

**"CHAPTER 237D
TRANSIENT ACCOMMODATIONS TAX**

Section

- 237D-1 Definitions
- 237D-2 Imposition and rates
- 237D-3 Exemptions
- 237D-3.5 Repealed
- 237D-4 Certificate of registration
- 237D-5 Repealed
- 237D-5.5 Repealed
- 237D-6 Return and payments; penalties
- 237D-6.5 Remittances; distribution to counties
- 237D-7 Annual return
- 237D-7.5 Federal assessments; adjustments of gross rental,
gross rental proceeds, or fair market rental value;
report to the department
- 237D-8 Filing of returns
- 237D-8.5 Collection of rental by third party; filing with
department; statement required
- 237D-8.6 Reconciliation; form requirement
- 237D-9 Assessment of tax upon failure to make return;
limitation period; exceptions; extension by agreement
- 237D-10 Overpayment; refunds
- 237D-11 Appeals
- 237D-12 Records to be kept; examination
- 237D-13 Disclosure of returns unlawful; destruction of returns
- 237D-14 Collection by suit; injunction
- 237D-15 Application of tax
- 237D-16 Administration and enforcement; rules
- 237D-17 Repealed

" **§237D-1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Department" means the department of taxation.

"Director" means the director of taxation.

"Fair market rental value" means an amount equal to one-half of the gross daily maintenance fees that are paid by the owner and are attributable to the time share unit located in Hawaii. Gross daily maintenance fees include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, resort fees, and other costs including payments required for reserves or sinking funds. Amounts paid for optional goods and services such as food and beverage services or beach chair or umbrella rentals shall be excluded from fair market rental value.

"Gross rental" or "gross rental proceeds" means the gross receipts, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations and the value proceeding or accruing from the furnishing of such accommodations without any deductions on account of the cost of property or services sold, the cost of materials used, labor cost, taxes, royalties, interest, discounts, or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer's books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 237 for any taxable year in which event the taxpayer shall report the taxpayer's gross income for the purposes of this chapter on the accrual basis for the same period.

The words "gross rental" or "gross rental proceeds" shall not be construed to include the amounts of taxes imposed by chapter 237 or this chapter on operators of transient accommodations and passed on, collected, and received from the consumer as part of the receipts received as compensation for the furnishing of transient accommodations. Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissionable negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, gross rental or gross rental proceeds to the operator means only the respective portion allocated or distributed to the operator, and no more. For purposes of this definition, where the operator maintains a schedule of rates for identifiable groups of individuals, such as kamaainas, upon which the accommodations are leased, let, or rented, gross rental or gross rental

proceeds means the receipts collected and received based upon the scheduled rates and recorded as receipts in its books and records.

"Lease", "let", or "rental" means the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment hotels, motels, condominium property regimes or apartments defined in chapter 514A or units defined in chapter 514B, cooperative apartments, rooming houses, or other places in which lodgings are regularly furnished to transients for a consideration, without transfer of the title of such property.

"Local contact" means an individual residing on the same island as the transient accommodation or resort time share vacation unit or an entity with a place of business and at least one employee, officer, partner, member, or other person working on behalf of the company who is residing on the same island as the transient accommodation or resort time share vacation unit.

"Occupant" means an owner of a resort time share vacation plan or other person occupying the resort time share vacation unit.

"Operator" means any person operating a transient accommodation, whether as owner or proprietor or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business which involves the actual furnishing of transient accommodation.

"Owner" means any person who owns a resort time share vacation interest; provided that to the extent and for those purposes provided in an agreement of sale, the vendee under the agreement of sale shall be considered the owner of the resort time share vacation interest.

"Plan manager" means a person who undertakes the duties, responsibilities, and obligations of managing a resort time share vacation plan or is required to act for a resort time share vacation plan under this chapter.

"Resort time share vacation interest" means any interest in a resort time share vacation unit or plan which entitles the owner thereof to the use, occupancy, or possession of a resort time share vacation unit on a periodically recurring basis.

