

JAN 19 2018

# A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

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

SECTION 1. Section 237D-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "gross rental" or "gross rental proceeds" to read:

"Gross rental" or "gross rental proceeds" means the gross ~~[receipts]~~ sale or gross charges collected from consumers, including but not limited to booking fees, cleaning fees, lodging fees, transient fees, or any other fees collected, but does not include fees collected for ground transportation, airfare, meals, excursions, tours, or other items included in a travel package, other than accommodations, 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



1 taxpayer shall be presumed to be dealing on a cash basis unless  
2 the taxpayer proves to the satisfaction of the department of  
3 taxation that the taxpayer is dealing on an accrual basis and  
4 the taxpayer's books are so kept, or unless the taxpayer employs  
5 or is required to employ the accrual basis for the purposes of  
6 the tax imposed by chapter 237 for any taxable year in which  
7 event the taxpayer shall report the taxpayer's gross income for  
8 the purposes of this chapter on the accrual basis for the same  
9 period.

10 The words "gross rental" or "gross rental proceeds" shall  
11 not be construed to include the amounts of taxes imposed by  
12 chapter 237 or this chapter on operators of transient  
13 accommodations and passed on, collected, and received from the  
14 consumer as part of the receipts received as compensation for  
15 the furnishing of transient accommodations. Where transient  
16 accommodations are furnished through arrangements made by a  
17 transient accommodations intermediary or travel agency [~~or tour~~  
18 ~~packager~~] at noncommissionable negotiated contract rates and the  
19 gross income is divided between the operator of transient  
20 accommodations on the one hand and the transient accommodations  
21 intermediary or travel agency [~~or tour packager~~] on the other



1 hand, [~~gross rental or gross rental proceeds to the operator~~  
2 ~~means only the respective portion allocated or distributed to~~  
3 ~~the operator,~~] the tax imposed by this chapter shall apply to  
4 each operator and transient accommodations intermediary with  
5 respect to that person's respective portion of the proceeds, and  
6 no more. For purposes of this definition, where the operator  
7 maintains a schedule of rates for identifiable groups of  
8 individuals, such as kamaainas, upon which the accommodations  
9 are leased, let, or rented, gross rental or gross rental  
10 proceeds means the receipts collected and received based upon  
11 the scheduled rates and recorded as receipts in its books and  
12 records."

13 2. By amending the definition of "transient accommodations  
14 broker" to read:

15 "Transient accommodations [~~broker~~] intermediary" means  
16 any person or entity, including but not limited to persons who  
17 operate or market transient accommodations through wholesale  
18 travel companies, online websites, online travel agencies, [~~or~~]  
19 online booking agencies, or booking platforms, that offers,  
20 lists, advertises, or accepts reservations or collects whole or



1 partial payment for transient accommodations or resort time  
2 share vacation interests, units, or plans."

3 SECTION 2. Section 237D-2, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) Every operator or transient accommodations  
6 intermediary who collects whole or partial payment for transient  
7 accommodations shall pay to the State the tax imposed by  
8 subsection (a), as provided in this chapter."

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

11 1. By amending subsection (a) to read:

12 "(a) Each operator, transient accommodations intermediary,  
13 or plan manager as a condition precedent to engaging or  
14 continuing in the business of furnishing transient  
15 accommodations or in business as a resort time share vacation  
16 plan shall register with the director the name and physical  
17 address of each place of business within the State subject to  
18 this chapter. The operator or plan manager shall make a one-  
19 time payment as follows:

20 (1) \$5 for each registration for transient accommodations  
21 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."

2. By amending subsection (d) to read:

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

7           SECTION 4.   Section 237D-6, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9           "(a)   On or before the twentieth day of each calendar  
10 month, every [~~operator taxable, or plan manager~~] taxpayer liable  
11 under this chapter during the preceding calendar month shall  
12 file a sworn return with the director in such form as the  
13 director shall prescribe together with a remittance for the  
14 amount of the tax in the form required by section 237D-6.5.  
15 Sections 237-30 and 237-32 shall apply to returns and penalties  
16 made under this chapter to the same extent as if the sections  
17 were set forth specifically in this section."

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

20          "**§237D-7   Annual return.**   On or before the twentieth day of  
21 the fourth month following the close of the taxable year, every



1 person who has become liable for the payment of the taxes under  
2 this chapter during the preceding tax year shall file a return  
3 summarizing that person's liability under this chapter for the  
4 year, in such form as the director prescribes. The ~~[operator or~~  
5 ~~plan manager]~~ taxpayer shall transmit with the return a  
6 remittance covering the residue of the tax chargeable to the  
7 ~~[operator or plan manager,]~~ taxpayer, if any, to the office of  
8 the appropriate state district tax assessor designated in  
9 section 237D-8. The return shall be signed by the taxpayer, if  
10 made by an individual, or by the president, vice-president,  
11 secretary, or treasurer of a corporation, if made on behalf of a  
12 corporation. If made on behalf of a partnership, firm, society,  
13 unincorporated association, group, hui, joint adventure, joint  
14 stock company, corporation, trust estate, decedent's estate,  
15 trust, or other entity, any individual delegated by the entity  
16 shall sign the same on behalf of the taxpayer. If for any  
17 reason it is not practicable for the individual taxpayer to sign  
18 the return, it may be done by any duly authorized agent. The  
19 department, for good cause shown, may extend the time for making  
20 the return on the application of any taxpayer and grant such



1 reasonable additional time within which to make the return as  
2 the department may deem advisable.

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

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

7 "(a) If any [~~operator or plan manager~~] taxpayer fails to  
8 make a return as required by this chapter, the director shall  
9 make an estimate of the tax liability of the [~~operator or plan~~  
10 ~~manager~~] taxpayer from any information the director obtains, and  
11 according to the estimate so made, assess the taxes, interest,  
12 and penalty due the State from the [~~operator or plan manager,~~  
13 taxpayer, give notice of the assessment to the [~~operator or plan~~  
14 ~~manager,~~] taxpayer, and make demand upon the [~~operator or plan~~  
15 ~~manager~~] taxpayer for payment. The assessment shall be presumed  
16 to be correct until and unless, upon an appeal duly taken as  
17 provided in section 237D-11, the contrary shall be clearly  
18 proved by the person assessed, and the burden of proof upon such  
19 appeal shall be upon the person assessed to disprove the  
20 correctness of assessment."



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

"§237D-10 Overpayment; refunds. Upon application by [an ~~operator or plan manager,~~] a taxpayer, 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~~] taxpayer under this chapter. The director shall refund the balance to the [~~operator or plan manager~~] taxpayer or the [~~operator's or plan manager's~~] taxpayer'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."

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

"§237D-12 Records to be kept; examination. Every ~~[operator and plan manager]~~ taxpayer 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,



1 or fair market rental value relating to the business taxed under  
2 this chapter, and such other books, records of account, and  
3 invoices as may be required by the department, and all such  
4 books, records, and invoices shall be open for examination at  
5 any time by the department or the Multistate Tax Commission  
6 pursuant to chapter 255, or the authorized representative  
7 thereof."

8 SECTION 9. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall apply to taxable years  
11 beginning after December 31, 2017.

12 INTRODUCED BY:

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# S.B. NO. 2615

**Report Title:**

Transient Accommodations Tax; Gross Rental Price; Transient Accommodations Intermediaries

**Description:**

Clarifies that the transient accommodations tax shall be calculated based on the gross rental price paid by a visitor. Specifies that the transient accommodations tax is to be collected from operators or transient accommodations intermediaries that collect whole or partial payment for transient accommodations.

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