

## ACT 241

S.B. NO. 1712

A Bill for an Act Relating to Transient Accommodations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 237D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§237D- Collection of rental by third party; filing with department; statement required.** (a) Every person authorized under an agreement by the owner of transient accommodations located within this State to collect rent on behalf of such owner shall be subject to this section.

(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

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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 the effective date of this section 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 property being rented with the department of taxation at the same time as such forms must be filed with the Internal Revenue Service for the applicable tax year. The person also shall notify the owner that such 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.

**§237D- Reconciliation; form requirement.** On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes under this chapter during the preceding taxable year and who has furnished transient accommodations which were exempt, for any portion of the taxable year, from the tax imposed under this chapter, shall file a reconciliation for transient accommodations as prescribed by the director indicating the amount of gross income that was subject to such tax and the amount that was subject to the general excise tax imposed under chapter 237.”

SECTION 2. Section 237D-1, Hawaii Revised Statutes, is amended:

1. By adding two new definitions to be appropriately inserted and to read as follows:

“ “Gross rental” or “gross rental proceeds” means the gross receipts, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations and the value proceeding or accruing from the furnishing of such accommodations without any deductions on account of the cost of property or services sold, the cost of materials used, labor cost, taxes, royalties, interest, discounts, or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer’s books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 237 for any taxable year in which event the taxpayer shall report the taxpayer’s gross income for the purposes of this chapter on the accrual basis for the same period.

The words “gross rental” or “gross rental proceeds” shall not be construed to include the amounts of taxes imposed by chapter 237 on operators of transient accommodations and passed on, collected, and received from the consumer as part of the receipts received as compensation for the furnishing of transient accommodations. Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissionable negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, gross rental or gross rental proceeds to the operator means only the respective portion allocated or distributed to the operator, and no more. For purposes of this definition, where the operator maintains a schedule of rates for identifiable groups of individuals, such as kamaainas, upon which the accommodations are leased, let,

or rented, gross rental or gross rental proceeds means the receipts collected and received based upon the scheduled rates and recorded as receipts in its books and records.

“Lease”, “let”, or “rental” means the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment hotels, motels, horizontal property regimes or apartments defined in chapter 514A, cooperative apartments, rooming houses, or other places in which lodgings are regularly furnished to transients for a consideration, without transfer of the title of such property.”

2. By amending the definition of “transient accommodations” to read as follows:

“ “Transient accommodations” [means the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one-hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, horizontal property regime or apartment as defined in chapter 514A, cooperative apartment, rooming house, or other place in which lodgings are regularly furnished to transients for consideration.] mean the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one-hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, horizontal property regime or apartment as defined in chapter 514A, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.”

3. By deleting the definition of “gross income” or “gross proceeds”.

[“ “Gross income” or “gross proceeds” means the same as defined in chapter 237, limited to the gross rental charged and collected for transient accommodations, except that any taxes passed on and collected under chapter 237 shall be deducted in order to determine gross proceeds or gross income for the purposes of this chapter.”]

4. By deleting the definition of “transient”.

[“ “Transient” means that the accommodations furnished to a person are being furnished to a person who does not have the intention of making such accommodation a permanent place of domicile.”]

SECTION 3. Section 237D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a tax of five per cent on the gross [income] rental or gross rental proceeds derived from furnishing transient accommodations.”

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

**“[[§237D-3]] Exemptions.** This chapter shall not apply to:

- (1) Health care facilities including all such facilities enumerated in section 321-11(10).
- (2) School dormitories of a public or private educational institution providing education in grades kindergarten through twelve, or of any institution of higher education.
- (3) Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes[.]; provided that this exemption shall apply only to the activities of the religious, charitable, or educational corporation or association as such and not to any rental

- or gross rental the primary purpose of which is to produce income even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association.
- (4) Living accommodations for persons in the military on permanent duty assignment to Hawaii[.], including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State.
  - (5) Low-income renters receiving rental subsistence from the state or federal governments and whose rental periods are for durations shorter than sixty days.
  - (6) Operators of transient accommodations who furnish accommodations to full-time students enrolled in an institution offering post-secondary education. The director of taxation shall determine what shall be deemed acceptable proof of full-time enrollment. This exemption shall also apply to operators who furnish transient accommodations to students during summer employment.
  - (7) Accommodations furnished without charge such as, but not limited to, complimentary accommodations, accommodations furnished to contract personnel such as physicians, golf or tennis professionals, swimming and dancing instructors, and other personnel to whom no salary is paid or to employees who receive room and board as part of their salary or compensation.”