"Resort time share vacation plan" means any plan or program subject to chapter 514E in which the use, occupancy, or possession of one or more resort time share vacation units circulates among various persons for less than a sixty-day period in any year, for any occupant. The term resort time share vacation plan includes both resort time share vacation ownership plans and resort time share vacation use plans, as follows:

- (1) "Resort time share vacation ownership plan" means any arrangement whether by tenancy in common, sale, deed, or by other means, whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.
- (2) "Resort time share vacation use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a resort time share vacation unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

"Resort time share vacation unit" means the actual and promised accommodations, and related facilities, which are the subject of a resort time share vacation plan.

"Transient accommodations" means the furnishing of a room, apartment, suite, single family dwelling, or the like to a transient for less than one hundred eighty consecutive days for each letting in a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A or unit as defined in chapter 514B, cooperative apartment, dwelling unit, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients.

"Transient accommodations broker" means any person or entity, including but not limited to persons who operate online websites, online travel agencies, or online booking agencies, that offers, lists, advertises, or accepts reservations or collects whole or partial payment for transient accommodations or resort time share vacation interests, units, or plans. [L 1986, c 340, pt of §1; am L 1988, c 65, §2 and c 241, §2; am L 1990, c 185, §3; am L 1998, c 156, §15; am L 2004, c 164, §§8, 35(5); am L 2005, c 93, §7; am L 2008, c 28, §5; am L 2015, c 93, §1 and c 204, §3]

" **§237D-2 Imposition and rates.** (a) There is levied and shall be assessed and collected each month a tax of:

- (1) Five per cent for the period beginning on January 1, 1987, to June 30, 1994;
- (2) Six per cent for the period beginning on July 1, 1994, to December 31, 1998;
- (3) 7.25 per cent for the period beginning on January 1, 1999, to June 30, 2009;

- (4) 8.25 per cent for the period beginning on July 1, 2009, to June 30, 2010; and
- (5) 9.25 per cent for the period beginning on July 1, 2010, and thereafter;

on the gross rental or gross rental proceeds derived from furnishing transient accommodations.

(b) Every operator shall pay to the State the tax imposed by subsection (a), as provided in this chapter.

(c) There is levied and shall be assessed and collected each month, on the occupant of a resort time share vacation unit, a transient accommodations tax of:

- (1) 7.25 per cent on the fair market rental value until December 31, 2015;
- (2) 8.25 per cent on the fair market rental value for the period beginning on January 1, 2016, to December 31, 2016; and
- (3) 9.25 per cent on the fair market rental value for the period beginning on January 1, 2017, and thereafter.

(d) Every plan manager shall be liable for and pay to the State the transient accommodations tax imposed by subsection (c) as provided in this chapter. Every resort time share vacation plan shall be represented by a plan manager who shall be subject to this chapter. [L 1986, c 340, pt of §1; am L 1988, c 241, §3; am L Sp 1993, c 7, §18; am L 1998, c 156, §16; am L 2009, c 61, §§1, 4; am L 2011, c 103, §1; am L 2013, c 161, §§1, 3; am L 2015, c 93, §2]

Attorney General Opinions

Rental of hotel rooms to airlines for term of 180 days is not taxable. Att. Gen. Op. 90-6.

Case Notes

One per cent increase in transient accommodations tax earmarked for financing expenses associated with convention center development and construction qualified as a "user tax". 78 H. 157, 890 P.2d 1197.

- " **§237D-3 Exemptions.** This chapter shall not apply to:
- (1) Health care facilities including all such facilities enumerated in section 321-11(10);
 - (2) School dormitories of a public or private educational institution providing education in grades kindergarten through twelve, or of any institution of higher education;

- (3) Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes; provided that this exemption shall apply only to the activities of the religious, charitable, or educational corporation or association as such and not to any rental or gross rental the primary purpose of which is to produce income even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association;
- (4) Living accommodations for persons in the military on permanent duty assignment to Hawaii, including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State;
- (5) Low-income renters receiving rental subsistence from the state or federal governments and whose rental periods are for durations shorter than sixty days;
- (6) Operators of transient accommodations who furnish accommodations to full-time students enrolled in an institution offering post-secondary education. The director of taxation shall determine what shall be deemed acceptable proof of full-time enrollment. This exemption shall also apply to operators who furnish transient accommodations to students during summer employment;
- (7) Accommodations furnished without charge such as, but not limited to, complimentary accommodations, accommodations furnished to contract personnel such as physicians, golf or tennis professionals, swimming and dancing instructors, and other personnel to whom no salary is paid or to employees who receive room and board as part of their salary or compensation; and
- (8) Accommodations furnished to foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes. [L 1986, c 340, pt of §1; am L 1988, c 241, §4; am L 2000, c 38, §2]

" **§237D-3.5 REPEALED.** L 1996, c 13, §18.

