient accommodations.

6 "Gross rental" or "gross rental proceeds" is defined as the
7 gross receipts, cash or accrued, of the taxpayer received as
8 compensation for the furnishing of transient accommodations and
9 the value proceeding or accruing from the furnishing of such
10 accommodations without any deductions.

11 Under this definition, the transient accommodations tax is
12 imposed on any receipt received in exchange for furnishing a
13 transient accommodation, however construed or described. The
14 definition of gross rental and gross rental proceeds is written
15 so that the transient accommodations tax casts a wide and tight
16 net over any transaction where gross rental income is received
17 in exchange for the furnishing of a transient accommodation
18 located within the State.

1 To the extent resort fees, or any other type of surcharge,
2 are paid by a person in exchange for being furnished a transient
3 accommodation, those resort fees constitute gross rental
4 proceeds and are subject to the transient accommodations tax.
5 Specifically, the intent of this Act is to clarify that where a
6 resort fee or other surcharge is part of the guest's bill, the
7 fee clearly constitutes gross rental or gross rental proceeds
8 subject to transient accommodations tax. In addition, even if
9 the resort fee or other surcharge is not a mandatory charge, but
10 rather is negotiated in a separate or subsequent transaction to
11 the initial rental transaction between the operator and the
12 guest, the fee is still subject to transient accommodations tax
13 if it was charged in exchange for furnishing a transient
14 accommodation. Generally, any fee charged by the operator of
15 the transient accommodation to a guest for property or service
16 the guest consumes during his or her stay at the transient
17 accommodation is gross rental or gross rental income subject to
18 transient accommodations tax, regardless of whether the fee is
19 negotiated in a separate transaction, is stated as a separate
20 line item on the guest's bill, or is stated in a different bill
21 entirely.

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

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1 (1) By adding a new definition to be appropriately
2 inserted and to read as follows:

3 ""Resort fee" means any charge or surcharge imposed by a
4 transient accommodations operator, owner, plan manager, or
5 representative thereof to a transient or occupant for the use of
6 the transient accommodation's property, services or both. Such
7 charges or surcharges are considered a resort fee even when the
8 charges to the transient or occupant are:

9 (1) Negotiated in a transaction subsequent to, or separate
10 from, the initial transaction for the stay in the
11 transient accommodation;

12 (2) Separately itemized on the transient's or occupant's
13 bill or invoice;

14 (3) Stated on a separate bill or invoice;

15 (4) Charged by the operator, owner, plan manager, or
16 representative thereof to the transient or occupant
17 for property or services rendered by a third party;

18 (5) Optional, if the property or service is intrinsic to
19 the furnishing of a transient accommodation; or

20 (6) Mandatory, irrespective of whether the transient or
21 occupant uses the property or service in whole or in
22 part.

1 Resort fees do not include charges for property or services
2 sold in transactions unrelated to the furnishing of transient
3 accommodations."

4 (2) By amending the definition of "gross rental" or "gross
5 rental proceeds" to read as follows:

6 "'Gross rental" or "gross rental proceeds" means the gross
7 receipts, cash or accrued, of the taxpayer received as
8 compensation for the furnishing of transient accommodations and
9 the value proceeding or accruing from the furnishing of such
10 accommodations without any deductions on account of the cost of
11 property or services sold, the cost of materials used, labor
12 cost, taxes, royalties, interest, discounts, or any other
13 expenses whatsoever.

14 (1) Every taxpayer shall be presumed to be dealing on a
15 cash basis unless the taxpayer proves to the
16 satisfaction of the department of taxation that the
17 taxpayer is dealing on an accrual basis and the
18 taxpayer's books are so kept, or unless the taxpayer
19 employs or is required to employ the accrual basis for
20 the purposes of the tax imposed by chapter 237 for any
21 taxable year in which event the taxpayer shall report
22 the taxpayer's gross income for the purposes of this
23 chapter on the accrual basis for the same period.


- 1 (2) The words "gross rental" or "gross rental proceeds"
2 include resort fees or any other type of surcharge
3 charged to a guest for the furnishing of a transient
4 accommodation.
- 5 (3) The words "gross rental" or "gross rental proceeds"
6 shall not be construed to include the amounts of taxes
7 imposed by chapter 237 or this chapter on operators of
8 transient accommodations and passed on, collected, and
9 received from the consumer as part of the receipts
10 received as compensation for the furnishing of
11 transient accommodations.
- 12 (4) Where transient accommodations are furnished through
13 arrangements made by a travel agency or tour packager
14 at noncommissionable negotiated contract rates and the
15 gross income is divided between the operator of
16 transient accommodations on the one hand and the
17 travel agency or tour packager on the other hand,
18 gross rental or gross rental proceeds to the operator
19 means only the respective portion allocated or
20 distributed to the operator, and no more.
- 21 (5) For purposes of this definition, where the operator
22 maintains a schedule of rates for identifiable groups
23 of individuals, such as kamaainas, upon which the

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1 accommodations are leased, let, or rented, gross
2 rental or gross rental proceeds means the receipts
3 collected and received based upon the scheduled rates
4 and recorded as receipts in its books and records."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act, upon its approval, shall take effect
7 on July 1, 2013.

8
9 INTRODUCED BY: 

10 BY REQUEST

11

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Report Title:

Transient Accommodations Tax

Description:

Clarifies fees that are subject to the transient accommodations tax.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS TAX.

PURPOSE: Clarify that resort fees and other surcharges imposed by hotels and other transient accommodation operators are subject to the transient accommodations tax under chapter 237D, Hawaii Revised Statutes.

MEANS: Amend section 237D-1, Hawaii Revised Statutes.

JUSTIFICATION: Taxpayers may be under the mistaken belief that amounts sometimes referred to as resort fees are not subject to transient accommodations tax. This bill provides further clarification that gross rental proceeds received in exchange for furnishing transient accommodations and are subject to transient accommodations tax.

Impact on the public: The law will more explicitly state that resort fees which constitute gross rental proceeds are subject to transient accommodations tax, which will aid taxpayers in understanding transient accommodations tax law.

Impact on the department and other agencies: Clarifying the law will aid the department in enforcement and collection of the transient accommodations tax.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.