

ACT 90

H.B. NO. 1043

A Bill for an Act Relating to Transient Accommodations Tax.

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

SECTION 1. The purpose of this Act is to make numerous amendments to the transient accommodations tax for the purpose of simplifying and streamlining administration of the transient accommodations tax.

SECTION 2. Section 237D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Taxpayer” means any person liable for any tax in this chapter.”

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 or other taxpayer who receives gross rental proceeds shall pay to the State the tax imposed by subsection (a), as provided in this chapter.”

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

“§237D-4 Certificate of registration. (a) ~~[Each operator or plan manager]~~ Every taxpayer not required to register under section 237D-4.5, as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan, shall register with the director the name and address of each place of business within the State subject to this chapter. The ~~[operator or plan manager]~~ taxpayer shall make a one-time payment as follows:

- (1) \$5 for each registration for transient accommodations consisting of one to five units;
- (2) \$15 for each registration for transient accommodations consisting of six or more units; and
- (3) \$15 for each resort time share vacation plan within the State;

upon receipt of which the director shall issue a certificate of registration in ~~[such]~~ a form ~~[as]~~ determined by the director ~~[determines]~~, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the ~~[operator or plan manager]~~ taxpayer in whose name it is issued and for the transaction of business at the place designated therein. Acquisition of additional transient accommodation units after payment of the one-time fee shall not result in additional fees.

(b) 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. The name, phone number, and electronic mail address of the local contact shall at all times be conspicuously displayed in the same place as the registration or the same place as the notice stating where the registration may be inspected and examined. Failure to meet the requirements of this subsection shall be unlawful. The department may issue citations to any person who fails to conspicuously display the registration or notice, or the local contact’s name, phone number, or electronic mail address as required by this subsection. A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of this subsection shall include a monetary fine of ~~[not]~~ no less than:

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

(c) Any advertisement, including an online advertisement, for any transient accommodation or resort time share vacation interest, plan, or unit shall conspicuously provide:

- (1) The registration identification number or an electronic link to the registration identification number ~~[of the operator or plan manager]~~ issued pursuant to this section; and
- (2) The local contact’s name, phone number, and electronic mail address~~;~~; provided that this paragraph shall be considered satisfied if this information is provided to the transient or occupant prior to the furnishing of the transient accommodation or resort time share vacation unit.

(d) Failure to meet the requirements of subsection (c) shall be unlawful. The department may issue citations to any person~~[- including operators, plan managers, and transient accommodations brokers,]~~ who violates subsection (c). A citation issued pursuant to this subsection for each transient accommodation or resort time share vacation interest, plan, or unit in violation of subsection (c) shall include a monetary fine of ~~[not]~~ no less than:

- (1) \$500 per day, for a first violation for which a citation is issued;

- (2) \$1,000 per day, for a second violation for which a citation is issued; and
- (3) \$5,000 per day, for a third and any subsequent violation for which a citation is issued.

(e) The registration provided for by this section 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 registration application and shall be subject to the payment of the one-time registration fee. The director may revoke or cancel any license issued under this chapter for cause as provided by rule under chapter 91.

(f) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

~~[(g) 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 or as a plan manager 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 the same as that prescribed by section 231-35 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.]~~

~~[(h)]~~ (g) Any monetary fine assessed under this section shall be due and payable thirty days after issuance of the citation, subject to appeal rights provided under this subsection. Citations may be appealed to the director [of taxation] or the director's designee.

~~[(h) Any person who is required by this section to register, as a condition precedent to engaging or continuing in the business of furnishing transient accommodations or in business as a resort time share vacation plan subject to taxation under this chapter, and who engages or continues in the business without registering in conformity with this section shall be subject to the citation process and monetary fines under subsections (d) and (g).]~~

~~[(i) For purposes of this section, "engaging or continuing in the business of furnishing transient accommodations" includes posting any advertisement for the furnishing of a transient accommodation.]~~

SECTION 5. Section 237D-4.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§237D-4.5]] Certificate of registration for transient accommodations broker, travel agency, and tour packager.~~ (a) 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.

(b) Any person who enters into an agreement to furnish transient accommodations without registering in conformity with this section shall be subject to the citation process and monetary fines under section 237D-4(d) and (g)."

SECTION 6. Section 237D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) On or before the twentieth day of each calendar month, every ~~operator taxable, or plan manager~~ person liable under this chapter during the preceding calendar month shall file a sworn return with the director in ~~[such]~~ a form ~~[as the]~~ prescribed by the director ~~[shall prescribe]~~ together with a remittance for the amount of the tax ~~[in the form required by section 237D-6.5]~~. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section."

SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All remittances of taxes imposed under this chapter shall be made by cash, bank drafts, cashier's check, money order, or certificate of deposit ~~[to the office of the taxation district to which the return was transmitted]."~~

SECTION 8. Section 237D-7, Hawaii Revised Statutes, is amended to read as follows:

§237D-7 Annual return. 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 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]~~ a form ~~[as the]~~ prescribed by the director ~~[prescribes. The operator or plan manager]~~, and shall transmit with the return a remittance covering the residue of the tax ~~[chargeable to the operator or plan manager,]~~ due, 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 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 9. Section 237D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If any [~~operator or plan manager~~] person fails to make a return as required by this chapter, the director shall make an estimate of the tax liability of the [~~operator or plan manager~~] person 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 or plan manager,~~] person, give notice of the assessment to the [~~operator or plan manager,~~] person, and make demand upon the [~~operator or plan manager~~] person 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.”

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

“**§237D-10 Overpayment; refunds.** Upon application [~~by an operator or plan manager~~], 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 or plan manager~~] taxpayer under this chapter. The director shall refund the balance to the [~~operator or plan manager or the operator's or plan manager's~~] taxpayer or the taxpayer's successors, administrators, executors, or assigns in accordance with section 231-23. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for [~~such~~] the credit or refund is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later[-]; or
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return,
 whichever is later.

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

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

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

“**§237D-12 Records to be kept; examination.** Every [~~operator and plan manager~~] taxpayer shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross rental, gross rental proceeds, or fair market rental value relating to the business taxed under this chapter, and such other books, records of account, and invoices as may be required by the department, 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.”

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SECTION 12. Section 237D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of taxation shall administer and enforce this chapter.

In respect of:

- (1) The examinations of books and records and of taxpayers and other persons~~[-];~~
- (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return~~[-];~~ and
- (3) The general administration of this chapter,

the director of taxation shall have all rights and powers conferred by chapter 237 with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are made applicable to and with respect to the taxes, taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237.”

SECTION 13. Section 237D-8, Hawaii Revised Statutes, is repealed.

SECTION 14. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 2022.

(Approved June 25, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.