

JAN 19 2018

---

# A BILL FOR AN ACT

---

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

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

1       SECTION 1. The legislature finds that since the enactment  
2 of Act 340, Session Laws of Hawaii 1986, codified as chapter  
3 237D, Hawaii Revised Statutes (chapter 237D), occupants of  
4 short-term accommodations, who are usually visitors to Hawaii,  
5 have paid a tax on the retail value of their lodging. Known as  
6 the transient accommodations tax or "TAT", this tax is assessed  
7 and collected by the operator on the gross rental proceeds  
8 derived from furnishing transient accommodations. Operators of  
9 accommodations are obligated to impose the transient  
10 accommodations tax, collect it from visitors, and pay the tax to  
11 the State each month. Transient accommodations tax revenues are  
12 distributed for various purposes, including allocations to:  
13 support the Hawaii convention center and the Hawaii tourism  
14 authority; protect, preserve, and maintain natural resources,  
15 including beaches, that are important to the visitor industry;  
16 and the counties to help support services relied upon by



1 tourists, such as police and fire protection, emergency medical  
2 services, ocean safety personnel, and parks.

3 The legislature further finds that when chapter 237D was  
4 originally codified, it did not contemplate the variety of  
5 methods that would eventually be developed to market and sell  
6 transient accommodations. As such, chapter 237D now fails to  
7 capture the full amount of transient accommodations tax owed to  
8 the State.

9 The legislature notes that there are a variety of ways  
10 visitors can book transient accommodations, such as hotel rooms,  
11 condominiums, bed and breakfast rooms, single family residences,  
12 or rooms in residential homes. One such method is via direct or  
13 commissioned sales. In a direct sale between the operator of a  
14 licensed and permitted accommodation and a visitor, the full  
15 retail price and taxes are paid to the operator, with the taxes  
16 then being paid to the State. If the visitor uses the services  
17 of a travel agency or an online travel agency that facilitates a  
18 booking directly with the operator and is compensated by  
19 commissions, the full retail price and taxes are transmitted to  
20 the operator. The commissions paid cover the travel agency's



1 operating costs, such as marketing, advertising, payroll,  
2 benefits, rent, and profit.

3 Another method is sales based on net contracted rates. A  
4 significant number of bookings to Hawaii are made by a visitor  
5 directly or by a travel agent on the visitor's behalf, through  
6 wholesale travel companies and online travel agencies that have  
7 established wholesale net rate contracts with accommodation  
8 operators. The difference between the retail rate paid by the  
9 visitor and the net rate is retained by the wholesale company.  
10 As with travel agent commissions, this margin covers operating  
11 costs, such as travel agent commissions, marketing, advertising,  
12 payroll, benefits, rent, and profit.

13 Companies apply the general excise tax, and in some cases  
14 the transient accommodations tax, to the gross retail price paid  
15 by the visitor or the visitor's agent. The accommodation  
16 operator is paid the net rate and associated general excise tax  
17 and transient accommodations tax. However, the accommodation  
18 operator is responsible for the payment of taxes on only the  
19 portion of the revenue they receive, not the taxes on the margin  
20 retained by the company or remarketer. Furthermore, remarketers



1 are currently required to pay the general excise tax on their  
2 portion of revenue, but not the transient accommodations tax.

3 Finally, another method of reserving accommodations is via  
4 sales subject to fees on booking platforms. Some booking  
5 platforms commonly charge a booking fee and cleaning fee to the  
6 visitor and may charge subscription, registration, membership,  
7 marketing, booking, and other fees to the accommodations  
8 operator. As with the wholesale margin, the amounts charged to  
9 the visitor and the operator to cover the operating costs and  
10 profits of the booking platforms are not currently covered under  
11 the transient accommodations tax statute.

12 The legislature additionally finds that with these types of  
13 booking platforms, there are also the questions of whether the  
14 accommodation operators have the necessary county and state  
15 permits or licenses and are paying general excise and transient  
16 accommodations taxes on the value of the rental. There must be  
17 a coordinated effort between the State and counties to ensure  
18 all vacation accommodations are operating legally and paying all  
19 appropriate taxes.

20 The legislature also finds that with each transaction that  
21 is processed through a wholesale net rate contract, a booking



1 platform, or any other way in which the full amount paid by the  
2 visitor is not currently subject to the transient accommodations  
3 tax, the State loses significant tax revenues. Requiring the  
4 following will remedy the current revenue loss for the State:

5 (1) If the accommodation is booked through an online  
6 travel agency, the transient accommodations tax will  
7 be paid by the online travel agency and the operator  
8 (e.g., a hotel, condominium, or resort) and calculated  
9 on their respective gross receipts, including any  
10 added fees or commissions;

11 (2) If the accommodation is booked through an  
12 international or domestic wholesale travel company,  
13 the transient accommodations tax will be paid by the  
14 operator and the wholesale travel company and  
15 calculated on each of their respective gross receipts,  
16 including any added fees, markups, or commissions; and

17 (3) If the accommodation is booked through a booking  
18 platform, the full amount of transient accommodations  
19 tax will be charged to the consumer at the time of the  
20 sale, and the transient accommodations tax will be  
21 paid by the booking platform, the operator, or both



1 and calculated on each of their respective gross  
2 receipts from the sale, including any added fees or  
3 markups.