" **§237D-4 Certificate of registration.** (a) Each operator or plan manager as a condition precedent to engaging or continuing in the business of furnishing transient

accommodations or in business as a resort time share vacation plan shall register with the director the name and address of each place of business within the State subject to this chapter. The operator or plan manager shall make a one-time payment as follows:

- (1) \$5 for each registration for transient accommodations consisting of one to five units;
- (2) \$15 for each registration for transient accommodations consisting of six or more units; and
- (3) \$15 for each resort time share vacation plan within the State;

upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the operator or plan manager in whose name it is issued and for the transaction of business at the place designated therein. Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.

(b) The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued. The name, phone number, and electronic mail address of the local contact shall at all times be conspicuously displayed in the same place as the registration or the same place as the notice stating where the registration may be inspected and examined. Failure to meet the requirements of this subsection shall be unlawful. The department may issue citations to any person who fails to conspicuously display the registration or notice, or the local contact's name, phone number, or electronic mail address as required by this subsection. A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of this subsection shall include a monetary fine of not less than:

- (1) \$500 per day, for a first violation for which a citation is issued;
- (2) \$1,000 per day, for a second violation for which a citation is issued; and
- (3) \$5,000 per day, for a third and any subsequent violation for which a citation is issued.

(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

- (1) The registration identification number or an electronic link to the registration identification

number of the operator or plan manager issued pursuant to this section; and

- (2) The local contact's name, phone number, and electronic mail address, provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit.

(d) Failure to meet the requirements of subsection (c) shall be unlawful. The department may issue citations to any person, including operators, plan managers, and transient accommodations brokers, who violates subsection (c). A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of subsection (c) shall include a monetary fine of not less than:

- (1) \$500 per day, for a first violation for which a citation is issued;
- (2) \$1,000 per day, for a second violation for which a citation is issued; and
- (3) \$5,000 per day, for a third and any subsequent violation for which a citation is issued.

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

(f) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(g) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or as a plan manager subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or

abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be the same as that prescribed by section 231-35 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.

(h) Any monetary fine assessed under this section shall be due and payable thirty days after issuance of the citation, subject to appeal rights provided under this subsection. Citations may be appealed to the director of taxation or the director's designee. [L 1986, c 340, pt of §1; am L 1988, c 241, §5; am L 1989, c 199, §1; am L 1998, c 156, §17; am L 2015, c 204, §4]

" **§237D-5 REPEALED.** L 1989, c 199, §3.

" **§237D-5.5 REPEALED.** L 2005, c 235, §9.

" **§237D-6 Return and payments; penalties.** (a) On or before the twentieth day of each calendar month, every operator taxable, or plan manager liable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the tax in the form required by section 237D-6.5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 20, July 20, October 20, and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax

liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or

- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 20 and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the seventh month following the beginning of the fiscal year and on or before the twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability; provided that the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a taxpayer filing the taxpayer's return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer's return or the payment of the taxes due thereon, or if the liability of a taxpayer, who possesses a permit to file the taxpayer's return and to make payments on a semiannual basis exceeds \$2,000 in transient accommodations taxes during the calendar year or exceeds \$4,000 in transient accommodations taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the transient accommodations tax, the director, at any time, may revoke a taxpayer's permit, in which case the taxpayer shall then be required to file the taxpayer's return and make payments thereon as provided in subsection (a).

(d) Section 232-2 does not apply to a monthly return. [L 1986, c 340, pt of §1; am L 1988, c 241, §6; am L 1990, c 185, §4; am L 1993, c 39, §2; am L 1998, c 156, §18; am L Sp 2001 3d, c 8, §4; am L 2010, c 22, §2]

" **§237D-6.5 Remittances; distribution to counties.** (a) All remittances of taxes imposed under this chapter shall be made by cash, bank drafts, cashier's check, money order, or certificate

of deposit to the office of the taxation district to which the return was transmitted.

