
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 total amount of initiation and annual dues received by
7 the destination club organization each year, divided by the
8 number of units around the world, multiplied by the number of
9 units in Hawaii.

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 annually a tax of seven per cent on the amount resulting from
12 the following operation: seventy-five per cent of the annual
13 destination club dues apportioned to any destination club unit
14 located in the State, divided by 365, the result of which is
15 then multiplied by the number of nights the accommodation is
16 occupied during the taxable year. The tax of seven per cent
17 shall also be levied and assessed on seventy-five per cent of
18 any additional amounts received by the destination club in
19 exchange for furnishing the destination club unit.

20 (f) Each destination club membership plan manager shall
21 pay to the State the tax imposed by subsection (e), as provided
22 in this chapter. Every destination club membership plan shall



1 be represented by a destination club membership plan manager who
2 shall be subject to this chapter."

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

5 **"§237D-4 Certificate of registration.** (a) Each operator,
6 destination club membership plan manager, or plan manager as a
7 condition precedent to engaging or continuing in the business of
8 furnishing transient accommodations or in business as a resort
9 time share vacation plan or destination club membership plan
10 shall register with the director the name and address of each
11 place of business within the State subject to this chapter. The
12 operator, destination club membership plan manager, or plan
13 manager shall make a one-time payment as follows:

- 14 (1) \$5 for each registration for transient accommodations
15 consisting of one to five units;
- 16 (2) \$15 for each registration for transient accommodations
17 consisting of six or more units; [~~and~~]
- 18 (3) \$15 for each resort time share vacation plan within
19 the State; and
- 20 (4) \$15 for each destination club membership plan
21 operating within the State;



1 upon receipt of which the director shall issue a certificate of
2 registration in such form as the director determines, attesting
3 that the registration has been made. The registration shall not
4 be transferable and shall be valid only for the operator,
5 destination club membership plan manager, or plan manager in
6 whose name it is issued and for the transaction of business at
7 the place designated therein.

8 The registration, or in lieu thereof a notice stating where
9 the registration may be inspected and examined, shall at all
10 times be conspicuously displayed at the place for which it is
11 issued. Acquisition of additional transient accommodation units
12 or destination club units after payment of the one-time fee
13 shall not result in additional fees.

14 The registration provided for by this section shall be
15 effective until canceled in writing. Any application for the
16 reissuance of a previously canceled registration identification
17 number shall be regarded as a new registration application and
18 shall be subject to the payment of the one-time registration
19 fee. The director may revoke or cancel any license issued under
20 this chapter for cause as provided by rule under chapter 91.

21 (b) A destination club membership plan manager for a
22 destination club membership plan that began operating in the



1 State prior to October 1, 2014, shall register in the manner
2 provided for in subsection (a) no later than December 31, 2014,
3 and the lack of a registration shall not function as a condition
4 precedent to engaging or continuing in business as a destination
5 club membership plan until January 1, 2015.

6 [~~(b)~~] (c) If the license fee is paid, the department shall
7 not refuse to issue a registration or revoke or cancel a
8 registration for the exercise of a privilege protected by the
9 First Amendment of the Constitution of the United States, or for
10 the carrying on of interstate or foreign commerce, or for any
11 privilege the exercise of which, under the Constitution and laws
12 of the United States, cannot be restrained on account of
13 nonpayment of taxes, nor shall section 237D-14 be invoked to
14 restrain the exercise of such a privilege, or the carrying on of
15 such commerce.

16 [~~(e)~~] (d) Any person who may lawfully be required by the
17 State, and who is required by this chapter, to register as a
18 condition precedent to engaging or continuing in the business of
19 furnishing transient accommodations, as a destination club
20 membership plan manager, or as a plan manager subject to
21 taxation under this chapter, who engages or continues in the
22 business without registering in conformity with this chapter,



1 shall be guilty of a misdemeanor. Any director, president,
2 secretary, or treasurer of a corporation who permits, aids, or
3 abets such corporation to engage or continue in business without
4 registering in conformity with this chapter, shall likewise be
5 guilty of a misdemeanor. The penalty for the misdemeanors shall
6 be that prescribed by section 231-34 for individuals,
7 corporations, or officers of corporations, as the case may be,
8 for violation of that section."

