

ACT 20

S.B. NO. 380

A Bill for an Act Relating to the Transient Accommodations Tax.

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

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

1. By adding a new definition to be appropriately inserted and to read:
““Resort fee” means any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation’s property, services, or amenities.”

2. By amending the definition of “gross rental” or “gross rental proceeds” to read:

““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 transient accommodations or entering into arrangements to furnish transient accommodations, including resort fees, 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, 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 2. The department of taxation shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to further define the definitions added or amended by this Act; provided that this Act shall not be construed to prevent the department of taxation from levying, assessing, or collecting taxes resulting from the imposition of resort fees prior to the adoption of these rules.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2019.

(Approved April 23, 2019.)