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# A BILL FOR AN ACT

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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 mandatory charge or surcharge  
6 imposed by an operator, owner, or representative thereof to a  
7 transient for the use of the transient accommodation's property,  
8 services, or 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, including but not limited to persons who  
3 operate or market transient accommodations through travel  
4 agencies, tour packagers, wholesale travel companies, online  
5 websites, online travel agencies, [ex] online booking agencies,  
6 or booking platforms, that offers, lists, advertises, or accepts  
7 reservations or collects whole or partial payment for transient  
8 accommodations or resort time share vacation interests, units,  
9 or plans."

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

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

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

18       "**§237D-4 Certificate of registration.** (a) Each operator,  
19 transient accommodations intermediary, or plan manager as a  
20 condition precedent to engaging or continuing in the business of  
21 furnishing transient accommodations or in business as a resort



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

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

7 (2) \$15 for each registration for transient accommodations  
8 consisting of six or more units; and

9 (3) \$15 for each resort time share vacation plan within  
10 the State;

11 upon receipt of which the director shall issue a certificate of  
12 registration in ~~[such]~~ a form as the director determines,  
13 attesting that the registration has been made. The registration  
14 shall not be transferable and shall be valid only for the  
15 operator or plan manager in whose name it is issued and for the  
16 transaction of business at the place designated therein.

17 Acquisition of additional transient accommodation units after  
18 payment of the one-time fee shall not result in additional fees.

19 (b) The registration, or in lieu thereof a notice stating  
20 where the registration may be inspected and examined, shall at  
21 all times be conspicuously displayed at the place for which it



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

- 14 (1) \$500 per day, for a first violation for which a  
15 citation is issued;  
16 (2) \$1,000 per day, for a second violation for which a  
17 citation is issued; and  
18 (3) \$5,000 per day, for a third and any subsequent  
19 violation for which a citation is issued.



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

4 (1) The registration identification number or an  
5 electronic link to the registration identification  
6 number of the operator or plan manager issued pursuant  
7 to this section; and

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

14 (d) Failure to meet the requirements of subsection (c)  
15 shall be unlawful. The department may issue citations to any  
16 person, including operators, plan managers, and transient  
17 accommodations [~~brokers,~~] intermediaries, who violates  
18 subsection (c). A citation issued pursuant to this subsection  
19 for each transient accommodation or resort time share vacation  
20 interest, plan, or unit in violation of subsection (c) shall  
21 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 (e) The registration provided for by this section shall be  
8 effective until canceled in writing. Any application for the  
9 reissuance of a previously canceled registration identification  
10 number shall be regarded as a new registration application and  
11 shall be subject to the payment of the one-time registration  
12 fee. The director may revoke or cancel any license issued under  
13 this chapter for cause as provided by rule under chapter 91.

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





1 restrain the exercise of such a privilege, or the carrying on of  
2 such commerce.

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

17 (h) Any monetary fine assessed under this section shall be  
18 due and payable thirty days after issuance of the citation,  
19 subject to appeal rights provided under this subsection.  
20 Citations may be appealed to the director of taxation or the  
21 director's designee.



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

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

15        "(a) On or before the twentieth day of each calendar  
16 month, every [~~operator taxable, or plan manager~~] taxpayer liable  
17 under this chapter during the preceding calendar month shall  
18 file a sworn return with the director in [~~such~~] a form as the  
19 director shall prescribe together with a remittance for the  
20 amount of the tax in the form required by section 237D-6.5.  
21 Sections 237-30 and 237-32 shall apply to returns and penalties



1 made under this chapter to the same extent as if the sections  
2 were set forth specifically in this section."