(b) Revenues collected under this chapter shall be distributed in the following priority, with the excess revenues to be deposited into the general fund:

- (1) \$1,500,000 shall be allocated to the Turtle Bay conservation easement special fund beginning July 1, 2015, for the reimbursement to the state general fund of debt service on reimbursable general obligation bonds, including ongoing expenses related to the issuance of the bonds, the proceeds of which were used to acquire the conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources important to the State, until the bonds are fully amortized;
- (2) \$26,500,000 shall be allocated to the convention center enterprise special fund established under section 201B-8;
- (3) \$82,000,000 shall be allocated to the tourism special fund established under section 201B-11; provided that:
 - (A) Beginning on July 1, 2012, and ending on June 30, 2015, \$2,000,000 shall be expended from the tourism special fund for development and implementation of initiatives to take advantage of expanded visa programs and increased travel opportunities for international visitors to Hawaii;
 - (B) Of the \$82,000,000 allocated:
 - (i) \$1,000,000 shall be allocated for the operation of a Hawaiian center and the museum of Hawaiian music and dance at the Hawaii convention center; and
 - (ii) 0.5 per cent of the \$82,000,000 shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; and
 - (C) Of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency special fund, established in section 201B-10, in a manner

- sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency special fund;
- (4) \$103,000,000 for fiscal year 2014-2015, \$103,000,000 for fiscal year 2015-2016, \$103,000,000 for fiscal year 2016-2017, and \$93,000,000 for each fiscal year thereafter shall be allocated as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; provided that commencing with fiscal year 2018-2019, a sum that represents the difference between a county public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the county public employer's contributions into that trust fund shall be retained by the state director of finance and deposited to the credit of the county public employer's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42, if the respective county fails to remit the total amount of the county's required annual contributions, as required under section 87A-43; and
- (5) \$3,000,000 shall be allocated to the special land and development fund established under section 171-19; provided that the allocation shall be expended in accordance with the Hawaii tourism authority strategic plan for:
- (A) The protection, preservation, maintenance, and enhancement of natural resources, including beaches, important to the visitor industry;
 - (B) Planning, construction, and repair of facilities; and
 - (C) Operation and maintenance costs of public lands, including beaches, connected with enhancing the visitor experience.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.

As used in this subsection, "fiscal year" means the twelve-month period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year.

(c) On or before January or July 1 of each year or after the disposition of any tax appeal with respect to an assessment for periods after June 30, 1990, the state director of finance shall compute and pay the amount due as provided in subsection (b) to the director of finance of each county to become a

general realization of the county expendable as such, except as otherwise provided by law. [L 1990, c 185, §2; am L Sp 1993, c 7, §19; am L 1997, c 124, §7; am L 1998, c 156, §19; am L 1999, c 98, §7; am L 2002, c 250, §5 and c 253, §9; am L 2003, c 113, §2; am L 2005, c 235, §8; am L 2006, c 209, §§1, 3; am L 2007, c 201, §3; am L 2009, c 61, §§2, 4; am L 2011, c 103, §§2, 4; am L 2012, c 171, §2 and c 243, §2; am L 2013, c 161, §§2 to 4 and c 268, §§10, 16; am L 2014, c 81, §4 and c 174, §1; am L 2015, c 117, §3, c 121, §7, and c 237, §12; am L 2016, c 223, §1]

" **§237D-7 Annual return.** On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of the taxes under this chapter during the preceding tax year shall file a return summarizing that person's liability under this chapter for the year, in such form as the director prescribes. The operator or plan manager shall transmit with the return a remittance covering the residue of the tax chargeable to the operator or plan manager, if any, to the office of the appropriate state district tax assessor designated in section 237D-8. The return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint adventure, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the same on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any taxpayer and grant such reasonable additional time within which to make the return as the department may deem advisable.

