
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 purpose of this Act is to make numerous
2 amendments to the transient accommodations tax for the purpose
3 of simplifying and streamlining administration of the transient
4 accommodations tax.

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

7 1. By adding a new definition to be appropriately inserted
8 and to read:

9 "Taxpayer" means any person liable for any tax hereunder."

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

12 "Gross rental" or "gross rental proceeds" means the gross
13 receipts, cash or accrued, of the taxpayer received as
14 compensation for the furnishing of transient accommodations or
15 entering into arrangements to furnish transient accommodations
16 and the value proceeding or accruing from the furnishing of
17 transient accommodations or entering into arrangements to



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

14 The words "gross rental" or "gross rental proceeds" shall
15 not be construed to include the amounts of taxes imposed by
16 chapter 237 or this chapter on operators of transient
17 accommodations, transient accommodations brokers, travel
18 agencies, and tour packagers and passed on, collected, and
19 received from the consumer as part of the receipts received as
20 compensation for the furnishing of transient accommodations or
21 entering into arrangements to furnish transient accommodations.



1 The words "gross rental" or "gross rental proceeds" shall
2 not be construed to include the fees earned by a hotel, hotel-
3 condominium, or condominium-hotel as defined under section
4 486K-1, that is acting as a managing or rental agent for an
5 operator or owner.

6 Where transient accommodations are furnished through
7 arrangements made by a transient accommodations broker, travel
8 agency, or tour packager at noncommissionable negotiated
9 contract rates and the gross income is divided between the
10 operator of transient accommodations on the one hand and the
11 transient accommodations broker, travel agency, or tour packager
12 on the other hand, the tax imposed by this chapter shall apply
13 to each operator and transient accommodations broker, travel
14 agency, or tour packager with respect to that person's
15 respective portion of the proceeds and no more.

16 For purposes of this definition, where the operator
17 maintains a schedule of rates for identifiable groups of
18 individuals, such as kamaainas, upon which the accommodations
19 are leased, let, or rented, gross rental or gross rental
20 proceeds means the receipts collected and received based upon



1 the scheduled rates and recorded as receipts in its books and
2 records."

3 3. By amending the definition of "operator" to read:

4 "Operator" means any person operating a transient
5 accommodation, whether as owner or proprietor or as lessee,
6 sublessee, mortgagee in possession, licensee, or otherwise, or
7 engaging or continuing in any service business [~~which~~] that
8 involves the actual furnishing of transient accommodation[~~-~~] or
9 that results in the collection of any receipts defined as gross
10 rental proceeds under this chapter."

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

13 "**§237D-4 Certificate of registration.** (a) [~~Each operator~~
14 ~~or plan manager~~] Every person not required to register by
15 section 237D-4.5, as a condition precedent to engaging or
16 continuing in the business of furnishing transient
17 accommodations or in business as a resort time share vacation
18 plan, shall register with the director the name and address of
19 each place of business within the State subject to this chapter.
20 The [~~operator or plan manager~~] person shall make a one-time
21 payment as follows:



1 (1) \$5 for each registration for transient accommodations
2 consisting of one to five units;
3 (2) \$15 for each registration for transient accommodations
4 consisting of six or more units; and
5 (3) \$15 for each resort time share vacation plan within
6 the State;
7 upon receipt of which the director shall issue a certificate of
8 registration in [~~such~~] a form as the director determines,
9 attesting that the registration has been made. The registration
10 shall not be transferable and shall be valid only for the
11 [~~operator or plan manager~~] person in whose name it is issued and
12 for the transaction of business at the place designated therein.
13 Acquisition of additional transient accommodation units after
14 payment of the one-time fee shall not result in additional fees.
15 (b) The registration, or in lieu thereof a notice stating
16 where the registration may be inspected and examined, shall at
17 all times be conspicuously displayed at the place for which it
18 is issued. The name, phone number, and electronic mail address
19 of the local contact shall at all times be conspicuously
20 displayed in the same place as the registration or the same
21 place as the notice stating where the registration may be



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

- 10 (1) \$500 per day, for a first violation for which a
11 citation is issued;
- 12 (2) \$1,000 per day, for a second violation for which a
13 citation is issued; and
- 14 (3) \$5,000 per day, for a third and any subsequent
15 violation for which a citation is issued.
- 16 (c) Any advertisement, including an online advertisement,
17 for any transient accommodation or resort time share vacation
18 interest, plan, or unit shall conspicuously provide:
- 19 (1) The registration identification number or an
20 electronic link to the registration identification



1 number of the operator or plan manager issued pursuant
2 to this section; and

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

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

17 (1) \$500 per day, for a first violation for which a
18 citation is issued;

19 (2) \$1,000 per day, for a second violation for which a
20 citation is issued; and



1 (3) \$5,000 per day, for a third and any subsequent
2 violation for which a citation is issued.

