

JAN 18 2019

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 "fair market rental
10 value" to read:

11 "Fair market rental value" means an amount equal to [~~one-~~
12 ~~half~~] one hundred per cent of the gross daily maintenance fees
13 that are paid by the owner and are attributable to the time
14 share unit located in Hawaii. Gross daily maintenance fees
15 include maintenance costs, operational costs, insurance, repair
16 costs, administrative costs, taxes, other than transient
17 accommodations taxes, resort fees, and other costs including



1 payments required for reserves or sinking funds. Amounts paid
2 for optional goods and services such as food and beverage
3 services or beach chair or umbrella rentals shall be excluded
4 from fair market rental value."

5 3. By amending the definition of "gross rental" or "gross
6 rental proceeds" to read:

7 "Gross rental" or "gross rental proceeds" means the gross
8 [receipts,] sales or gross charges collected from consumers
9 including but not limited to booking fees, resort fees, cleaning
10 fees, lodging fees, transient fees, or any other fees collected,
11 but does not include fees collected for ground transportation,
12 airfare, meals, excursions, tours, or other fees unrelated to
13 the transient accommodations, cash or accrued, of the taxpayer
14 received as compensation for the furnishing of transient
15 accommodations or entering into arrangements to furnish
16 transient accommodations and the value proceeding or accruing
17 from the furnishing of transient accommodations or entering into
18 arrangements to furnish transient accommodations without any
19 deductions on account of the cost of property or services sold,
20 the cost of materials used, labor cost, [~~taxes,~~] royalties,
21 interest, discounts, or any other expenses whatsoever. Every



1 taxpayer shall be presumed to be dealing on a cash basis unless
2 the taxpayer proves to the satisfaction of the department of
3 taxation that the taxpayer is dealing on an accrual basis and
4 the taxpayer's books are so kept, or unless the taxpayer employs
5 or is required to employ the accrual basis for the purposes of
6 the tax imposed by chapter 237 for any taxable year in which
7 event the taxpayer shall report the taxpayer's gross income for
8 the purposes of this chapter on the accrual basis for the same
9 period.

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

19 Where transient accommodations are furnished through
20 arrangements made by a transient accommodations [~~broker, travel~~
21 ~~agency, or tour packager~~] intermediary at noncommissionable



1 negotiated contract rates and the gross income is divided
2 between the operator of transient accommodations on the one hand
3 and the transient accommodations [~~broker, travel agency, or tour~~
4 ~~packager~~] intermediary on the other hand, the tax imposed by
5 this chapter shall apply to each operator and transient
6 accommodations [~~broker, travel agency, or tour packager~~]
7 intermediary with respect to that person's respective portion of
8 the proceeds and no more.

9 For purposes of this definition, where the operator
10 maintains a schedule of rates for identifiable groups of
11 individuals, such as kamaainas, upon which the accommodations
12 are leased, let, or rented, gross rental or gross rental
13 proceeds means the receipts collected and received based upon
14 the scheduled rates and recorded as receipts in its books and
15 records."

16 4. By amending the definition of "transient accommodations
17 broker" to read:

18 "Transient accommodations [~~broker~~] intermediary" means
19 any person or entity[7] that offers, lists, advertises, markets,
20 accepts reservations for, or collects whole or partial payment
21 for transient accommodations or resort time share vacation



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

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

10 "(b) Every transient accommodations [~~broker, travel~~
11 ~~agency, and tour packager~~] intermediary who arranges transient
12 accommodations at noncommissioned negotiated contract rates and
13 every operator shall pay to the State the tax imposed by
14 subsection (a), as provided in this chapter."

