
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 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 "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 as follows:

17 1. By amending subsection (a) to read:

18 "(a) Each operator or plan manager as a condition
19 precedent to engaging or continuing in the business of
20 furnishing transient accommodations or in business as a resort
21 time share vacation plan, shall register with the director the



1 name and physical address of each place of business within the
2 State subject to this chapter. The operator or plan manager
3 shall make a one-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
18 fees."

19 2. By amending subsection (d) to read:

20 "(d) Failure to meet the requirements of subsection (c)
21 shall be unlawful. The department may issue citations to any



1 person, including operators, plan managers, and transient
2 accommodations [~~brokers,~~] intermediaries, who violates
3 subsection (c). A citation issued pursuant to this subsection
4 for each transient accommodation or resort time share vacation
5 interest, plan, or unit in violation of subsection (c) shall
6 include a monetary fine of not less than:

- 7 (1) \$500 per day, for a first violation for which a
8 citation is issued;
- 9 (2) \$1,000 per day, for a second violation for which a
10 citation is issued; and
- 11 (3) \$5,000 per day, for a third and any subsequent
12 violation for which a citation is issued."

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

15 "[+]§237D-4.5[+] Certificate of registration for transient
16 accommodations broker, travel agency, and tour packager. Each
17 transient accommodations [~~broker, travel agency, or tour~~
18 ~~packager,~~] intermediary as a condition precedent to entering
19 into an arrangement to furnish transient accommodations at
20 noncommissioned negotiated contract rates, shall register with
21 the director. The transient accommodations intermediary shall



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

15 The registration shall be effective until canceled in
16 writing. Any application for the reissuance of a previously
17 canceled registration identification number shall be regarded as
18 a new application for registration and shall be subject to the
19 payment of the one-time registration fee. The director may
20 revoke or cancel any registration issued under this section for
21 cause as provided by rule under chapter 91."



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~~] taxpayer 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-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§237D-7 Annual return.** On or before the twentieth day of
15 the fourth month following the close of the taxable year, every
16 person who has become liable for the payment of the taxes under
17 this chapter during the preceding tax year shall file a return
18 summarizing that person's liability under this chapter for the
19 year, in [~~such~~] a form as the director prescribes. The
20 [~~operator or plan manager~~] taxpayer shall transmit with the
21 return a remittance covering the residue of the tax chargeable



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

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

19 SECTION 7. Section 237D-9, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) If any [~~operator or plan manager~~] taxpayer 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~~] taxpayer 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 taxpayer, give notice of the assessment to the [~~operator or plan~~
8 ~~manager,~~] taxpayer, and make demand upon the [~~operator or plan~~
9 ~~manager~~] taxpayer 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
13 [~~such~~] appeal shall be upon the person assessed to disprove the
14 correctness of assessment."

15 SECTION 8. 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,~~] a taxpayer, if the director
19 determines that any tax, interest, or penalty has been paid more
20 than once, or has been erroneously or illegally collected or
21 computed, the tax, interest, or penalty shall be credited by the



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

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

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

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

20 (B) Three years after the date prescribed for the
21 filing of the annual return,



1 whichever is later.

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

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

9 SECTION 9. Section 237D-12, Hawaii Revised Statutes, is
10 amended to read as follows:

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



1 SECTION 10. Section 237D-15, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Except as otherwise provided, this chapter shall
4 apply to a transient accommodations [~~broker, travel agency, or~~
5 ~~tour packager~~] intermediary who furnishes or enters into an
6 agreement to furnish transient accommodations at noncommissioned
7 negotiated contract rates in the same manner as [~~it~~] this
8 chapter applies to an operator."

9 SECTION 11. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 12. This Act, upon its approval, shall apply to
12 taxable years beginning after December 31, 2019.

13



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 the calculation of the transient accommodations tax. 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. Requires transient accommodations intermediaries to register with the director of taxation before arranging to furnish transient accommodations at noncommissioned negotiated contract rates. 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. (SD1)

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