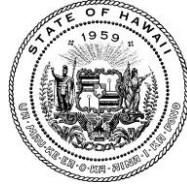


JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 2485, H.D. 1, S.D. 1, Relating to State Tax Administration.

BEFORE THE:

Senate Committee on Ways and Means

DATE: Wednesday, April 3, 2024

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 211

Chair Dela Cruz, Vice-Chair Moriwaki, and Members of the Committee:

The Department of Taxation ("Department") strongly supports H.B. 2485, H.D. 1, S.D. 1, an Administration measure, and offers the following comments for your consideration.

This bill amends section 231-10.8, Hawaii Revised Statutes (HRS), relating to tax clearance fees, sections 237-30.5 and 237D-8.5, HRS, relating to rental collection agreements, and section 237-49, relating to unfair competition. The bill is effective upon its approval.

Tax Clearance Fees

Section 1 of H.B. 2485, H.D. 1, S.D. 1, amends section 231-10.8, HRS, to remove the \$5 fee charged for each certified copy of a tax clearance. This fee provision is outdated and no longer applicable because the Department does not certify tax clearances.

Rental Collection Agreements

Sections 2 and 4 of the bill amend sections 237-30.5 and 237D-8.5, HRS, to establish a penalty of \$500 per violation for failure to comply with the notice and filing

requirements of those sections. Under current law, every person authorized to collect rent on behalf of an owner of real property in the State is required to provide the Department with the name, address, social security number, general excise tax (GET) license number, and transient accommodations tax (TAT) registration number of the owner within 30 days after entering into the agreement, or in the alternative, must provide the Department with a copy of federal Form 1099 at the same time the form must be filed with the Internal Revenue Service. There is, however, no penalty for failing to comply with these requirements. Adding this enforcement mechanism would be an excellent tool to help the Department promote tax compliance and uphold the State's tax laws.

Unfair Competition

Section 3 of the bill amends section 237-49, HRS, to increase the fine for unfair competition in GET law from \$50 to \$1000. This law prohibits taxpayers from advertising or holding out to the public that GET is not considered an element in the price to the purchaser. This amendment is necessary to account for inflation and update the Department's enforcement tools, as the fine has not been increased since it was first enacted in 1935.

These amendments would improve tax administration and efficiency by modernizing outdated provisions and enhancing the Department's tools to enforce tax laws and ensure tax compliance. The Department also notes that the two new penalty subsections proposed to be added to sections 237-30.5 and 237D-8.5, HRS, include provisions to safeguard taxpayers' appeal rights and due process.

Thank you for the opportunity to provide testimony in support of this important measure.



March 28, 2024

Senate Ways & Means Committee
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

Re: Amendments to House Bill 2485, SD1

Dear Chair Donovan Dela Cruz, Vice Chair Gilbert Keith-Agaran, and Members of the Senate Ways & Means Committee:

On behalf of the Travel Technology Association (Travel Tech) and our members, I submit the following amendments to Hawaii's proposed House Bill 2485, SD1.

Travel Tech advocates for public policy that promotes market transparency and competition to encourage innovation and preserve consumer choice. Our members include innovators in travel technology, including online travel agencies, metasearch engines, short-term rental platforms, global distribution systems, and travel management companies.

We respectfully suggest that, to avoid any ambiguity, the bill clarifies the reporting obligations for tech-based companies. Some of the legal provisions this bill would update to include penalties were written in 1983 and 1988 and have not been updated since. To address these issues, we have the following questions that should be clarified in the bill:

1. Which properties does this reporting requirement apply to? The legislative definitions would seem to extend to hotels and motels, which do not typically receive 1099s.
2. Do the disclosures for rental collection agreements from Chapter 237-30.5 and Chapter 237D-8.5 apply to online bookings, which do not have paper rental collection agreements? If so, what is the definition of a "rental collection agreement" especially in the context of an online platform?
3. How will sensitive data, including social security numbers, be protected? Will the Department of Taxation be creating a new, secure portal to transmit information?

