

# S.B. NO. 2922

JAN 23 2020

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## 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  
8 inserted and to read as follows:

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

10          (2) By amending the definition of "operator" to read as  
11 follows:

12          "Operator" means any person operating a transient  
13 accommodation, whether as owner or proprietor or as lessee,  
14 sublessee, mortgagee in possession, licensee, or otherwise, or  
15 engaging or continuing in any service business which involves  
16 the actual furnishing of transient accommodation[+] or which  
17 results in the collection of any receipts defined as gross  
18 rental proceeds under this chapter."

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

3 **"§237D-4 Certificate of registration.** (a) [~~Each operator~~  
4 ~~or plan manager~~] Every person not required to register by  
5 section 237D-4.5, as a condition precedent to engaging or  
6 continuing in the business of furnishing transient  
7 accommodations or in business as a resort time share vacation  
8 plan, shall register with the director the name and address of  
9 each place of business within the State subject to this chapter.  
10 The [~~operator or plan manager~~] person shall make a one-time  
11 payment as follows:

- 12 (1) \$5 for each registration for transient accommodations  
13 consisting of one to five units;  
14 (2) \$15 for each registration for transient accommodations  
15 consisting of six or more units; and  
16 (3) \$15 for each resort time share vacation plan within  
17 the State;

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

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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;

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

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

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

8           (1) The registration identification number or an  
9           electronic link to the registration identification  
10          number of the operator or plan manager issued pursuant  
11          to this section; and

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

18          (d) Failure to meet the requirements of subsection (c)  
19 shall be unlawful. The department may issue citations to any  
20 person, including operators, plan managers, and transient  
21 accommodations brokers, who violates subsection (c). A citation  
22 issued pursuant to this subsection for each transient

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1 accommodation or resort time share vacation interest, plan, or  
2 unit in violation of subsection (c) shall include a monetary  
3 fine of not less than:

4 (1) \$500 per day, for a first violation for which a  
5 citation is issued;

6 (2) \$1,000 per day, for a second violation for which a  
7 citation is issued; and

8 (3) \$5,000 per day, for a third and any subsequent  
9 violation for which a citation is issued.

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

17 (f) If the license fee is paid, the department shall not  
18 refuse to issue a registration or revoke or cancel a  
19 registration for the exercise of a privilege protected by the  
20 First Amendment of the Constitution of the United States, or for  
21 the carrying on of interstate or foreign commerce, or for any  
22 privilege the exercise of which, under the Constitution and laws

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1 of the United States, cannot be restrained on account of  
2 nonpayment of taxes, nor shall section 237D-14 be invoked to  
3 restrain the exercise of such a privilege, or the carrying on of  
4 such commerce.

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

19 ~~(h)]~~ (g) Any monetary fine assessed under this section  
20 shall be due and payable thirty days after issuance of the  
21 citation, subject to appeal rights provided under this

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1 subsection. Citations may be appealed to the director of  
2 taxation or the director's designee.

3 (h) Any person who is required by this section to register  
4 as a condition precedent to engaging or continuing in the  
5 business of furnishing transient accommodations or as a plan  
6 manager subject to taxation under this chapter, who engages or  
7 continues in the business without registering in conformity with  
8 this section, shall be subject to the citation process and  
9 monetary fines under subsection (d).

10 (i) For purposes of this section, "engaging or continuing  
11 in the business of furnishing transient accommodations" includes  
12 posting any advertisement for the furnishing of a transient  
13 accommodation."

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

16 "[+]§237D-4.5[+] **Certificate of registration for transient**  
17 **accommodations broker, travel agency, and tour packager. (a)**  
18 Each transient accommodations broker, travel agency, or tour  
19 packager, as a condition precedent to entering into an  
20 arrangement to furnish transient accommodations at  
21 noncommissioned negotiated contract rates, shall register with  
22 the director. The transient accommodations broker, travel

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1 agency, or tour packager shall make a one-time payment of \$15  
2 for each registration, upon receipt of which the director shall  
3 issue a certificate of registration in a form as the director  
4 determines, attesting that the registration has been made. The  
5 registration shall not be transferable and shall be valid only  
6 for the transient accommodations broker, travel agency, or tour  
7 packager in whose name it is issued.