Section 232-2 applies to the annual return, but not to a monthly return. [L 1986, c 340, pt of §1; am L 1988, c 241, §7; am L 1998, c 156, §20]

" **§237D-7.5 Federal assessments; adjustments of gross rental, gross rental proceeds, or fair market rental value; report to the department.** (a) Any person required to report to the department by section 235-101(b), also shall report to the department any change, correction, adjustment, or recomputation of gross rental, gross rental proceeds, or fair market rental value subject to the tax imposed by this chapter. This report shall be made in the form of a return amending the person's

gross rental, gross rental proceeds, or fair market rental value as previously reported on a return filed with the department for the taxable year. If no return has been filed with the department for the taxable year, a return shall be filed and shall take into account any change, correction, adjustment, or recomputation of gross rental, gross rental proceeds, or fair market rental value.

(b) Any return or amended return required by this section shall be filed with the department within ninety days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service. The return or amended return shall be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment, or recomputation.

(c) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by this section shall not expire before the expiration of one year from the date the department is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of such a report as provided in subsection (a). Before the expiration of this one-year period, the department and the taxpayer may agree, in writing, to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. [L 1993, c 32, §2; am L 1998, c 156, §21]

" **§237D-8 Filing of returns.** All monthly, quarterly, semiannual, and annual returns shall be transmitted to the office of the taxation district in which the taxes arose or to the office of the first taxation district in Honolulu. [L 1986, c 340, pt of §1; am L 1988, c 241, §8; am L 1998, c 156, §22]

" **[§237D-8.5] Collection of rental by third party; filing with department; statement required.** (a) Every person authorized under an agreement by the owner of transient accommodations located within this State to collect rent on behalf of such owner shall be subject to this section.

(b) Every written rental collection agreement shall have on the first page of the agreement the name, address, social security or federal identification number, and, if available, the general excise tax license and transient accommodations tax registration numbers of the owner of the transient accommodations being rented, the address of the property being rented, and the following statement which shall be set forth in bold print and in ten-point type size:

"HAWAII TRANSIENT ACCOMMODATIONS TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING TRANSIENT ACCOMMODATIONS IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS AGREEMENT, OR OF FEDERAL INTERNAL REVENUE FORM 1099 STATING THE AMOUNT OF RENTS COLLECTED, SHALL BE FILED WITH THE HAWAII DEPARTMENT OF TAXATION."

Every person entering an oral rental collection agreement shall furnish the department of taxation the information required under this subsection and shall give the owner of the property a copy of the notice required by this subsection. The statement required by this subsection may be combined with the statement required under section 237-30.5 by adding in bold print and in ten-point type size to the front of the statement in section 237-30.5 the following:

"HAWAII TRANSIENT ACCOMMODATIONS TAXES AND".

(c) Every person authorized to collect rent for another person shall file a copy of the first page of the rental collection agreement with the department of taxation within ninety days after June 9, 1988, or within thirty days after entering into the agreement, or shall file a copy of federal Internal Revenue form 1099, the property owner's social security or federal identification number, and, if available, the general excise tax license and transient accommodations tax registration numbers of the owner of such property being rented with the department of taxation at the same time as such forms must be filed with the Internal Revenue Service for the applicable tax year. The person also shall notify the owner that such information is being furnished and give the owner a copy of the notice required by subsection (b).

(d) If a person complies with the provisions of this section, the person shall be deemed to have complied with section 237-30.5. [L 1988, c 241, pt of §1]

Revision Note

"June 9, 1988" substituted for "the effective date of this section".

" **§237D-8.6 Reconciliation; form requirement.** (a) On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes under this chapter during the preceding taxable year and who has furnished transient accommodations which were exempt, for any portion of the taxable year, from the tax imposed under this chapter, shall file a reconciliation for transient accommodations as prescribed by the director indicating the amount of gross income that was subject to such

tax and the amount that was subject to the general excise tax imposed under chapter 237.

(b) On or before the twentieth day of the fourth month following the close of the taxable year, every plan manager who has become liable for the payment of taxes under this chapter during the preceding taxable year shall file a reconciliation indicating the period of time that the owner of a resort time share vacation unit was subject to the general excise tax or the tax under section 237D-2(a). [L 1988, c 241, pt of §1; am L 1998, c 156, §23]

" **§237D-9 Assessment of tax upon failure to make return; limitation period; exceptions; extension by agreement.** (a) If any operator or plan manager fails to make a return as required by this chapter, the director shall make an estimate of the tax liability of the operator or plan manager from any information the director obtains, and according to the estimate so made, assess the taxes, interest, and penalty due the State from the operator or plan manager, give notice of the assessment to the operator or plan manager, and make demand upon the operator or plan manager for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section 237D-11, the contrary shall be clearly proved by the person assessed, and the burden of proof upon such appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any tax due under this chapter, the director shall assess the taxes and interest due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any

tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the State if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the State the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(d) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.