Answering these questions will ensure all parties have clarity about reporting requirements and ensure the parties, including all Online Travel Agents (OTAs), can comply.

For these reasons, Travel Tech and our member companies ask that you clarify the ambiguities above to ensure compliance with reporting obligations for GET and TAT.



Thank you for your careful consideration of this matter.

Sincerely,

Laura Chadwick

Laura Chadwick
President & CEO
The Travel Technology Association
www.traveltech.org



April 2, 2024

Senator Donovan Dela Cruz
Chair of the Senate Committee on Ways & Means

Re: HB 2485, HD1, SD1, Relating to State Tax Administration

Dear Chair Dela Cruz and Members of the Senate Committee on Ways & Means:

Thank you for the opportunity to comment on HB 2485, HD1, SD1. We respectfully request you amend the bill as proposed in the draft amendment submitted with this testimony to clarify the law.

HB 2485 updates Section 237-30.5 and Section 237D-8.5 of the Hawai'i Revised Statutes. These chapters were written in 1983 and 1988 respectively, before the internet was commonly available, and have not been updated since. Given this, HB 2485 creates a number of ambiguities and inconsistencies.

The proposed amendment makes changes to clarify that hotels would not be covered, to create a streamlined reporting mechanism that would not include physical pages of rental collection agreements, and to return to the bill's original effective date.

The Department of Taxation has indicated openness to clarifying amendments to the bill, and the attached proposal reflects initial feedback from Department staff. We remain ready to work with the Department of Taxation and the Legislature to further develop this amendment as necessary.

In the draft amendment changes are reflected in red text, with underlines representing new text, and strikethroughs representing cut text.

Please do not hesitate to contact me if there is any additional information we can provide.

Mahalo,

Mackenzie Chase
Regional Manager, Hawai'i
Expedia Group



SECTION 1. Section 231-10.8, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§231-10.8[+] Tax clearance fees.~~ The department may charge a fee of \$20 for each tax clearance application submitted ~~[and \$5 for each certified copy of a tax clearance].~~"

SECTION 2. Section 237-30.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§237-30.5[+] Collection of rental by third party; filing with department; statement~~

~~required.~~ (a) Every person authorized under an agreement by the owner of residential real property located within this State to collect rent on behalf of ~~[such]~~ the owner shall be subject to this section.

Residential real property does not include hotels, hotel condominiums, or condominium-hotels as defined in section 486K-1.

(b) Every written rental collection agreement shall have on the first page of the agreement the name, address, social security number, and, if available, the general excise tax number of the owner of the real property being rented, the address of the property being rented, and the following statement which shall be set forth in bold print and in ten-point type size:

"HAWAII GENERAL EXCISE TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING REAL PROPERTY IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS

**AGREEMENT, OR OF FEDERAL INTERNAL REVENUE FORM 1099
STATING THE AMOUNT OF RENTS COLLECTED, SHALL BE FILED
WITH THE HAWAII DEPARTMENT OF TAXATION."**

Every person entering an oral rental collection agreement shall furnish the department of taxation the information required under this subsection and shall give the owner of the property a copy of the notice required by this subsection.

(c) Every person authorized to collect rent for another person shall file a copy of the first page of the rental collection agreement with the department of taxation within thirty days after entering into the agreement, or, where available, shall file a copy of federal Internal Revenue form 1099, the property owner's social security number, and, if available, the general excise tax license number of the owner of the property being rented with the department of taxation at the same time [~~as such~~] that the forms must be filed with the Internal Revenue Service.

(d) Every person authorized under an agreement by the owner of real property located within this State to collect rent on behalf of [~~such~~] the owner within ninety days after the effective date of this section shall furnish the department of taxation with the information required in subsection (b) and in the case of federal form 1099 [~~such~~] the form for the taxable year ~~1983~~ **2023**. The person also shall notify the owner that

[such] the information is being furnished and give the owner a copy of the notice required by subsection (b).

