

JAN 29 2015

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# A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1           SECTION 1. Section 237-16.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§~~237-16.5 Tax on [~~written~~] real property leases;  
4 deduction allowed. (a) This section relates to the leasing of  
5 real property by a lessor to a lessee. There is hereby levied,  
6 and shall be assessed and collected annually, a privilege tax  
7 against persons engaging or continuing within the State in the  
8 business of leasing real property to another, equal to four per  
9 cent of the gross proceeds or gross income received or derived  
10 from the leasing; provided that where real property is subleased  
11 by a lessee to a sublessee, the lessee, as provided in this  
12 section, shall be allowed a deduction from the amount of gross  
13 proceeds or gross income received from its sublease of the real  
14 property. The deduction shall be in the amount allowed under  
15 this section.

16           All deductions under this section and the name and general  
17 excise tax number of the lessee's lessor shall be reported on



1 the general excise tax return. Any deduction allowed under this  
2 section shall only be allowed with respect to leases and  
3 subleases in writing and relating to the same real property.

4 (b) The lessee shall obtain from its lessor a certificate,  
5 in the form as the department shall prescribe, certifying that  
6 the lessor is subject to tax under this chapter on the gross  
7 proceeds or gross income received from the lessee. The absence  
8 of the certificate in itself shall give rise to the presumption  
9 that the lessee is not allowed the deduction under this section.

10 (c) If various real property or space leased to the lessee  
11 have different rental values, then the total monetary gross  
12 proceeds or gross income paid to a lessor for all real property  
13 or space shall first be allocated to the fair rental value for  
14 each real property or space. If the lessee leases less than one  
15 hundred per cent of real property or space that was leased from  
16 the lessor to a sublessee, then the total monetary gross  
17 proceeds or gross income paid by the lessee for that real  
18 property or space to its lessor shall be allocated. The  
19 percentage of real property or space subleased shall be  
20 multiplied by the monetary gross proceeds or gross income paid  
21 for the real property or space by the lessee to its lessor. The



1 product of the preceding multiplication shall be deducted from  
2 the monetary gross proceeds or gross income received for real  
3 property or space by the lessee.

4 Once the allocations are made, the appropriate deduction  
5 under subsection (g) shall be made.

6 (d) The lessor shall make allocations under this section  
7 at the time the sublease is entered into and the allocations  
8 shall not be changed during the term of the sublease. There  
9 shall be a reasonable basis for the allocations, taking into  
10 consideration the size, quality, and location of the real  
11 property or space subleased. In no event shall the total amount  
12 allocated to all subleases exceed the total monetary gross  
13 proceeds paid by the lessee to its lessor. The director may  
14 redetermine the amount of the deduction under this section if  
15 the director finds that the basis for allocation is not  
16 reasonable or that redetermination is necessary to prevent the  
17 avoidance of taxes.

18 (e) As used in this section:

19 "Lease" means the rental of real property under an  
20 instrument in writing by which one conveys real property for a  
21 specified term and for a specified consideration, and includes



1 the written extension or renegotiation of a lease, and any  
2 holdover tenancy.

3 "Lessee" means one who holds real property under lease, and  
4 includes a sublessee.

5 "Lessor" means one who conveys real property by lease, and  
6 includes a sublessor.

7 "Real property or space" means the area actually rented and  
8 used by the lessee, and includes common elements as defined in  
9 section 514A-3 or 514B-3.

10 "Sublease" includes the rental of real property which is  
11 held under a lease and is made in a written document by which  
12 one conveys real property for a specified term and for a  
13 specified consideration. A sublease includes the written  
14 extension or renegotiation of a sublease and any holdover  
15 tenancy under the written sublease.

16 "Sublessee" means one who holds real property under a  
17 sublease.

18 "Sublessor" means one who conveys real property by  
19 sublease.

20 "Transient accommodations" shall have the same meaning as  
21 in section 237D-1.



1           (f) This section shall not cause the tax upon a lessor,  
2 with respect to any item of the lessor's gross proceeds or gross  
3 income, to exceed four per cent.

4           (g) After allocation under subsection (c), if necessary,  
5 the deduction under this section shall be allowed from the gross  
6 proceeds or gross income of the lessee received from its  
7 sublease in an amount calculated by multiplying the gross  
8 proceeds or gross income paid by the lessee to its lessor for  
9 the lease of the real property by the following amount:

- 10           (1) In calendar year 1998, .125;  
11           (2) In calendar year 1999, .25;  
12           (3) In calendar year 2000, .375;  
13           (4) In calendar year 2001, .50;  
14           (5) In calendar year 2002, .625;  
15           (6) In calendar year 2003, .75; and  
16           (7) In calendar year 2004, and thereafter, .875.

17           The amount calculated under paragraphs (1) to (7) shall be  
18 deducted by the lessee from the lessee's total reported gross  
19 proceeds or gross income. The deduction allowed by this  
20 subsection may be taken by the fiscal and calendar year lessees.



1        (h) For purposes of this section, the furnishing of  
 2 transient accommodations shall be considered as though the  
 3 furnishing of transient accommodations were made under a  
 4 sublease, regardless of whether the arrangement is made in  
 5 writing; provided that the transient accommodations are  
 6 furnished upon real property that the taxpayer leases from a  
 7 related entity. The deduction permitted under subsection (a)  
 8 from gross proceeds or gross income from the furnishing of  
 9 transient accommodations shall be allowed without regard to  
 10 subsections (c) and (d). As used in this subsection, "related  
 11 entity" shall have the same meaning as in section 237-23.5."

12        SECTION 2. Statutory material to be repealed is bracketed  
 13 and stricken. New statutory material is underscored.

14        SECTION 3. This Act shall take effect on July 1, 2015.

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INTRODUCED BY:           *AM D M. BR*          



# S.B. NO. 1306

**Report Title:**

Real Property; Leases; Transient Accommodations

**Description:**

Permits a taxpayer who provides transient accommodations on real property leased from a related entity to claim a general excise tax deduction from the amount of gross proceeds or gross income received from its sublease of the real property.

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