

JAN 25 2017

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that, under certain
2 circumstances, allowing a private person to act as a tax
3 collection agent is likely to ease the burden of collecting
4 taxes. Section 237-9, Hawaii Revised Statutes, allows a person
5 engaged in network marketing, multi-level marketing, or other
6 similar business to enter into an agreement with the department
7 of taxation to act as a tax collection agent on behalf of its
8 direct sellers. The legislature finds that similarly allowing a
9 transient accommodations broker to act as a tax collection agent
10 on behalf of providers of transient accommodations that utilize
11 the services of the transient accommodations broker may
12 facilitate the collection of transient accommodations taxes and
13 general excise taxes.

14 The purpose of this Act is to allow a transient
15 accommodations broker to register to act as a tax collection
16 agent with respect to transient accommodations taxes and general
17 excise taxes for its operators and plan managers in a manner



1 that recognizes the dynamic changes that are occurring in the
2 transient accommodations business.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§237- Transient accommodations broker as tax collection
7 agent. (a) The director may permit a transient accommodations
8 broker to register as a tax collection agent on behalf of all of
9 its operators and plan managers by entering into a tax
10 collection agreement with the director or by submitting a
11 transient accommodations broker tax collection agent
12 registration statement to the director.

13 The director may deny an application for registration as a
14 transient accommodations broker tax collection agent under this
15 section for any cause authorized by law, including but not
16 limited to any violation of this chapter or rules adopted
17 pursuant thereto, violation of any prior tax collection
18 agreement, or failure to meet minimum criteria that may be set
19 forth by the department in rules adopted pursuant to chapter 91.

20 The director shall issue a certificate of registration or
21 letter of denial within thirty days after a transient



1 accommodations broker submits to the director a completed and
2 signed transient accommodations broker tax collection agent
3 registration statement, in a form prescribed by the department.
4 The registration shall be valid only for the transient
5 accommodations broker tax collection agent in whose name it is
6 issued, and for the website or platform designated therein, and
7 shall not be transferable.

8 A registered transient accommodations broker tax collection
9 agent shall be issued separate licenses under this chapter with
10 respect to taxes payable on behalf of its operators and plan
11 managers in its capacity as a registered transient
12 accommodations broker tax collection agent and, if applicable,
13 with respect to any taxes payable under this chapter for its own
14 business activities.

15 (b) In addition to its own responsibilities under this
16 chapter, a registered transient accommodations broker tax
17 collection agent shall report, collect, and pay over the taxes
18 due under this chapter on behalf of all of its operators and
19 plan managers from the date of registration until the
20 registration is canceled as provided in subsection (h); provided
21 that the registered transient accommodations broker tax



1 collection agent's obligation to report, collect, and pay taxes
2 on behalf of all of its operators and plan managers shall apply
3 solely to transient accommodations in the State arranged or
4 booked directly through the registered transient accommodations
5 broker tax collection agent.

6 (c) The registered transient accommodations broker tax
7 collection agent's operators and plan managers shall obtain
8 licensure under this chapter and remain subject to the
9 requirements of title 14; provided that the registered transient
10 accommodations broker tax collection agent may comply with all
11 requirements of title 14 on behalf of the operators and plan
12 managers for business activity conducted directly through the
13 agent, from the date of registration until the registration is
14 canceled as provided in subsection (h). For purposes of any
15 other business activity, the operators and plan managers are
16 subject to all requirements of title 14 and all county, city,
17 and town laws or ordinances, and rules and regulations
18 thereunder, regulating short-term rentals, vacation rentals, or
19 bed and breakfast lodging within their jurisdictions as if this
20 section did not exist.



1 (d) Under this section, a registered transient
2 accommodations broker tax collection agent shall assume all
3 obligations, rights, and responsibilities imposed by this
4 chapter upon its operators and plan managers with respect to
5 their business activities conducted directly through the
6 registered transient accommodations broker tax collection agent
7 from the date of registration until the registration is canceled
8 as provided in subsection (h).

9 (e) A transient accommodations broker tax collection agent
10 shall be personally liable for the taxes imposed by this chapter
11 that are due and collected on behalf of operators and plan
12 managers, if taxes are collected, but not reported or paid,
13 together with penalties and interest as provided by law.

14 (f) All returns and other information provided by a
15 registered transient accommodations broker tax collection agent,
16 including the application for registration as a transient
17 accommodations broker tax collection agent or any tax collection
18 agreement, shall be confidential and disclosure thereof shall be
19 prohibited as provided in section 237-34.