SECTION 5. Section 237D-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§237D-4] Certificate of registration.** No later than seven days before January 1, 1987, each operator as a condition precedent to engaging or continuing in the business of furnishing transient accommodations shall register with the director the name and address of each place of business within the State subject to this chapter. The operator shall pay the sum of \$1 for each registration, upon receipt of which the director shall issue a certificate of registration [for each place] in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable[,] and shall be valid only for the operator in whose name it is issued and for the transaction of business at the place designated therein[, and]. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued. Any person commencing business as an operator after January 1, 1987, shall register and obtain a certificate of registration before commencing business. Each certificate of registration shall expire on December 31 next succeeding the date of its issuance. Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section [237D-17] 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.”

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

**“[[§237D-6]] Return and payments; remittance; penalties.** (a) On or before the last day of each calendar month, every operator taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe. Sections 237-30, 237-31, and 237-32 shall apply to returns, remittances, and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer’s return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit, on or before April 30, July 31, October 31, and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and that the taxpayer’s total tax liability for the calendar year under this chapter will not exceed \$2,000; or
- (2) On a semiannual basis during the calendar year, the return and payment to be made by or before the last day of the calendar month after the close of each six-month period, to wit on July 31 and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and that the taxpayer’s total tax liability for the calendar year under this chapter will not exceed \$1,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer’s estimated quarterly or semiannual liability; provided that the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar year, as provided in this section.

(c) If a taxpayer filing the taxpayer’s return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer’s return or the payment of the taxes due thereon, or if the liability of a taxpayer, who possesses a permit to file the taxpayer’s return and to make payments on a semiannual basis exceeds \$1,000 in transient accommodations taxes during the calendar year or exceeds \$2,000 in transient accommodations taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the transient accommodations tax, the director, at any time, may revoke a taxpayer’s permit, in which case the taxpayer shall then be required to file the taxpayer’s return and make payments thereon as provided in subsection (a).

(d) Section 232-2 does not apply to a monthly return.”

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

**“[[§237D-7]] Annual return.** On or before [April 20 in each] the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of the taxes under this chapter during the preceding tax year shall file a return summarizing that person’s liability under this chapter for the year, in such form as the director prescribes. The operator shall transmit with the return a remittance covering the residue of the tax chargeable to the operator, if any, to the office of the appropriate state district tax assessor designated in section 237D-8. The return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a

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

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

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

"[§237D-8] Filing of returns. All monthly, quarterly, semiannual, and annual returns shall be transmitted to the office of the taxation district in which the transient accommodation upon which the tax is imposed is situated[. Where a person is authorized to collect rent on behalf of an owner under an agreement subject to section 237-30.5, such person shall comply with section 237-30.5 with respect to the tax imposed under this chapter.] or to the office of the first taxation district in Honolulu."

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

"[§237D-9] Assessment of tax upon failure to make return[.]; limitation period; exceptions; extension by agreement. (a) If any operator fails to make a return as required by this chapter, the director shall make an estimate of the tax liability of the operator from any information the director obtains, and according to the estimate so made, assess the taxes, interest, and penalty due the State from the operator, give notice of the assessment to the operator, and make demand upon the operator for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section 237D-11, the contrary shall be clearly proved by the person assessed, and the burden of proof upon such appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter<sup>1</sup> the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any tax due under this chapter, the director shall assess the taxes and interest due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment. [No assessment under this section shall be made after three years from the date the return was due, unless the return was fraudulent.]

(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period.

(d) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim must first be made by a judge of the circuit court as provided in section 235-111(b) which shall apply to the tax imposed by this chapter.

(e) Where, before the expiration of the period prescribed in subsection (c), both the department of taxation and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (c), the tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.”

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

**“[~~§~~237D-10] Overpayment; refunds.** Upon application by an operator, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty shall be credited by the director on any taxes then due from the operator under this chapter. The director shall refund the balance to the operator or the operator’s successors, administrators, executors, or assigns in accordance with section 231-23. [No credit or refund shall be allowed after three years from the date the return was due.] No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund shall be filed within three years after the annual return was filed, or in any case of payment of tax without the filing of an annual return, within three years after payment of tax, or within three years of the date prescribed for the filing of the annual return, whichever is later. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section 237D-11.”

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

**“[~~§~~237D-12] Records to be kept; examination; penalties.** Every operator shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross rental or gross rental proceeds [and gross income] relating to transient accommodations taxed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. Any person violating this section shall be guilty of a misdemeanor; and any director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor; the penalty for such misdemeanor shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.”

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

**“(b)** The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section 237D-6, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval.

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(Approved June 9, 1988.)

### **Notes**

1. Prior to amendment, “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.