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# A BILL FOR AN ACT

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

3           1. By adding a new definition to be appropriately inserted  
4 and to read:

5           "Resort fee" means any mandatory charge or surcharge  
6 imposed by an operator, owner, or representative thereof on a  
7 transient for the use of the transient accommodation's property,  
8 services, or amenities."

9           2. By amending the definition of "fair market rental  
10 value" to read:

11           "Fair market rental value" means an amount equal to [~~one-~~  
12 ~~half~~]        per cent of the gross daily maintenance fees that  
13 are paid by the owner and are attributable to the time share  
14 unit located in Hawaii. Gross daily maintenance fees include  
15 maintenance costs, operational costs, insurance, repair costs,  
16 administrative costs, taxes, other than transient accommodations  
17 taxes, resort fees, and other costs including payments required



1 for reserves or sinking funds. Amounts paid for optional goods  
2 and services such as food and beverage services or beach chair  
3 or umbrella rentals shall be excluded from fair market rental  
4 value."

5 3. By amending the definition of "gross rental" or "gross  
6 rental proceeds" to read:

7 "Gross rental" or "gross rental proceeds" means the gross  
8 ~~[receipts,]~~ sales or gross charges collected from consumers,  
9 including but not limited to booking fees, resort fees, cleaning  
10 fees, lodging fees, transient fees, or any other fees collected,  
11 but does not include fees collected for ground transportation,  
12 airfare, meals, excursions, tours, or other fees unrelated to  
13 the transient accommodations, cash or accrued, of the taxpayer  
14 received as compensation for the furnishing of transient  
15 accommodations or entering into arrangements to furnish  
16 transient accommodations and the value proceeding or accruing  
17 from the furnishing of ~~[such]~~ the accommodations or entering  
18 into arrangements to furnish transient accommodations without  
19 any deductions on account of the cost of property or services  
20 sold, the cost of materials used, labor cost, ~~[taxes,]~~  
21 royalties, interest, discounts, or any other expenses



1 whatsoever. Every taxpayer shall be presumed to be dealing on a  
2 cash basis unless the taxpayer proves to the satisfaction of the  
3 department of taxation that the taxpayer is dealing on an  
4 accrual basis and the taxpayer's books are so kept, or unless  
5 the taxpayer employs or is required to employ the accrual basis  
6 for the purposes of the tax imposed by chapter 237 for any  
7 taxable year in which event the taxpayer shall report the  
8 taxpayer's gross income for the purposes of this chapter on the  
9 accrual basis for the same period.

10 The words "gross rental" or "gross rental proceeds" shall  
11 not be construed to include the amounts of taxes imposed by  
12 chapter 237 or this chapter on operators of transient  
13 accommodations or transient accommodations intermediaries and  
14 passed on, collected, and received from the consumer as part of  
15 the receipts received as compensation for the furnishing of  
16 transient accommodations[-] or entering into arrangements to  
17 furnish transient accommodations. Where transient  
18 accommodations are furnished through arrangements made by a  
19 [~~travel agency or tour packager~~] transient accommodations  
20 intermediary at noncommissionable negotiated contract rates and  
21 the gross income is divided between the operator of transient



1 accommodations on the one hand and the [~~travel agency or tour~~  
 2 ~~packager~~] transient accommodations intermediary on the other  
 3 hand, [~~gross rental or gross rental proceeds to the operator~~  
 4 ~~means only the respective portion allocated or distributed to~~  
 5 ~~the operator,~~] the tax imposed by this chapter shall apply to  
 6 each operator and transient accommodations intermediary with  
 7 respect to that person's respective portion of the proceeds, and  
 8 no more. For purposes of this definition, where the operator  
 9 maintains a schedule of rates for identifiable groups of  
 10 individuals, such as kamaainas, upon which the accommodations  
 11 are leased, let, or rented, gross rental or gross rental  
 12 proceeds means the receipts collected and received based upon  
 13 the scheduled rates and recorded as receipts in its books and  
 14 records."