20 (g) A registered transient accommodations broker tax
21 collection agent may be required to disclose to the director the



1 names or addresses of any of its operators and plan managers in
2 connection with any return, reconciliation, payment, or other
3 filing by the registered transient accommodations broker tax
4 collection agent under this chapter; provided that such
5 information shall remain confidential and disclosure thereof
6 shall be prohibited as provided in section 237-34.

7 (h) The registration provided for under this section shall
8 be effective until canceled in writing.

9 A registered transient accommodations broker tax collection
10 agent may cancel its registration under this section by
11 delivering written notice of cancellation to the director and
12 each of its operators and plan managers furnishing transient
13 accommodations in the State not later than ninety days prior to
14 the effective date of cancellation.

15 The director may cancel a transient accommodations broker
16 tax collection agent's registration under this section for any
17 cause, including but not limited to any violation of this
18 chapter or rules adopted pursuant thereto, or for violation of
19 any applicable tax collection agreement, by delivering written
20 notice of cancellation to the transient accommodations broker



1 tax collection agent not later than ninety days prior to the
2 effective date of cancellation.

3 (i) For the purposes of this section:

4 "Director" means the director of taxation.

5 "Operator" has the same meaning as in section 237D-1.

6 "Plan manager" has the same meaning as in section 237D-1.

7 "Transient accommodations broker" has the same meaning as
8 in section 237D-1.

9 (j) All registered transient accommodations broker tax
10 collection agents shall inquire and ensure that the transient
11 accommodation is in compliance with all pertinent state and
12 county land use laws, including but not limited to:

13 (1) Prior to placing an advertisement, including an online
14 advertisement, on the availability of a property for
15 lease or rent on behalf of an operator or plan
16 manager, notifying the operator or plan manager that
17 the subject property is required to be in compliance
18 with applicable state and county land use laws prior
19 to retaining the services of the transient
20 accommodations broker;



1 (2) Requiring the operator or plan manager to display or
2 make available its transient accommodation tax
3 registration identification number, along with other
4 required information in any advertisement, in
5 compliance with section 237D-4; and

6 (3) Requiring the operator or plan manager to provide
7 verification of compliance with county land use laws
8 in the form of a written certification, verification,
9 or permit issued by the appropriate county agency."

10 SECTION 3. Chapter 237D, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§237D- Transient accommodations broker as tax
14 collection agent. (a) The director may permit a transient
15 accommodations broker to register as a tax collection agent on
16 behalf of all of its operators and plan managers by entering
17 into a tax collection agreement with the director or by
18 submitting a transient accommodations broker tax collection
19 agent registration statement to the director.

20 The director may deny an application for registration as a
21 transient accommodations broker tax collection agent under this



1 section for any cause authorized by law, including but not
2 limited to any violation of this chapter or rules adopted
3 pursuant thereto, violation of any prior tax collection
4 agreement, or failure to meet minimum criteria that may be set
5 forth by the department in rules adopted pursuant to chapter 91.

6 The director shall issue a certificate of registration or
7 letter of denial within thirty days after a transient
8 accommodations broker submits to the director a completed and
9 signed transient accommodations broker tax collection agent
10 registration statement, in a form prescribed by the department.
11 The registration shall be valid only for the transient
12 accommodations broker tax collection agent in whose name it is
13 issued, and for the website or platform designated therein, and
14 shall not be transferable.

15 A registered transient accommodations broker tax collection
16 agent shall be issued separate certificates of registration
17 under this chapter with respect to taxes payable on behalf of
18 its operators and plan managers in its capacity as a registered
19 transient accommodations broker tax collection agent and, if
20 applicable, with respect to any taxes payable under this chapter
21 for its own business activities.



1 (b) In addition to its own responsibilities under this
2 chapter, a registered transient accommodations broker tax
3 collection agent shall report, collect, and pay over the taxes
4 due under this chapter on behalf of all of its operators and
5 plan managers from the date of registration until the
6 registration is canceled as provided in subsection (h); provided
7 that the registered transient accommodations broker tax
8 collection agent's obligation to report, collect, and pay taxes
9 on behalf of all of its operators and plan managers shall apply
10 solely to transient accommodations in the State arranged or
11 booked directly through the registered transient accommodations
12 broker tax collection agent.