4 Accordingly, the purpose of this Act is to ensure the State  
5 receives the full amount of transient accommodations tax  
6 calculated based upon the full or gross rental price paid by the  
7 visitor, whether that amount is collected by the local Hawaii  
8 operator, travel agent, wholesale travel company, or online by  
9 an online travel agency or booking platform.

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

12 1. By adding a new definition to be appropriately inserted  
13 and to read:

14 "Travel agency" shall have the same meaning as in section  
15 468L-1."

16 2. By amending the definition of "gross rental" or "gross  
17 rental proceeds" to read:

18 "Gross rental" or "gross rental proceeds" means the gross  
19 [receipts,] sale or gross charges collected from consumers,  
20 including but not limited to booking fees, cleaning fees,  
21 lodging fees, transient fees, or any other fees collected, but



1 does not include fees collected for ground transportation,  
2 airfare, meals, excursions, tours, or other items included in a  
3 travel package, other than accommodations, cash or accrued, of  
4 the taxpayer received as compensation for the furnishing of  
5 transient accommodations and the value proceeding or accruing  
6 from the furnishing of such accommodations without any  
7 deductions on account of the cost of property or services sold,  
8 the cost of materials used, labor cost, [~~taxes,~~] royalties,  
9 interest, discounts, or any other expenses whatsoever. Every  
10 taxpayer shall be presumed to be dealing on a cash basis unless  
11 the taxpayer proves to the satisfaction of the department of  
12 taxation that the taxpayer is dealing on an accrual basis and  
13 the taxpayer's books are so kept, or unless the taxpayer employs  
14 or is required to employ the accrual basis for the purposes of  
15 the tax imposed by chapter 237 for any taxable year in which  
16 event the taxpayer shall report the taxpayer's gross income for  
17 the purposes of this chapter on the accrual basis for the same  
18 period.

19       The words "gross rental" or "gross rental proceeds" shall  
20 not be construed to include the amounts of taxes imposed by  
21 chapter 237 or this chapter on operators of transient



1 accommodations and passed on, collected, and received from the  
2 consumer as part of the receipts received as compensation for  
3 the furnishing of transient accommodations. Where transient  
4 accommodations are furnished through arrangements made by a  
5 transient accommodations remarketer or travel agency [~~or tour~~  
6 ~~packager~~] at noncommissionable negotiated contract rates and the  
7 gross income is divided between the operator of transient  
8 accommodations on the one hand and the transient accommodations  
9 remarketer or travel agency [~~or tour packager~~] on the other  
10 hand, [~~gross rental or gross rental proceeds to the operator~~  
11 ~~means only the respective portion allocated or distributed to~~  
12 ~~the operator,~~] the tax imposed by this chapter shall apply to  
13 each person with respect to that person's respective portion of  
14 the proceeds, and no more. For purposes of this definition,  
15 where the operator maintains a schedule of rates for  
16 identifiable groups of individuals, such as kamaainas, upon  
17 which the accommodations are leased, let, or rented, gross  
18 rental or gross rental proceeds means the receipts collected and  
19 received based upon the scheduled rates and recorded as receipts  
20 in its books and records."



1           3. By amending the definition of "lease", "let", or  
2 "rental" to read:

3            "Lease", "let", or "rental" means the leasing or renting  
4 of living quarters or sleeping or housekeeping accommodations in  
5 hotels, apartment hotels, motels, single family dwellings,  
6 condominium property regimes or apartments defined in chapter  
7 514A or units defined in chapter 514B, cooperative apartments,  
8 rooming houses, or other places in which lodgings are regularly  
9 furnished to transients for a consideration, without transfer of  
10 the title of such property."

11           4. By amending the definition of "transient accommodations  
12 broker" to read:

13            "Transient accommodations [~~broker~~] remarketer" means any  
14 person or entity, including but not limited to persons who  
15 operate or market transient accommodations through wholesale  
16 travel companies, online websites, online travel agencies, [~~or~~]  
17 online booking agencies, or booking platforms, that offers,  
18 lists, advertises, or accepts reservations or collects whole or  
19 partial payment for transient accommodations or resort time  
20 share vacation interests, units, or plans."



