
A BILL FOR AN ACT

RELATING TO THE 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 adding a new definition to be appropriately inserted
4 and to read:

5 "Resort fee" means any charge or surcharge imposed by an
6 operator, owner, or representative thereof to a transient for
7 the use of the transient accommodation's property, services, or
8 amenities."

9 2. By amending the definition of "gross rental" or "gross
10 rental proceeds" to read:

11 "Gross rental" or "gross rental proceeds" means the gross
12 [~~receipts,~~ sales or gross charges collected from consumers,
13 including but not limited to booking fees, resort fees, cleaning
14 fees, lodging fees, transient fees, or any other fees collected,
15 but does not include fees collected for ground transportation,
16 airfare, meals, excursions, tours, or other fees unrelated to
17 the transient accommodations, cash or accrued, of the taxpayer



1 received as compensation for the furnishing of transient
2 accommodations and the value proceeding or accruing from the
3 furnishing of [~~such~~] the accommodations without any deductions
4 on account of the cost of property or services sold, the cost of
5 materials used, labor cost, [~~taxes,~~] royalties, interest,
6 discounts, or any other expenses whatsoever. Every taxpayer
7 shall be presumed to be dealing on a cash basis unless the
8 taxpayer proves to the satisfaction of the department of
9 taxation that the taxpayer is dealing on an accrual basis and
10 the taxpayer's books are so kept, or unless the taxpayer employs
11 or is required to employ the accrual basis for the purposes of
12 the tax imposed by chapter 237 for any taxable year in which
13 event the taxpayer shall report the taxpayer's gross income for
14 the purposes of this chapter on the accrual basis for the same
15 period.

16 The words "gross rental" or "gross rental proceeds" shall
17 not be construed to include the amounts of taxes imposed by
18 chapter 237 or this chapter on operators of transient
19 accommodations or transient accommodation intermediaries and
20 passed on, collected, and received from the consumer as part of
21 the receipts received as compensation for the furnishing of



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

19 3. By amending the definition of "transient accommodations
20 broker" to read:



1 "Transient accommodations [~~broker~~] intermediary" means
2 any person or entity[~~7~~] that offers, lists, advertises, markets,
3 accepts reservations for, or collects whole or partial payment
4 for transient accommodations or resort time share vacation
5 interests, units, or plans, including but not limited to
6 ~~[persons who operate]~~ travel agencies, tour packagers, wholesale
7 travel companies, online websites, online travel agencies, [~~or~~
8 ~~online booking agencies, [that offers, lists, advertises, or~~
9 ~~accepts reservations or collects whole or partial payment for~~
10 ~~transient accommodations or resort time share vacation~~
11 ~~interests, units, or plans.]~~ and booking platforms."

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

14 "(b) Every [~~operator~~] transient accommodations
15 intermediary who arranges transient accommodations at
16 noncommissioned negotiated contract rates and every operator
17 shall pay to the State the tax imposed by subsection (a), as
18 provided in this chapter."

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



1 **"§237D-4 Certificate of registration.** (a) Each operator
2 ~~[or]~~, plan manager, or transient accommodations intermediary
3 that has obtained prior consent from each operator and plan
4 manager working with the transient accommodations intermediary,
5 as a condition precedent to engaging or continuing in the
6 business of furnishing transient accommodations or in business
7 as a resort time share vacation plan, shall register with the
8 director the name and physical address of each place of business
9 within the State subject to this chapter. The operator or plan
10 manager shall make a one-time payment as follows:

11 (1) \$5 for each registration for transient accommodations
12 consisting of one to five units;

13 (2) \$15 for each registration for transient accommodations
14 consisting of six or more units; and

15 (3) \$15 for each resort time share vacation plan within
16 the State;

17 upon receipt of which the director shall issue a certificate of
18 registration in ~~[such]~~ a form as the director determines,
19 attesting that the registration has been made. The registration
20 shall not be transferable and shall be valid only for the
21 operator or plan manager in whose name it is issued and for the



1 transaction of business at the place designated therein.
2 Acquisition of additional transient accommodation units after
3 payment of the one-time fee shall not result in additional fees.