15 4. By amending the definition of "transient accommodations  
 16 broker" to read:

17 ""Transient accommodations [~~broker~~] intermediary" means  
 18 any person or entity[~~]~~ that offers, lists, advertises, markets,  
 19 accepts reservations for, or collects whole or partial payment  
 20 for transient accommodations or resort time share vacation  
 21 interests, units, or plans, including but not limited to



1 ~~[persons who operate]~~ travel agencies, tour packagers, wholesale  
 2 travel companies, online websites, online travel agencies, [ex]  
 3 online booking agencies, [that offers, lists, advertises, or  
 4 accepts reservations or collects whole or partial payment for  
 5 transient accommodations or resort time share vacation  
 6 interests, units, or plans.] and booking platforms."

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

9 "(b) Every ~~operator~~ transient accommodations  
 10 intermediary who arranges transient accommodations at  
 11 noncommissioned negotiated contract rates and every operator  
 12 shall pay to the State the tax imposed by subsection (a), as  
 13 provided in this chapter."

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

16 "§237D-4 Certificate of registration. (a) Each operator  
 17 or plan manager as a condition precedent to engaging or  
 18 continuing in the business of furnishing transient  
 19 accommodations or in business as a resort time share vacation  
 20 plan, shall register with the director the name and physical  
 21 address of each place of business within the State subject to



1 this chapter. The operator or plan manager shall make a one-  
2 time payment as follows:

3 (1) \$5 for each registration for transient accommodations  
4 consisting of one to five units;

5 (2) \$15 for each registration for transient accommodations  
6 consisting of six or more units; and

7 (3) \$15 for each resort time share vacation plan within  
8 the State;

9 upon receipt of which the director shall issue a certificate of  
10 registration in [~~such~~] a form as the director determines,  
11 attesting that the registration has been made. The registration  
12 shall not be transferable and shall be valid only for the  
13 operator or plan manager in whose name it is issued and for the  
14 transaction of business at the place designated therein.

15 Acquisition of additional transient accommodation units after  
16 payment of the one-time fee shall not result in additional fees.

17 (b) The registration, or in lieu thereof a notice stating  
18 where the registration may be inspected and examined, shall at  
19 all times be conspicuously displayed at the place for which it  
20 is issued. The name, phone number, and electronic mail address  
21 of the local contact shall at all times be conspicuously



1 displayed in the same place as the registration or the same  
2 place as the notice stating where the registration may be  
3 inspected and examined. Failure to meet the requirements of  
4 this subsection shall be unlawful. The department may issue  
5 citations to any person who fails to conspicuously display the  
6 registration or notice, or the local contact's name, phone  
7 number, or electronic mail address as required by this  
8 subsection. A citation issued pursuant to this subsection for  
9 each transient accommodation or resort time share vacation  
10 interest, plan, or unit in violation of this subsection shall  
11 include a monetary fine of not less than:

- 12 (1) \$500 per day, for a first violation for which a  
13 citation is issued;
  - 14 (2) \$1,000 per day, for a second violation for which a  
15 citation is issued; and
  - 16 (3) \$5,000 per day, for a third and any subsequent  
17 violation for which a citation is issued.
- 18 (c) Any advertisement, including an online advertisement,  
19 for any transient accommodation or resort time share vacation  
20 interest, plan, or unit shall conspicuously provide:



- 1           (1) The registration identification number or an  
2           electronic link to the registration identification  
3           number of the operator or plan manager issued pursuant  
4           to this section; and
- 5           (2) The local contact's name, phone number, and electronic  
6           mail address, provided that this paragraph shall be  
7           considered satisfied if this information is provided  
8           to the transient or occupant prior to the furnishing  
9           of the transient accommodation or resort time share  
10          vacation unit.
- 11          (d) Failure to meet the requirements of subsection (c)  
12          shall be unlawful. The department may issue citations to any  
13          person, including operators, plan managers, and transient  
14          accommodations [~~brokers,~~] intermediaries, who violates  
15          subsection (c). A citation issued pursuant to this subsection  
16          for each transient accommodation or resort time share vacation  
17          interest, plan, or unit in violation of subsection (c) shall  
18          include a monetary fine of not less than:
- 19           (1) \$500 per day, for a first violation for which a  
20           citation is issued;





1           (2) \$1,000 per day, for a second violation for which a  
2           citation is issued; and

3           (3) \$5,000 per day, for a third and any subsequent  
4           violation for which a citation is issued.