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

17 "**§237D-4 Certificate of registration.** (a) Each operator
18 or plan manager as a condition precedent to engaging or
19 continuing in the business of furnishing transient
20 accommodations or in business as a resort time share vacation
21 plan, shall register with the director the name and physical



1 address of each place of business within the State subject to
2 this chapter. The operator or plan manager shall make a one-
3 time payment as follows:

4 (1) \$5 for each registration for transient accommodations
5 consisting of one to five units;

6 (2) \$15 for each registration for transient accommodations
7 consisting of six or more units; and

8 (3) \$15 for each resort time share vacation plan within
9 the State;

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

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

18 (b) The registration, or in lieu thereof a notice stating
19 where the registration may be inspected and examined, shall at
20 all times be conspicuously displayed at the place for which it
21 is issued. The name, phone number, and electronic mail address



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

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



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

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

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

19 (1) \$500 per day, for a first violation for which a
20 citation is issued;



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

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



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

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

20 (i) Each transient accommodations intermediary, as a
21 condition precedent to entering into an arrangement to furnish



1 transient accommodations at noncommissioned negotiated contract
2 rates, shall register with the director. The transient
3 accommodations intermediary shall provide the physical address
4 of each transient accommodation for which it will enter into an
5 arrangement to furnish transient accommodations at
6 noncommissioned negotiated contract rates; provided that the
7 transient accommodations intermediary has obtained prior written
8 consent from the operator or plan manager to disclose the
9 address of the transient accommodation. The transient
10 accommodations intermediary shall make a one-time payment of \$15
11 to register with the director. Upon receipt of the registration
12 payment, the director shall issue a certificate of registration
13 to the transient accommodations intermediary in a form as the
14 director determines, attesting that the registration has been
15 made. The registration shall not be transferable and shall be
16 valid only for the transient accommodations intermediary in
17 whose name it is issued."

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

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



1 under this chapter during the preceding calendar month shall
 2 file a sworn return with the director in [~~such~~] a 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 5. Section 237D-7, Hawaii Revised Statutes, is
 9 amended to read as follows:

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



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

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

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

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



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

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

12 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~
13 ~~operator or plan manager,~~] a taxpayer, if the director
14 determines that any tax, interest, or penalty has been paid more
15 than once, or has been erroneously or illegally collected or
16 computed, the tax, interest, or penalty shall be credited by the
17 director on any taxes then due from the [~~operator or plan~~
18 ~~manager~~] taxpayer under this chapter. The director shall refund
19 the balance to the [~~operator or plan manager~~] taxpayer or the
20 [~~operator's or plan manager's~~] taxpayer's successors,
21 administrators, executors, or assigns in accordance with section



1 231-23. No credit or refund shall be allowed for any tax
2 imposed by this chapter, unless a claim for [~~such~~] the credit or
3 refund is filed as follows:

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

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

- 14 (A) Three years after the payment of the tax; or
15 (B) Three years after the date prescribed for the
16 filing of the annual return,
17 whichever is later.

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



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

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

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

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

20 "(c) Except as otherwise provided, this chapter shall
21 apply to a transient accommodations [~~broker, travel agency, or~~]



S.B. NO. 714

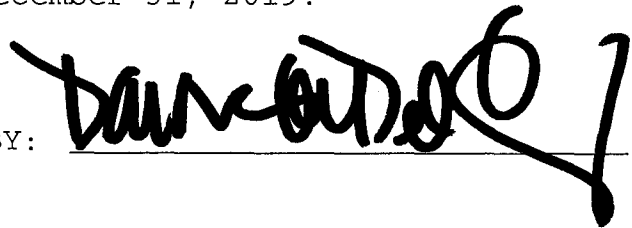
1 ~~tour packager]~~ intermediary who furnishes or enters into an
2 agreement to furnish transient accommodations at noncommissioned
3 negotiated contract rates in the same manner as [~~it~~] this
4 chapter applies to an operator."

5 SECTION 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act, upon its approval, shall apply to
8 taxable years beginning after December 31, 2019.

9

INTRODUCED BY:

A large, bold, handwritten signature in black ink, appearing to read "Dan Claitor", is written over a horizontal line. The signature is stylized and extends to the right of the line.

S.B. NO. 714

Report Title:

Transient Accommodations Tax; Hotel Resort Fees; Gross Rental Price; Transient Accommodations Intermediaries; Time Shares; Tax Base

Description:

Imposes the transient accommodations tax on 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. Amends the formula for the amount of transient accommodations tax to be collected from time shares by increasing the base on which time share occupancy is taxed from one-half of the gross daily maintenance fees paid by the owner and are attributable to the time share unit to one hundred per cent of the gross daily maintenance fees. Specifies that the transient accommodations tax is to be collected from transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates in the same manner as transient accommodations operators. Applies to taxable years beginning after 12/31/2019.

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

