

ACT 211

S.B. NO. 2868

A Bill for an Act Relating to Taxation.

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

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

“§237D- Certificate of registration for transient accommodations broker, travel agency, and tour packager. Each transient accommodations broker, travel agency, or tour packager, as a condition precedent to entering into an arrangement to furnish transient accommodations at noncommissioned negotiated contract rates, shall register with the director. The transient accommodations broker, travel agency, or tour packager shall make a one-time payment of \$15 for each registration, upon receipt of which the director shall issue a certificate of registration in a 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 transient accommodations broker, travel agency, or tour packager in whose name it is issued.

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

SECTION 2. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definition of “gross rental” or “gross rental proceeds” 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 or entering into arrangements to furnish transient accommodations and the value proceeding or accruing from the furnishing of [~~such~~] transient accommodations or entering into arrangements to furnish transient 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 or this chapter on operators of transient accommodations, transient accommodations brokers, travel agencies, and tour packagers and passed on, collected, and received from the consumer as part of the receipts received as compensation for the furnishing of transient accommodations[.] or entering into arrangements to furnish transient accommodations.

Where transient accommodations are furnished through arrangements made by a transient accommodations broker, 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

transient accommodations broker, 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,] the tax imposed by this chapter shall apply to each operator and transient accommodations broker, travel agency, or tour packager with respect to that person's respective portion of the proceeds 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.”

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

“(b) Every transient accommodations broker, travel agency, and tour packager who arranges transient accommodations at noncommissioned negotiated contract rates and every operator shall pay to the State the tax imposed by subsection (a), as provided in this chapter.”

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

“**§237D-15 Application of tax.** (a) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided in this chapter; provided that if it be held by any court of competent jurisdiction that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use thereof, then this chapter shall be deemed not to apply to such property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to such property and use.

(b) In order to determine if the tax under this chapter is to be levied, assessed, and collected upon transient accommodations the following presumptions shall control.

- (1) If a person lets a transient accommodation for less than one hundred eighty consecutive days, it shall be presumed that the accommodation furnished is for a transient purpose.
- (2) If a person lets a transient accommodation for one hundred eighty days or more, there is no presumption one way or another as to the purpose for which the accommodation is furnished.

The operator shall have the burden of proving to the department whether an accommodation is not being furnished for a transient purpose. If the department is satisfied that an accommodation is not furnished for a transient purpose, then the department shall not levy any tax under this chapter. The department shall adopt rules to implement this section.

(c) Except as otherwise provided, this chapter shall apply to a transient accommodations broker, travel agency, or tour packager who enters into an agreement to furnish transient accommodations at noncommissioned negotiated contract rates in the same manner as it applies to an operator.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2018, and shall apply to taxable years beginning after December 31, 2018.

(Approved July 10, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.