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

20 (1) \$500 per day, for a first violation for which a
21 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,~~] intermediaries, who violates



1 subsection (c). A citation issued pursuant to this subsection
2 for each transient accommodation or resort time share vacation
3 interest, plan, or unit in violation of subsection (c) shall
4 include a monetary fine of not less than:

5 (1) \$500 per day, for a first violation for which a
6 citation is issued;

7 (2) \$1,000 per day, for a second violation for which a
8 citation is issued; and

9 (3) \$5,000 per day, for a third and any subsequent
10 violation for which a citation is issued.

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

18 (f) If the license fee is paid, the department shall not
19 refuse to issue a registration or revoke or cancel a
20 registration for the exercise of a privilege protected by the
21 First Amendment of the Constitution of the United States, or for



1 the carrying on of interstate or foreign commerce, or for any
2 privilege the exercise of which, under the Constitution and laws
3 of the United States, cannot be restrained on account of
4 nonpayment of taxes, nor shall section 237D-14 be invoked to
5 restrain the exercise of such a privilege, or the carrying on of
6 such commerce.

7 (g) Any person who may lawfully be required by the State,
8 and who is required by this chapter, to register as a condition
9 precedent to engaging or continuing in the business of
10 furnishing transient accommodations or as a plan manager subject
11 to taxation under this chapter, who engages or continues in the
12 business without registering in conformity with this chapter,
13 shall be guilty of a misdemeanor. Any director, president,
14 secretary, or treasurer of a corporation who permits, aids, or
15 abets [~~such~~] the corporation to engage or continue in business
16 without registering in conformity with this chapter, shall
17 likewise be guilty of a misdemeanor. The penalty for the
18 misdemeanors shall be the same as that prescribed by section
19 231-35 for individuals, corporations, or officers of
20 corporations, as the case may be, for violation of that section.



1 (h) Any monetary fine assessed under this section shall be
2 due and payable thirty days after issuance of the citation,
3 subject to appeal rights provided under this subsection.

4 Citations may be appealed to the director of taxation or the
5 director's designee.

6 (i) Each transient accommodations intermediary, as a
7 condition precedent to entering into an arrangement to furnish
8 transient accommodations at noncommissioned negotiated contract
9 rates, shall register with the director. The transient
10 accommodations intermediary shall make a one-time payment of \$15
11 for each registration, upon receipt of which the director shall
12 issue a certificate of registration in a form as the director
13 determines, attesting that the registration has been made. The
14 registration shall not be transferable and shall be valid only
15 for the transient accommodations intermediary in whose name it
16 is issued."

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

19 "(a) On or before the twentieth day of each calendar
20 month, every [~~operator taxable, or plan manager~~] taxpayer liable
21 under this chapter during the preceding calendar month shall



1 file a sworn return with the director in [~~such~~] a form as the
2 director shall prescribe together with a remittance for the
3 amount of the tax in the form required by section 237D-6.5.
4 Sections 237-30 and 237-32 shall apply to returns and penalties
5 made under this chapter to the same extent as if the sections
6 were set forth specifically in this section."

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

9 "**§237D-7 Annual return.** On or before the twentieth day of
10 the fourth month following the close of the taxable year, every
11 person who has become liable for the payment of the taxes under
12 this chapter during the preceding tax year shall file a return
13 summarizing that person's liability under this chapter for the
14 year, in [~~such~~] a form as the director prescribes. The
15 [~~operator or plan manager~~] taxpayer shall transmit with the
16 return a remittance covering the residue of the tax chargeable
17 to the [~~operator or plan manager,~~] taxpayer, if any, to the
18 office of the appropriate state district tax assessor designated
19 in section 237D-8. The return shall be signed by the taxpayer,
20 if made by an individual, or by the president, vice-president,
21 secretary, or treasurer of a corporation, if made on behalf of a