5           (e) The registration provided for by this section shall be  
6           effective until canceled in writing. Any application for the  
7           reissuance of a previously canceled registration identification  
8           number shall be regarded as a new registration application and  
9           shall be subject to the payment of the one-time registration  
10          fee. The director may revoke or cancel any license issued under  
11          this chapter for cause as provided by rule under chapter 91.

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



1 (g) Any person who may lawfully be required by the State,  
2 and who is required by this chapter, to register as a condition  
3 precedent to engaging or continuing in the business of  
4 furnishing transient accommodations or as a plan manager subject  
5 to taxation under this chapter, who engages or continues in the  
6 business without registering in conformity with this chapter,  
7 shall be guilty of a misdemeanor. Any director, president,  
8 secretary, or treasurer of a corporation who permits, aids, or  
9 abets [such] the corporation to engage or continue in business  
10 without registering in conformity with this chapter, shall  
11 likewise be guilty of a misdemeanor. The penalty for the  
12 misdemeanors shall be the same as that prescribed by section  
13 231-35 for individuals, corporations, or officers of  
14 corporations, as the case may be, for violation of that section.

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

20 (i) Each transient accommodations intermediary, as a  
21 condition precedent to entering into an arrangement to furnish



1 transient accommodations at noncommissioned negotiated contract  
2 rates, shall register with the director. The transient  
3 accommodations intermediary shall provide the physical address  
4 of each transient accommodation for which it will enter into an  
5 arrangement to furnish transient accommodations at  
6 noncommissioned negotiated contract rates; provided that the  
7 transient accommodations intermediary has obtained prior written  
8 consent from the operator or plan manager to disclose the  
9 address of the transient accommodation. The transient  
10 accommodations intermediary shall make a one-time payment of \$15  
11 to register with the director. Upon receipt of the registration  
12 payment, the director shall issue a certificate of registration  
13 to the transient accommodations intermediary in a form as the  
14 director determines, attesting that the registration has been  
15 made. The registration shall not be transferable and shall be  
16 valid only for the transient accommodations intermediary in  
17 whose name it is issued."

18 SECTION 4. Section 237D-6, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) On or before the twentieth day of each calendar  
21 month, every [~~operator taxable, or plan manager~~] taxpayer liable



1 under this chapter during the preceding calendar month shall  
2 file a sworn return with the director in [~~such~~] a form as the  
3 director shall prescribe together with a remittance for the  
4 amount of the tax in the form required by section 237D-6.5.  
5 Sections 237-30 and 237-32 shall apply to returns and penalties  
6 made under this chapter to the same extent as if the sections  
7 were set forth specifically in this section."

8 SECTION 5. Section 237D-7, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§237D-7 Annual return.** On or before the twentieth day of  
11 the fourth month following the close of the taxable year, every  
12 person who has become liable for the payment of the taxes under  
13 this chapter during the preceding tax year shall file a return  
14 summarizing that person's liability under this chapter for the  
15 year, in [~~such~~] a form as the director prescribes. The  
16 [~~operator or plan manager~~] taxpayer shall transmit with the  
17 return a remittance covering the residue of the tax chargeable  
18 to the [~~operator or plan manager,~~] taxpayer, if any, to the  
19 office of the appropriate state district tax assessor designated  
20 in section 237D-8. The return shall be signed by the taxpayer,  
21 if made by an individual, or by the president, vice-president,



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

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

15 SECTION 6. Section 237D-9, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) If any [~~operator or plan manager~~] taxpayer fails to  
18 make a return as required by this chapter, the director shall  
19 make an estimate of the tax liability of the [~~operator or plan  
20 manager~~] taxpayer from any information the director obtains, and  
21 according to the estimate so made, assess the taxes, interest,



1 and penalty due the State from the [~~operator or plan manager,~~  
2 taxpayer, give notice of the assessment to the [~~operator or plan~~  
3 ~~manager,~~ taxpayer, and make demand upon the [~~operator or plan~~  
4 ~~manager~~] taxpayer for payment. The assessment shall be presumed  
5 to be correct until and unless, upon an appeal duly taken as  
6 provided in section 237D-11, the contrary shall be clearly  
7 proved by the person assessed, and the burden of proof upon  
8 [such] appeal shall be upon the person assessed to disprove the  
9 correctness of assessment."