13 (c) The registered transient accommodations broker tax
14 collection agent's operators and plan managers shall obtain
15 registration under this chapter and remain subject to the
16 requirements of title 14; provided that the registered transient
17 accommodations broker tax collection agent may comply with all
18 requirements of title 14 on behalf of the operators and plan
19 managers for business activity conducted directly through the
20 agent, from the date of registration until the registration is
21 canceled as provided in subsection (h). For purposes of any



1 other business activity, the operators and plan managers are
2 subject to all requirements of title 14 and all county, city,
3 and town laws or ordinances, and rules and regulations
4 thereunder, regulating short-term rentals, vacation rentals, or
5 bed and breakfast lodging within their jurisdictions as if this
6 section did not exist.

7 (d) Under this section, a registered transient
8 accommodations broker tax collection agent shall assume all
9 obligations, rights, and responsibilities imposed by this
10 chapter upon its operators and plan managers with respect to
11 their business activities conducted directly through the
12 registered transient accommodations broker tax collection agent
13 from the date of registration until the registration is canceled
14 as provided in subsection (h).

15 (e) A transient accommodations broker tax collection agent
16 shall be personally liable for the taxes imposed by this chapter
17 that are due and collected on behalf of operators and plan
18 managers, if taxes are collected, but not reported or paid,
19 together with penalties and interest as provided by law.

20 (f) All returns and other information provided by a
21 registered transient accommodations broker tax collection agent,



1 including the application for registration as a transient
2 accommodations broker tax collection agent or any tax collection
3 agreement, shall be confidential and disclosure thereof shall be
4 prohibited as provided in section 237D-13.

5 (g) A registered transient accommodations broker tax
6 collection agent may be required to disclose to the director the
7 names or addresses of any of its operators and plan managers in
8 connection with any return, reconciliation, payment, or other
9 filing by the registered transient accommodations broker tax
10 collection agent under this chapter; provided that such
11 information shall remain confidential and disclosure thereof
12 shall be prohibited as provided in section 237D-13.

13 (h) The registration provided for under this section shall
14 be effective until canceled in writing.

15 A registered transient accommodations broker tax collection
16 agent may cancel its registration under this section by
17 delivering written notice of cancellation to the director and
18 each of its operators and plan managers furnishing transient
19 accommodations in the State not later than ninety days prior to
20 the effective date of cancellation.



1 The director may cancel a transient accommodations broker
2 tax collection agent's registration under this section for any
3 cause, including but not limited to any violation of this
4 chapter or rules adopted pursuant thereto, or for violation of
5 any applicable tax collection agreement, by delivering written
6 notice of cancellation to the transient accommodations broker
7 tax collection agent not later than ninety days prior to the
8 effective date of cancellation.

9 (i) All registered transient accommodations broker tax
10 collection agents shall inquire and ensure that the transient
11 accommodation is in compliance with all pertinent state and
12 county land use laws, including but not limited to:

13 (1) Prior to placing an advertisement, including an online
14 advertisement, on the availability of a property for
15 lease or rent on behalf of an operator or plan
16 manager, notifying the operator or plan manager that
17 the subject property is required to be in compliance
18 with applicable state and county land use laws prior
19 to retaining the services of the transient
20 accommodations broker;



- 1 (2) Requiring the operator or plan manager to display or
2 make available its transient accommodation tax
3 registration identification number, along with other
4 required information in any advertisement, in
5 compliance with section 237D-4; and
- 6 (3) Requiring the operator or plan manager to provide
7 verification of compliance with county land use laws
8 in the form of a written certification, verification,
9 or permit issued by the appropriate county agency."

10 SECTION 4. By January 1, 2018, the director of taxation
11 shall make available to transient accommodations brokers a form
12 of application for registration as a transient accommodations
13 broker tax collection agent under the new section of chapter
14 237, Hawaii Revised Statutes, added by section 2 of this Act,
15 and under the new section of chapter 237D, Hawaii Revised
16 Statutes, added by section 3 of this Act.

17 SECTION 5. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



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1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 6. New statutory material is underscored.

4 SECTION 7. This Act shall take effect upon its approval
5 and shall apply to taxable years beginning after December 31,
6 2017.

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INTRODUCED BY:

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S.B. NO. 1281

Report Title:

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

Description:

Allows transient accommodations brokers to register as a tax collection agent on behalf of all of its operators and plan managers. Requires registered transient accommodations broker tax collection agent's operators and plan managers to obtain licensure. Requires all registered transient accommodations broker tax collection agents to inquire and ensure that the transient accommodation is in compliance with all pertinent state and county land use laws. Requires the operator or plan manager to provide verification of compliance with county land use laws in the form of a written certification, verification, or permit issued by the appropriate county agency.

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