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

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

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

21 "(a) On or before the twentieth day of each calendar  
22 month, every [~~operator taxable, or plan manager~~] person liable



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

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

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

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

16 "**§237D-7 Annual return.** On or before the twentieth day of  
17 the fourth month following the close of the taxable year, every  
18 person who has become liable for the payment of the taxes under  
19 this chapter during the preceding tax year shall file a return  
20 summarizing that person's liability under this chapter for the  
21 year, in such form as the director prescribes [~~The operator or~~  
22 ~~plan manager~~] and shall transmit with the return a remittance

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1 covering the residue of the tax [~~chargeable to the operator or~~  
2 ~~plan manager,~~] due, if any[, ~~to the office of the appropriate~~  
3 ~~state district tax assessor designated in section 237D-8~~]. The  
4 return shall be signed by the taxpayer, if made by an  
5 individual, or by the president, vice-president, secretary, or  
6 treasurer of a corporation, if made on behalf of a corporation.  
7 If made on behalf of a partnership, firm, society,  
8 unincorporated association, group, hui, joint adventure, joint  
9 stock company, corporation, trust estate, decedent's estate,  
10 trust, or other entity, any individual delegated by the entity  
11 shall sign the same on behalf of the taxpayer. If for any  
12 reason it is not practicable for the individual taxpayer to sign  
13 the return, it may be done by any duly authorized agent. The  
14 department, for good cause shown, may extend the time for making  
15 the return on the application of any taxpayer and grant such  
16 reasonable additional time within which to make the return as  
17 the department may deem advisable.

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

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

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

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

17           "**§237D-10 Overpayment; refunds.** Upon application [~~by an~~  
18 ~~operator or plan manager~~], if the director determines that any  
19 tax, interest, or penalty has been paid more than once, or has  
20 been erroneously or illegally collected or computed, the tax,  
21 interest, or penalty shall be credited by the director on any  
22 taxes then due from the [~~operator or plan manager~~] person under

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1 this chapter. The director shall refund the balance to the  
2 [~~operator or plan manager or the operator's or plan manager's~~]  
3 person or the person's successors, administrators, executors, or  
4 assigns in accordance with section 231-23. No credit or refund  
5 shall be allowed for any tax imposed by this chapter, unless a  
6 claim for such credit or refund is filed as follows:

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

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

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

18 (B) Three years after the date prescribed for the  
19 filing of the annual return,

20 whichever is later.

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

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

8 SECTION 10. Section 237D-16, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~+~~]**§237D-16**[~~+~~] **Administration and enforcement; rules.**

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

13 (1) The examinations of books and records and of taxpayers  
14 and other persons,

15 (2) Procedure and powers upon failure or refusal by a  
16 taxpayer to make a return or proper return, and

17 (3) The general administration of this chapter,

18 the director of taxation shall have all rights and powers

19 conferred by chapter 237 with respect to taxes thereby or

20 thereunder imposed; and, without restriction upon these rights

21 and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are

22 made applicable to and with respect to the taxes, taxpayers, tax

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1 officers, and other persons, and the matters and things affected  
2 or covered by this chapter, insofar as not inconsistent with  
3 this chapter, in the same manner, as nearly as may be, as in  
4 similar cases covered by chapter 237.

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

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

9 [~~"§237D-8 Filing of returns. All monthly, quarterly,  
10 semiannual, and annual returns shall be transmitted to the  
11 office of the taxation district in which the taxes arose or to  
12 the office of the first taxation district in Honolulu."~~]

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

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

INTRODUCED BY:



BY REQUEST

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**Report Title:**

Transient Accommodations Tax

**Description:**

Amends chapter 237D, Hawaii Revised Statutes, to repeal the misdemeanor for failing to register under chapter 237D and replacing it with a fine structure and to make various technical amendments.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS TAX.

PURPOSE: To amend chapter 237D, Hawaii Revised Statutes (HRS), by updating various sections for consistency and clarity.

MEANS: Amend sections 237D-1, 237D-4, 237D-4.5, 237D-6(a), 237D-6.5(a), 237D-7, 237D-9(a), 237D-10, and 237D-16 and repeal section 237D-8, HRS.

JUSTIFICATION: Many provisions of chapter 237D, HRS, are out of date and must be updated. The references to "operator or plan manager" must be updated as recent amendments subject additional taxpayers to the transient accommodations tax. The criminal penalty for failure to register is not consistent with the monetary fines imposed for the same violation under general excise tax (GET) law, thus, this measure proposes replacing the criminal penalty with a monetary fine. Provisions requiring taxpayers to file and pay at specific taxation districts are out of date and are therefore removed. Finally, section 237D-16, HRS, is amended to update the applicable penalties that are adopted from GET law. Specifically, section 237-41.5, HRS, which provides for personal liability, is made applicable to chapter 237D, HRS.

Impact on the public: There will be minimal impact on the general public.

Impact on the department and other agencies: The department will benefit from a more streamlined transient accommodations tax law.



GENERAL FUND: None.  
OTHER FUNDS: None.  
PPBS PROGRAM  
DESIGNATION: None.  
OTHER AFFECTED  
AGENCIES: None.  
EFFECTIVE DATE: Upon approval.