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

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

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

1. By amending subsection (a) to read:

"(a) Each operator, transient accommodations remarketer, or travel agency 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 physical address of each [place of business] transient accommodation 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."

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, travel agencies, and  
transient accommodations [~~brokers~~,] remarketers, 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."

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

"(a) On or before the twentieth day of each calendar month, every ~~[operator taxable, or plan manager]~~ taxpayer 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."

SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is amended to read as follows:

**"§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



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

3 (b) Except for the revenues collected pursuant to section  
4 237D-2(e), revenues collected under this chapter shall be  
5 distributed in the following priority, with the excess revenues  
6 to be deposited into the general fund:

7 (1) \$1,500,000 shall be allocated to the Turtle Bay  
8 conservation easement special fund beginning July 1,  
9 2015, for the reimbursement to the state general fund  
10 of debt service on reimbursable general obligation  
11 bonds, including ongoing expenses related to the  
12 issuance of the bonds, the proceeds of which were used  
13 to acquire the conservation easement and other real  
14 property interests in Turtle Bay, Oahu, for the  
15 protection, preservation, and enhancement of natural  
16 resources important to the State, until the bonds are  
17 fully amortized;

18 (2) \$26,500,000 shall be allocated to the convention  
19 center enterprise special fund established under  
20 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



1 provided in this paragraph and except for any sum  
2 authorized by the legislature for expenditure  
3 from revenues subject to this paragraph,  
4 beginning July 1, 2007, funds shall be deposited  
5 into the tourism emergency special fund,  
6 established in section 201B-10, in a manner  
7 sufficient to maintain a fund balance of  
8 \$5,000,000 in the tourism emergency special fund;

9 (4) \$103,000,000 shall be allocated as follows: Kauai  
10 county shall receive 14.5 per cent, Hawaii county  
11 shall receive 18.6 per cent, city and county of  
12 Honolulu shall receive 44.1 per cent, and Maui county  
13 shall receive 22.8 per cent; provided that commencing  
14 with fiscal year 2018-2019, a sum that represents the  
15 difference between a county public employer's annual  
16 required contribution for the separate trust fund  
17 established under section 87A-42 and the amount of the  
18 county public employer's contributions into that trust  
19 fund shall be retained by the state director of  
20 finance and deposited to the credit of the county  
21 public employer's annual required contribution into



1           that trust fund in each fiscal year, as provided in  
2           section 87A-42, if the respective county fails to  
3           remit the total amount of the county's required annual  
4           contributions, as required under section 87A-43; and  
5       (5)   \$3,000,000 shall be allocated to the special land and  
6           development fund established under section 171-19;  
7           provided that the allocation shall be expended in  
8           accordance with the Hawaii tourism authority strategic  
9           plan for:

- 10           (A)   The protection, preservation, maintenance, and  
11                enhancement of natural resources, including  
12                beaches, important to the visitor industry;  
13           (B)   Planning, construction, and repair of facilities;  
14                and  
15           (C)   Operation and maintenance costs of public lands,  
16                including beaches, connected with enhancing the  
17                visitor experience.

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



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

4 (c) In addition to the allocations apportioned to the  
5 counties pursuant to subsection (b) (4), any portion of the  
6 transient accommodations taxes collected from transient  
7 accommodations remarketers or travel agencies and paid directly  
8 to the department shall be allocated to the counties in the same  
9 percentage as set forth in subsection (b) (4) and placed into a  
10 fund, which shall be named the tourism impact fund, that is  
11 established, maintained, and managed by each county.

12 [~~(e)~~] (d) On or before January or July 1 of each year or  
13 after the disposition of any tax appeal with respect to an  
14 assessment for periods after June 30, 1990, the state director  
15 of finance shall compute and pay the amount due as provided in  
16 subsection (b) to the director of finance of each county to  
17 become a general realization of the county expendable as such,  
18 except as otherwise provided by law."

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



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



1 the return on the application of any taxpayer and grant such  
2 reasonable additional time within which to make the return as  
3 the department may deem advisable.

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

6 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

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



SECTION 9. 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 10. 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 11. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 12. This Act shall take effect on July 1, 2018.

11 INTRODUCED BY:

Clarence K. Richardson

Roslyn Yl Baker

James Marcando Ke

J. Kevin G. G. H.

Breene H. H.

Don E. R.

Ernie L. Hooper



# S.B. NO. 2657

**Report Title:**

Transient Accommodations Tax; Gross Rental Price; Travel Agencies; Operators; Booking Platforms

**Description:**

Ensures the State receives the full amount of transient accommodations tax, calculated based upon the gross rental price paid by a visitor, whether that amount is collected by a local Hawaii operator, travel agent, wholesale travel company, or online by an online travel agency or booking platform.

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