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

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

20 ~~[(g) Any person who may lawfully be required by the State,~~
21 ~~and who is required by this chapter, to register as a condition~~



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

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

18 (h) Any person who is required by this section to register
19 as a condition precedent to engaging or continuing in the
20 business of furnishing transient accommodations or as a plan
21 manager subject to taxation under this chapter, who engages or



1 continues in the business without registering in conformity with
2 this section, shall be subject to the citation process and
3 monetary fines under subsection (d).

4 (i) For purposes of this section, "engaging or continuing
5 in the business of furnishing transient accommodations" includes
6 posting any advertisement for the furnishing of a transient
7 accommodation.

8 (j) This section shall not apply to a hotel, hotel-
9 condominium, or condominium-hotel as defined under section
10 486K-1 that is acting as a managing or rental agent for an
11 operator or owner."

12 SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"[+]§237D-4.5[+] Certificate of registration for transient**
15 **accommodations broker, travel agency, and tour packager. (a)**

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



1 for each registration, upon receipt of which the director shall
2 issue a certificate of registration in a 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 broker, travel agency, or tour
6 packager in whose name it is issued.

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

14 (b) Any person who enters into an agreement to furnish
15 transient accommodations without registering in conformity with
16 this section shall be subject to the citation process and
17 monetary fines under section 237D-4(d) and (g).

18 (c) This section shall not apply to a hotel, hotel-
19 condominium, or condominium-hotel as defined under section
20 486K-1 that is acting as a managing or rental agent for an
21 operator or owner."



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

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

12 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) All remittances of taxes imposed under this chapter
15 shall be made by cash, bank drafts, cashier's check, money
16 order, or certificate of deposit [~~to the office of the taxation~~
17 ~~district to which the return was transmitted~~]."

18 SECTION 7. 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~~] a form as the director prescribes [~~—The~~
5 ~~operator or plan manager~~] and shall transmit with the return a
6 remittance covering the residue of the tax [~~chargeable to the~~
7 ~~operator or plan manager,~~] due, if any [~~, to the office of the~~
8 ~~appropriate state district tax assessor designated in section~~
9 ~~237D-8~~]. The return shall be signed by the taxpayer, if made by
10 an individual, or by the president, vice-president, secretary,
11 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 8. 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~~] person 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~~] person 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 person, give notice of the assessment to the [~~operator or plan~~
14 ~~manager,~~] person, and make demand upon the [~~operator or plan~~
15 ~~manager~~] person 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 9. 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~~], if the director determines that any
5 tax, interest, or penalty has been paid more than once, or has
6 been erroneously or illegally collected or computed, the tax,
7 interest, or penalty shall be credited by the director on any
8 taxes then due from the [~~operator or plan manager~~] person under
9 this chapter. The director shall refund the balance to the
10 [~~operator or plan manager or the operator's or plan manager's~~
11 person or the person's successors, administrators, executors, or
12 assigns in accordance with section 231-23. No credit or refund
13 shall be allowed for any tax imposed by this chapter, unless a
14 claim for [~~such~~] the credit or refund is filed as follows:

15 (1) If an annual return is timely filed, or is filed
16 within three years after the date prescribed for
17 filing the annual return, then the credit or refund
18 shall be claimed within three years after the date the
19 annual return was filed or the date prescribed for
20 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 10. Section 237D-16, Hawaii Revised Statutes, is
17 amended to read as follows:

18 " ~~§237D-16~~ Administration and enforcement; rules.

19 (a) The director of taxation shall administer and enforce this
20 chapter. In respect of:



1 (1) The examinations of books and records and of taxpayers
2 and other persons [7];
3 (2) Procedure and powers upon failure or refusal by a
4 taxpayer to make a return or proper return [7]; and
5 (3) The general administration of this chapter,
6 the director of taxation shall have all rights and powers
7 conferred by chapter 237 with respect to taxes thereby or
8 thereunder imposed; and, without restriction upon these rights
9 and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are
10 made applicable to and with respect to the taxes, taxpayers, tax
11 officers, and other persons, and the matters and things affected
12 or covered by this chapter, insofar as not inconsistent with
13 this chapter, in the same manner, as nearly as may be, as in
14 similar cases covered by chapter 237.

15 (b) The director may adopt, amend, or repeal rules under
16 chapter 91 to carry out this chapter."

17 SECTION 11. Section 237D-8, Hawaii Revised Statutes, is
18 repealed.

19 [~~§237D-8 Filing of returns. All monthly, quarterly,~~
20 ~~semiannual, and annual returns shall be transmitted to the~~



1 ~~office of the taxation district in which the taxes arose or to~~
2 ~~the office of the first taxation district in Honolulu."]~~

3 SECTION 12. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect upon its approval.



H.B. NO. 2366
S.D. 1

Report Title:

Transient Accommodations Tax

Description:

Amends the transient accommodations tax law to repeal the misdemeanor for failing to register and replacing it with a fine structure and to make various technical amendments. (SD1)

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