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

5 "§237D-7 Annual return. On or before the twentieth day of  
6 the fourth month following the close of the taxable year, every  
7 person who has become liable for the payment of the taxes under  
8 this chapter during the preceding tax year shall file a return  
9 summarizing that person's liability under this chapter for the  
10 year, in [~~such~~] a form as the director prescribes. The  
11 [~~operator or plan manager~~] taxpayer shall transmit with the  
12 return a remittance covering the residue of the tax chargeable  
13 to the [~~operator or plan manager,~~] taxpayer, if any, to the  
14 office of the appropriate state district tax assessor designated  
15 in section 237D-8. The return shall be signed by the taxpayer,  
16 if made by an individual, or by the president, vice-president,  
17 secretary, or treasurer of a corporation, if made on behalf of a  
18 corporation. If made on behalf of a partnership, firm, society,  
19 unincorporated association, group, hui, joint adventure, joint  
20 stock company, corporation, trust estate, decedent's estate,  
21 trust, or other entity, any individual delegated by the entity



1 shall sign the same on behalf of the taxpayer. If for any  
2 reason it is not practicable for the individual taxpayer to sign  
3 the return, it may be done by any duly authorized agent. The  
4 department, for good cause shown, may extend the time for making  
5 the return on the application of any taxpayer and grant ~~[such]~~  
6 reasonable additional time within which to make the return as  
7 the department may deem advisable.

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

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

12 "(a) If any ~~[operator or plan manager]~~ taxpayer fails to  
13 make a return as required by this chapter, the director shall  
14 make an estimate of the tax liability of the ~~[operator or plan~~  
15 ~~manager]~~ taxpayer from any information the director obtains, and  
16 according to the estimate so made, assess the taxes, interest,  
17 and penalty due the State from the ~~[operator or plan manager,]~~  
18 taxpayer, give notice of the assessment to the ~~[operator or plan~~  
19 ~~manager,]~~ taxpayer, and make demand upon the ~~[operator or plan~~  
20 ~~manager]~~ taxpayer for payment. The assessment shall be presumed  
21 to be correct until and unless, upon an appeal duly taken as



1 provided in section 237D-11, the contrary shall be clearly  
2 proved by the person assessed, and the burden of proof upon  
3 [such] appeal shall be upon the person assessed to disprove the  
4 correctness of assessment."

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

7 "§237D-10 Overpayment; refunds. Upon application by [an  
8 ~~operator or plan manager,~~] a taxpayer, if the director  
9 determines that any tax, interest, or penalty has been paid more  
10 than once, or has been erroneously or illegally collected or  
11 computed, the tax, interest, or penalty shall be credited by the  
12 director on any taxes then due from the [~~operator or plan~~  
13 ~~manager~~] taxpayer under this chapter. The director shall refund  
14 the balance to the [~~operator or plan manager~~] taxpayer or the  
15 [~~operator's or plan manager's~~] taxpayer's successors,  
16 administrators, executors, or assigns in accordance with section  
17 231-23. No credit or refund shall be allowed for any tax  
18 imposed by this chapter, unless a claim for [such] the credit or  
19 refund is filed as follows:

- 20 (1) If an annual return is timely filed, or is filed  
21 within three years after the date prescribed for



1 filing the annual return, then the credit or refund  
2 shall be claimed within three years after the date the  
3 annual return was filed or the date prescribed for  
4 filing the annual return, whichever is later.

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

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

10 (B) Three years after the date prescribed for the  
11 filing of the annual return,  
12 whichever is later.

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

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

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



1       "§237D-12 Records to be kept; examination. Every  
2   ~~[operator and plan manager]~~ taxpayer shall keep in the English  
3   language within the State, and preserve for a period of three  
4   years, suitable records of gross rental, gross rental proceeds,  
5   or fair market rental value relating to the business taxed under  
6   this chapter, and ~~[such]~~ any other books, records of account,  
7   and invoices ~~[as]~~ that may be required by the department, and  
8   all such books, records, and invoices shall be open for  
9   examination at any time by the department or the Multistate Tax  
10   Commission pursuant to chapter 255, or the authorized  
11   representative thereof."

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

14       SECTION 10. This Act, upon its approval, shall apply to  
15   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 operators or transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates. Applies to taxable years beginning after 12/31/2018. (SD1 PROPOSED)

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

