

JAN 23 2014

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
17 Hawaii.



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 seven per cent on thirty per cent of the
12 annual destination 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 resort
2 time share vacation plan or destination club membership plan
3 shall register with the director the name and address of each
4 place of business within the State subject to this chapter. The
5 operator, destination club membership plan manager, or plan
6 manager shall make a one-time payment as follows:

7 (1) \$5 for each registration for transient accommodations
8 consisting of one to five units;

9 (2) \$15 for each registration for transient accommodations
10 consisting of six or more units; ~~and~~

11 (3) \$15 for each resort time share vacation plan within
12 the State; and

13 (4) \$15 for each destination club membership plan
14 operating within the State;

15 upon receipt of which the director shall issue a certificate of
16 registration in such form as the director determines, attesting
17 that the registration has been made. The registration shall not
18 be transferable and shall be valid only for the operator,
19 destination club membership plan manager, or plan manager in
20 whose name it is issued and for the transaction of business at
21 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 in the manner
17 provided for in subsection (a) no later than December 31, 2014,
18 and the lack of a registration shall not function as a condition
19 precedent to engaging or continuing in business as a destination
20 club membership plan until January 1, 2015.

21 , ~~[(b)]~~ (c) If the license fee is paid, the department shall
22 not refuse to issue a registration or revoke or cancel a



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

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



1 corporations, or officers of corporations, as the case may be,
2 for violation of that section."

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

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



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

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

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

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



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

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

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



1 in section 237D-11, the contrary shall be clearly proved by the
2 person assessed, and the burden of proof upon such appeal shall
3 be upon the person assessed to disprove the correctness of
4 assessment."

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

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



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

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

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

12 (B) Three years after the date prescribed for the
13 filing of the annual return,

14 whichever is later.

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

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



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

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

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

17 **"§237D-14 Collection by suit; injunction.** The department
18 may collect taxes due and unpaid under this chapter, together
19 with all accrued penalties, by action in assumpsit or other
20 appropriate proceedings in the circuit court of the judicial
21 circuit in which the taxes arose. After delinquency shall have
22 continued for sixty days, or if any person lawfully required so



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

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

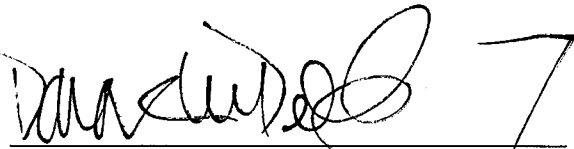
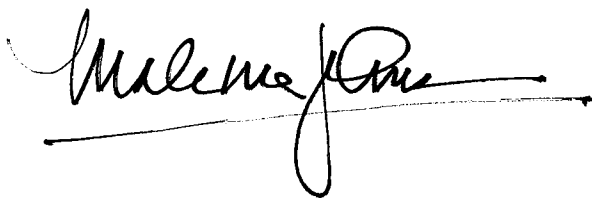
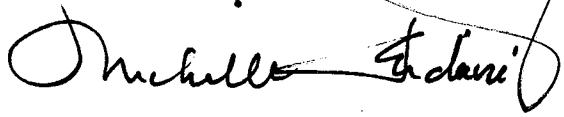
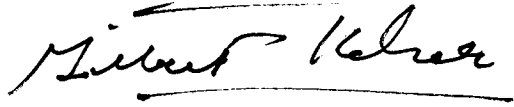
17 **"CHAPTER 237D**
18 **TRANSIENT ACCOMMODATIONS, RESORT TIME SHARES, AND DESTINATION**
19 **CLUBS TAX"**

20 SECTION 11. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 12. This Act, upon its approval, shall take effect
2 on October 1, 2014; provided that sections 1 and 2 shall take
3 effect retroactive to January 1, 2014.
4

INTRODUCED BY:



S.B. NO. 2774

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.

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

