
A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

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 amending the definition of "gross rental" or "gross
4 rental proceeds" to read:

5 "Gross rental" or "gross rental proceeds" means the gross
6 [receipts,] sale or gross charges collected from consumers,
7 including but not limited to booking fees, cleaning fees,
8 lodging fees, transient fees, or any other fees collected, but
9 does not include fees collected for ground transportation,
10 airfare, meals, excursions, tours, or other fees unrelated to
11 the transient accommodations, cash or accrued, of the taxpayer
12 received as compensation for the furnishing of transient
13 accommodations and the value proceeding or accruing from the
14 furnishing of such accommodations without any deductions on
15 account of the cost of property or services sold, the cost of
16 materials used, labor cost, [taxes,] royalties, interest,
17 discounts, or any other expenses whatsoever. Every taxpayer



1 shall be presumed to be dealing on a cash basis unless the
2 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 or transient accommodation intermediaries and
14 passed on, collected, and received from the consumer as part of
15 the receipts received as compensation for the furnishing of
16 transient accommodations. Where transient accommodations are
17 furnished through arrangements made by a [~~travel agency or tour~~
18 ~~packager~~] transient accommodations intermediary at
19 noncommissionable negotiated contract rates and the gross income
20 is divided between the operator of transient accommodations on
21 the one hand and the [~~travel agency or tour packager~~] transient



1 accommodations intermediary on the other hand, [~~gross rental or~~
2 ~~gross rental proceeds to the operator means only the respective~~
3 ~~portion allocated or distributed to the operator,~~] the tax
4 imposed by this chapter shall apply to each operator and
5 transient accommodations intermediary with respect to that
6 person's respective portion of the proceeds, and no more. For
7 purposes of this definition, where the operator maintains a
8 schedule of rates for identifiable groups of individuals, such
9 as kamaainas, upon which the accommodations are leased, let, or
10 rented, gross rental or gross rental proceeds means the receipts
11 collected and received based upon the scheduled rates and
12 recorded as receipts in its books and 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 travel
18 agencies, tour packagers, wholesale travel companies, online
19 websites, online travel agencies, [ex] online booking agencies,
20 or booking platforms, that offers, lists, advertises, or accepts
21 reservations or collects whole or partial payment for transient



1 accommodations or resort time share vacation interests, units,
2 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 and every transient accommodations
6 intermediary who arranges transient accommodations at
7 noncommissioned negotiated contract rates shall pay to the State
8 the tax imposed by subsection (a), as provided in this chapter."

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

11 "**§237D-4 Certificate of registration.** (a) Each operator,
12 transient accommodations intermediary, or plan manager as a
13 condition precedent to engaging or continuing in the business of
14 furnishing transient accommodations or in business as a resort
15 time share vacation plan shall register with the director the
16 name and physical address of each place of business within the
17 State subject to this chapter. The operator or plan manager
18 shall make a one-time payment as follows:

19 (1) \$5 for each registration for transient accommodations
20 consisting of one to five units;



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

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

13 (b) The registration, or in lieu thereof a notice stating
14 where the registration may be inspected and examined, shall at
15 all times be conspicuously displayed at the place for which it
16 is issued. The name, phone number, and electronic mail address
17 of the local contact shall at all times be conspicuously
18 displayed in the same place as the registration or the same
19 place as the notice stating where the registration may be
20 inspected and examined. Failure to meet the requirements of
21 this subsection shall be unlawful. The department may issue



1 citations to any person who fails to conspicuously display the
2 registration or notice, or the local contact's name, phone
3 number, or electronic mail address as required by this
4 subsection. A citation issued pursuant to this subsection for
5 each transient accommodation or resort time share vacation
6 interest, plan, or unit in violation of this subsection shall
7 include a monetary fine of not less than:

8 (1) \$500 per day, for a first violation for which a
9 citation is issued;

10 (2) \$1,000 per day, for a second violation for which a
11 citation is issued; and

12 (3) \$5,000 per day, for a third and any subsequent
13 violation for which a citation is issued.

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

17 (1) The registration identification number or an
18 electronic link to the registration identification
19 number of the operator or plan manager issued pursuant
20 to this section; and



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

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

- 15 (1) \$500 per day, for a first violation for which a
16 citation is issued;
- 17 (2) \$1,000 per day, for a second violation for which a
18 citation is issued; and
- 19 (3) \$5,000 per day, for a third and any subsequent
20 violation for which a citation is issued.



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

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

18 (g) Any person who may lawfully be required by the State,
19 and who is required by this chapter, to register as a condition
20 precedent to engaging or continuing in the business of
21 furnishing transient accommodations or as a plan manager subject



1 to taxation under this chapter, who engages or continues in the
2 business without registering in conformity with this chapter,
3 shall be guilty of a misdemeanor. Any director, president,
4 secretary, or treasurer of a corporation who permits, aids, or
5 abets such corporation to engage or continue in business without
6 registering in conformity with this chapter, shall likewise be
7 guilty of a misdemeanor. The penalty for the misdemeanors shall
8 be the same as that prescribed by section 231-35 for
9 individuals, corporations, or officers of corporations, as the
10 case may be, for violation of that section.

11 (h) Any monetary fine assessed under this section shall be
12 due and payable thirty days after issuance of the citation,
13 subject to appeal rights provided under this subsection.
14 Citations may be appealed to the director of taxation or the
15 director's designee.

16 (i) Each transient accommodations intermediary who markets
17 transient accommodations through a travel agency, as a condition
18 precedent to entering into an arrangement to furnish transient
19 accommodations at noncommissioned negotiated contract rates,
20 shall register with the director. The travel agency or tour
21 packager shall make a one-time payment of \$15 for each



1 registration, upon receipt of which the director shall issue a
2 certificate of registration in such form as the director
3 determines, attesting that the registration has been made. The
4 registration shall not be transferable and shall be valid only
5 for the transient accommodations remarketer or travel agency in
6 whose name it 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."



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

3 "§237D-10 Overpayment; refunds. Upon application by [an
4 ~~operator or plan manager,~~] taxpayer, if the director
5 determines that any tax, interest, or penalty has been paid more
6 than once, or has been erroneously or illegally collected or
7 computed, the tax, interest, or penalty shall be credited by the
8 director on any taxes then due from the [~~operator or plan~~
9 ~~manager~~] taxpayer under this chapter. The director shall refund
10 the balance to the [~~operator or plan manager~~] taxpayer or the
11 [~~operator's or plan manager's~~] taxpayer's successors,
12 administrators, executors, or assigns in accordance with section
13 231-23. No credit or refund shall be allowed for any tax
14 imposed by this chapter, unless a claim for such credit or
15 refund is filed as follows:

16 (1) If an annual return is timely filed, or is filed
17 within three years after the date prescribed for
18 filing the annual return, then the credit or refund
19 shall be claimed within three years after the date the
20 annual return was filed or the date prescribed for
21 filing the annual return, whichever is later.



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

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

6 (B) Three years after the date prescribed for the
7 filing of the annual return,

8 whichever is later.

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

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

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

18 "§237D-12 **Records to be kept; examination.** Every
19 [~~operator and plan manager~~] taxpayer shall keep in the English
20 language within the State, and preserve for a period of three
21 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, 2018.

12



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. 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. Applies to taxable years beginning after December 31, 2018. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