10 SECTION 7. Section 237D-10, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§237D-10 **Overpayment; refunds.** Upon application by [~~an~~  
13 ~~operator or plan manager,~~] a taxpayer, if the director  
14 determines that any tax, interest, or penalty has been paid more  
15 than once, or has been erroneously or illegally collected or  
16 computed, the tax, interest, or penalty shall be credited by the  
17 director on any taxes then due from the [~~operator or plan~~  
18 ~~manager~~] taxpayer under this chapter. The director shall refund  
19 the balance to the [~~operator or plan manager~~] taxpayer or the  
20 [~~operator's or plan manager's~~] taxpayer's successors,  
21 administrators, executors, or assigns in accordance with section



1 231-23. No credit or refund shall be allowed for any tax  
2 imposed by this chapter, unless a claim for ~~such~~ the credit or  
3 refund is filed as follows:

4 (1) If an annual return is timely filed, or is filed  
5 within three years after the date prescribed for  
6 filing the annual return, then the credit or refund  
7 shall be claimed within three years after the date the  
8 annual return was filed or the date prescribed for  
9 filing the annual return, whichever is later.

10 (2) If an annual return is not filed, or is filed more  
11 than three years after the date prescribed for filing  
12 the annual return, a claim for credit or refund shall  
13 be filed within:

- 14 (A) Three years after the payment of the tax; or
- 15 (B) Three years after the date prescribed for the  
16 filing of the annual return,  
17 whichever is later.

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



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

5 SECTION 8. Section 237D-12, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§237D-12 Records to be kept; examination. Every  
8 [~~operator and plan manager~~] taxpayer shall keep in the English  
9 language within the State, and preserve for a period of three  
10 years, suitable records of gross rental, gross rental proceeds,  
11 or fair market rental value relating to the business taxed under  
12 this chapter, and [~~such~~] any other books, records of account,  
13 and invoices [~~as~~] that may be required by the department, and  
14 all such books, records, and invoices shall be open for  
15 examination at any time by the department or the Multistate Tax  
16 Commission pursuant to chapter 255, or the authorized  
17 representative thereof."

18 SECTION 9. Section 237D-15, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§237D-15 Application of tax. (a) The tax imposed by  
21 this chapter shall be in addition to any other taxes imposed by





1 any other laws of the State, except as otherwise specifically  
2 provided in this chapter; provided that if it be held by any  
3 court of competent jurisdiction that the tax imposed by this  
4 chapter may not legally be imposed in addition to any other tax  
5 or taxes imposed by any other law or laws with respect to the  
6 same property or the use thereof, then this chapter shall be  
7 deemed not to apply to such property and the use thereof under  
8 the specific circumstances, but the other laws shall be given  
9 full effect with respect to such property and use.

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

13 (1) If a person lets a transient accommodation for less  
14 than one hundred eighty consecutive days, it shall be  
15 presumed that the accommodation furnished is for a  
16 transient purpose.

17 (2) If a person lets a transient accommodation for one  
18 hundred eighty days or more, there is no presumption  
19 one way or another as to the purpose for which the  
20 accommodation is furnished.



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

7           (c) Except as otherwise provided, this chapter shall apply  
8 to a transient accommodations intermediary who furnishes or  
9 enters into an agreement to furnish transient accommodations at  
10 noncommissioned negotiated contract rates in the same manner as  
11 this chapter applies to an operator."

12           SECTION 10. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14           SECTION 11. This Act, upon its approval, shall apply to  
15 taxable years beginning after December 31, 2018.



**Report Title:**

Transient Accommodations Tax; Hotel Resort Fees; Gross Rental Price; Transient Accommodations Intermediaries; Time Shares; Tax Base

**Description:**

Imposes the transient accommodations tax on resort fees that are calculated separately from the advertised transient accommodation's rate. Clarifies that the transient accommodations tax shall be calculated based on the gross rental. Amends the formula for the amount of transient accommodations tax to be collected from time shares by increasing the base on which time share occupancy is taxed from one-half of the gross daily maintenance fees paid by the owner and are attributable to the time share unit to an unspecified percentage. Specifies that the transient accommodations tax is to be collected from transient accommodations intermediaries who arrange transient accommodations at noncommissioned negotiated contract rates in the same manner as transient accommodations operators. Applies to taxable years beginning after 12/31/2018. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