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

11 **"§237D-7 Annual return.** On or before the twentieth day of
12 the fourth month following the close of the taxable year, every
13 person who has become liable for the payment of the taxes under
14 this chapter during the preceding tax year shall file a return
15 summarizing that person's liability under this chapter for the
16 year, in such form as the director prescribes. The operator or
17 plan manager shall transmit with the return a remittance
18 covering the residue of the tax chargeable to the operator or
19 plan manager, if any, to the office of the appropriate state
20 district tax assessor designated in section 237D-8. The
21 destination club membership plan manager shall transmit with the
22 return a remittance covering the full amount of the tax



1 chargeable to the destination club membership plan manager, if
2 any, to the office of the taxation district designated in
3 section 237D-8. The return shall be signed by the taxpayer, if
4 made by an individual, or by the president, vice-president,
5 secretary, or treasurer of a corporation, if made on behalf of a
6 corporation. If made on behalf of a partnership, firm, society,
7 unincorporated association, group, hui, joint adventure, joint
8 stock company, corporation, trust estate, decedent's estate,
9 trust, or other entity, any individual delegated by the entity
10 shall sign the same on behalf of the taxpayer. If for any
11 reason it is not practicable for the individual taxpayer to sign
12 the return, it may be done by any duly authorized agent. The
13 department, for good cause shown, may extend the time for making
14 the return on the application of any taxpayer and grant such
15 reasonable additional time within which to make the return as
16 the department may deem advisable.

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

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

21 "(a) Any person required to report to the department by
22 section 235-101(b), also shall report to the department any



1 change, correction, adjustment, or recomputation of gross
2 rental, gross rental proceeds, annual destination club dues
3 apportioned to the State, or fair market rental value subject to
4 the tax imposed by this chapter. This report shall be made in
5 the form of a return amending the person's gross rental, gross
6 rental proceeds, annual destination club dues apportioned to the
7 State, or fair market rental value as previously reported on a
8 return filed with the department for the taxable year. If no
9 return has been filed with the department for the taxable year,
10 a return shall be filed and shall take into account any change,
11 correction, adjustment, or recomputation of gross rental, gross
12 rental proceeds, annual destination club dues apportioned to the
13 State, or fair market rental value."

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

16 "(a) If any operator, destination club membership plan
17 manager, or plan manager fails to make a return as required by
18 this chapter, the director shall make an estimate of the tax
19 liability of the operator, destination club membership plan
20 manager, or plan manager from any information the director
21 obtains, and according to the estimate so made, assess the
22 taxes, interest, and penalty due the State from the operator,



1 destination club membership plan manager, or plan manager, give
2 notice of the assessment to the operator, destination club
3 membership plan manager, or plan manager, and make demand upon
4 the operator, destination club membership plan manager, or plan
5 manager for payment. The assessment shall be presumed to be
6 correct until and unless, upon an appeal duly taken as provided
7 in section 237D-11, the contrary shall be clearly proved by the
8 person assessed, and the burden of proof upon such appeal shall
9 be upon the person assessed to disprove the correctness of
10 assessment."

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

13 "**§237D-10 Overpayment; refunds.** Upon application by an
14 operator, destination club membership plan manager, or plan
15 manager, if the director determines that any tax, interest, or
16 penalty has been paid more than once, or has been erroneously or
17 illegally collected or computed, the tax, interest, or penalty
18 shall be credited by the director on any taxes then due from the
19 operator, destination club membership plan manager, or plan
20 manager under this chapter. The director shall refund the
21 balance to the operator, destination club membership plan
22 manager, or plan manager or the operator's, destination club



1 membership plan manager's, or plan manager's successors,
2 administrators, executors, or assigns in accordance with section
3 231-23. No credit or refund shall be allowed for any tax
4 imposed by this chapter, unless a claim for such credit or
5 refund is filed as follows:

6 (1) If an annual return is timely filed, or is filed
7 within three years after the date prescribed for
8 filing the annual return, then the credit or refund
9 shall be claimed within three years after the date the
10 annual return was filed or the date prescribed for
11 filing the annual return, whichever is later.

12 (2) If an annual return is not filed, or is filed more
13 than three years after the date prescribed for filing
14 the annual return, a claim for credit or refund shall
15 be filed within:

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

17 (B) Three years after the date prescribed for the
18 filing of the annual return,

19 whichever is later.

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



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

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

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

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

21 **"§237D-14 Collection by suit; injunction.** The department
22 may collect taxes due and unpaid under this chapter, together



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

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

21 **"CHAPTER 237D**



Report Title:

Destination Club Membership Plan; Taxation; Transient
Accommodations Tax

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. (SD1)

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