1 corporation. If made on behalf of a partnership, firm, society,
2 unincorporated association, group, hui, joint adventure, joint
3 stock company, corporation, trust estate, decedent's estate,
4 trust, or other entity, any individual delegated by the entity
5 shall sign the same on behalf of the taxpayer. If for any
6 reason it is not practicable for the individual taxpayer to sign
7 the return, it may be done by any duly authorized agent. The
8 department, for good cause shown, may extend the time for making
9 the return on the application of any taxpayer and grant ~~[such]~~
10 reasonable additional time within which to make the return as
11 the department may deem advisable.

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

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

16 "(a) If any ~~[operator or plan manager]~~ taxpayer fails to
17 make a return as required by this chapter, the director shall
18 make an estimate of the tax liability of the ~~[operator or plan~~
19 ~~manager]~~ taxpayer from any information the director obtains, and
20 according to the estimate so made, assess the taxes, interest,
21 and penalty due the State from the ~~[operator or plan manager,]~~



1 taxpayer, give notice of the assessment to the [~~operator or plan~~
2 ~~manager~~,] taxpayer, and make demand upon the [~~operator or plan~~
3 ~~manager~~] taxpayer for payment. The assessment shall be presumed
4 to be correct until and unless, upon an appeal duly taken as
5 provided in section 237D-11, the contrary shall be clearly
6 proved by the person assessed, and the burden of proof upon
7 [~~such~~] appeal shall be upon the person assessed to disprove the
8 correctness of assessment."

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

11 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~
12 ~~operator or plan manager~~,] a taxpayer, if the director
13 determines that any tax, interest, or penalty has been paid more
14 than once, or has been erroneously or illegally collected or
15 computed, the tax, interest, or penalty shall be credited by the
16 director on any taxes then due from the [~~operator or plan~~
17 ~~manager~~] taxpayer under this chapter. The director shall refund
18 the balance to the [~~operator or plan manager~~] taxpayer or the
19 [~~operator's or plan manager's~~] taxpayer's successors,
20 administrators, executors, or assigns in accordance with section
21 231-23. No credit or refund shall be allowed for any tax



1 imposed by this chapter, unless a claim for ~~[such]~~ the credit or
2 refund is filed as follows:

3 (1) If an annual return is timely filed, or is filed
4 within three years after the date prescribed for
5 filing the annual return, then the credit or refund
6 shall be claimed within three years after the date the
7 annual return was filed or the date prescribed for
8 filing the annual return, whichever is later.

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

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

14 (B) Three years after the date prescribed for the
15 filing of the annual return,
16 whichever is later.

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

20 As to all tax payments for which a refund or credit is not
21 authorized by this section (including, without prejudice to the



1 generality of the foregoing, cases of unconstitutionality), the
2 remedies provided by appeal or by section 40-35 are exclusive."

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

5 "**§237D-12 Records to be kept; examination.** Every
6 ~~[operator and plan manager]~~ taxpayer shall keep in the English
7 language within the State, and preserve for a period of three
8 years, suitable records of gross rental, gross rental proceeds,
9 or fair market rental value relating to the business taxed under
10 this chapter, and ~~[such]~~ any other books, records of account,
11 and invoices ~~[as]~~ that may be required by the department, and
12 all such books, records, and invoices shall be open for
13 examination at any time by the department or the Multistate Tax
14 Commission pursuant to chapter 255, or the authorized
15 representative thereof."

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

18 SECTION 10. This Act, upon its approval, shall apply to
19 taxable years beginning after December 31, 2018.



Report Title:

Transient Accommodations Tax; Hotel Resort Fees; Gross Rental Price; Transient Accommodations Intermediaries

Description:

Imposes the transient accommodations tax on hotel resort fees that are calculated separately from the advertised transient accommodation's rate. 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 transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates or operators. Applies to taxable years beginning after 12/31/2018. (SD1)

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