(e) Failure to comply with any provision of this section shall be unlawful. The department of taxation may issue a citation to any person who fails to comply with any provision of this section. A citation issued pursuant to this subsection shall include a monetary fine of no more than \$500 per violation. Any fine assessed under this subsection shall be due and payable thirty days after issuance, subject to appeal rights provided under this subsection. Citations may be appealed to the director or the director's designee, and the determination of the director may be appealed to the circuit court pursuant to chapter 91."

SECTION 3. Section 237-49, Hawaii Revised Statutes, is amended to read as follows:

"§237-49 Unfair competition; penalty. No taxpayer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax hereby imposed upon the taxpayer is not considered as an element in the price to the purchaser. Any person violating this section shall be fined [~~not~~] no more than [~~\$50~~] \$1,000 for each offense."

SECTION 4. Section 237D-8.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§237D-8.5[+] Collection of rental by third party; filing with department; statement

required. (a) Every person authorized under an agreement by the owner of transient accommodations in residential real property located within this State to collect rent on behalf of [~~such~~] the owner shall be subject to this section. Residential real property does not include hotels, hotel-condominiums, or condominium-hotels as defined in Section 486K-1.

(b) Every written rental collection agreement shall have on the first page of the agreement the name, address, social security or federal identification number, and, if available, the general excise tax license and transient accommodations tax registration numbers of the owner of the transient accommodations being rented, the address of the property being rented, and the following statement which shall be set forth in bold print and in ten-point type size:

"HAWAII TRANSIENT ACCOMMODATIONS TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING TRANSIENT ACCOMMODATIONS IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS AGREEMENT, OR OF FEDERAL INTERNAL REVENUE FORM 1099 STATING THE AMOUNT OF RENTS COLLECTED, SHALL BE FILED WITH THE HAWAII DEPARTMENT OF TAXATION."

Every person entering an oral rental collection agreement shall furnish the department of taxation the information required under this subsection and shall give the owner of the property a copy of the notice required by this subsection. The statement required by this

subsection may be combined with the statement required under section 237-30.5 by adding in bold print and in ten-point type size to the front of the statement in section 237-30.5 the following:

"HAWAII TRANSIENT ACCOMMODATIONS TAXES AND".

(c) Every person authorized to collect rent for another person shall file a copy of the first page of the rental collection agreement with the department of taxation within ninety days after June 9, 1988, or within thirty days after entering into the agreement, or shall file a copy of federal Internal Revenue form 1099, the property owner's social security or federal identification number, and, if available, the general excise tax license and transient accommodations tax registration numbers of the owner of [~~such~~] the property being rented with the department of taxation at the same time [~~as such~~] that the forms must be filed with the Internal Revenue Service for the applicable tax year. The person also shall notify the owner that [~~such~~] the information is being furnished and give the owner a copy of the notice required by subsection (b).

(d) If a person complies with the provisions of this section, the person shall be deemed to have complied with section 237-30.5.

(e) Failure to comply with any provision of this section shall be unlawful. The department of taxation may issue a citation to any person who fails to comply

with any provision of this section. A citation issued pursuant to this subsection shall include a monetary fine of no more than \$500 per violation. Any fine assessed under this subsection shall be due and payable thirty days after issuance, subject to appeal rights provided under this subsection. Citations may be appealed to the director or the director's designee, and the determination of the director may be appealed to the circuit court pursuant to chapter 91."

(f) If a person authorized to collect rent for another person (1) files a federal Internal Revenue form 1099 with the Internal Revenue Service for rent collected for the property owner, (2) provides an annual report to the department of taxation of the property owner's general excise tax license number and transient accommodations tax registration number, if available, and addresses of transient accommodations in residential real property, or (3) provides an annual report to the department of taxation of the property owner's Social Security Number or Federal Tax ID Number/Federal Employer ID Number, the person shall be deemed to have complied with sections 237D-8.5 and 237-30.5.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect on January 1, 2025. ~~upon its approval.~~