(e) Where, before the expiration of the period prescribed in subsection (c), both the department of taxation and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (c), the tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. [L 1986, c 340, pt of §1; am L 1988, c 241, §9; am L 1993, c 257, §3; am L 1998, c 156, §24; am L 2009, c 166, §8]

Note

Applicability of 2009 amendment. L 2009, c 166, §27.

" **§237D-10 Overpayment; refunds.** Upon application by an operator or plan manager, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty shall be credited by the director on any taxes then due from the operator or plan manager under this

chapter. The director shall refund the balance to the operator or plan manager or the operator's or plan manager's successors, administrators, executors, or assigns in accordance with section 231-23. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return,whichever is later.

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

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive. [L 1986, c 340, pt of §1; am L 1988, c 241, §10; am L 1994, c 19, §2; am L 1998, c 156, §25]

" **§237D-11 Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. [L 1986, c 340, pt of §1; am L 2000, c 199, §4; am L 2004, c 123, §4]

Note

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

" **§237D-12 Records to be kept; examination.** Every operator and plan manager shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross rental, gross rental proceeds, or fair market

rental value relating to the business taxed under this chapter, and such other books, records of account, and invoices as may be required by the department, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [L 1986, c 340, pt of §1; am L 1988, c 241, §11; am L 1995, c 92, §15; am L 1998, c 156, §26]

" **§237D-13 Disclosure of returns unlawful; destruction of returns.** (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) through (7);
- (9) Persons duly authorized by the State in connection with their official duties;

- (10) Any duly accredited tax official of the United States, or of any state or territory, or of any county of this State;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a class C felony. Nothing in this subsection shall prohibit the publication of statistics that are classified to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section 237D-6, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued. [L 1986, c 340, pt of §1; am L 1988, c 241, §12; am L 1997, c 178, §6; am L Sp 2005, c 9, §5; am L 2014, c 136, §6]

" **§237D-14 Collection by suit; injunction.** The department may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the taxes arose. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a certificate as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the certificate, the department may proceed in the circuit court of the judicial circuit in which the transient accommodations or in which occupants of resort time share vacation units are taxed, to obtain an injunction restraining the further furnishing of transient accommodations or the operation of the resort time share vacation plan until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such certificate is secured, or both, as the circumstances of the case may require. [L 1986, c 340, pt of §1; am L 1989, c 199, §2; am L 1998, c 156, §27]

" **§237D-15 Application of tax.** (a) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided in this chapter; provided that if it be held by any court of competent jurisdiction that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the

same property or the use thereof, then this chapter shall be deemed not to apply to such property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to such property and use.

(b) In order to determine if the tax under this chapter is to be levied, assessed, and collected upon transient accommodations the following presumptions shall control.

- (1) If a person lets a transient accommodation for less than one hundred eighty consecutive days, it shall be presumed that the accommodation furnished is for a transient purpose.
- (2) If a person lets a transient accommodation for one hundred eighty days or more, there is no presumption one way or another as to the purpose for which the accommodation is furnished.

The operator shall have the burden of proving to the department whether an accommodation is not being furnished for a transient purpose. If the department is satisfied that an accommodation is not furnished for a transient purpose, then the department shall not levy any tax under this chapter. The department shall adopt rules to implement this section. [L 1986, c 340, pt of §1; am L 1998, c 156, §28]

" **[§237D-16] Administration and enforcement; rules.** (a) The director of taxation shall administer and enforce this chapter. In respect of:

- (1) The examinations of books and records and of taxpayers and other persons,
 - (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and
 - (3) The general administration of this chapter,
- the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to 237-41 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237.

(b) The director may adopt, amend, or repeal rules under chapter 91 to carry out this chapter. [L 1986, c 340, pt of §1]

" **§237D-17 REPEALED.** L 1995, c 92, §26.