
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 charge or surcharge imposed by an
6 operator, owner, or representative thereof to a transient for
7 the use of the transient accommodation's property, services, or
8 amenities."

9 2. By amending the definition of "gross rental" or "gross
10 rental proceeds" to read:

11 "Gross rental" or "gross rental proceeds" means the gross
12 [receipts,] sales or gross charges collected from consumers,
13 including but not limited to booking fees, resort fees, cleaning
14 fees, lodging fees, transient fees, or any other fees collected,
15 but does not include fees collected for ground transportation,
16 airfare, meals, excursions, tours, or other fees unrelated to
17 the transient accommodations, cash or accrued, of the taxpayer



1 received as compensation for the furnishing of transient
2 accommodations or entering into arrangements to furnish
3 transient accommodations and the value proceeding or accruing
4 from the furnishing of [~~such~~] the accommodations or entering
5 into arrangements to furnish transient accommodations without
6 any deductions on account of the cost of property or services
7 sold, the cost of materials used, labor cost, [~~taxes,~~]
8 royalties, interest, discounts, or any other expenses
9 whatsoever. Every taxpayer shall be presumed to be dealing on a
10 cash basis unless the taxpayer proves to the satisfaction of the
11 department of taxation that the taxpayer is dealing on an
12 accrual basis and the taxpayer's books are so kept, or unless
13 the taxpayer employs or is required to employ the accrual basis
14 for the purposes of the tax imposed by chapter 237 for any
15 taxable year in which event the taxpayer shall report the
16 taxpayer's gross income for the purposes of this chapter on the
17 accrual basis for the same period.

18 The words "gross rental" or "gross rental proceeds" shall
19 not be construed to include the amounts of taxes imposed by
20 chapter 237 or this chapter on operators of transient
21 accommodations or transient accommodation intermediaries and



1 passed on, collected, and received from the consumer as part of
2 the receipts received as compensation for the furnishing of
3 transient accommodations~~[-]~~ or entering into arrangements to
4 furnish transient accommodations. Where transient
5 accommodations are furnished through arrangements made by a
6 ~~[travel agency or tour packager]~~ transient accommodations
7 intermediary at noncommissionable negotiated contract rates and
8 the gross income is divided between the operator of transient
9 accommodations on the one hand and the ~~[travel agency or tour~~
10 ~~packager]~~ transient accommodations intermediary on the other
11 hand, ~~[gross rental or gross rental proceeds to the operator~~
12 ~~means only the respective portion allocated or distributed to~~
13 ~~the operator,]~~ the tax imposed by this chapter shall apply to
14 each operator and transient accommodations intermediary with
15 respect to that person's respective portion of the proceeds, and
16 no more. For purposes of this definition, where the operator
17 maintains a schedule of rates for identifiable groups of
18 individuals, such as kamaainas, upon which the accommodations
19 are leased, let, or rented, gross rental or gross rental
20 proceeds means the receipts collected and received based upon



1 the scheduled rates and recorded as receipts in its books and
2 records."

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

5 "Transient accommodations [broker] intermediary" means
6 any person or entity~~[,]~~ that offers, lists, advertises, markets,
7 accepts reservations for, or collects whole or partial payment
8 for transient accommodations or resort time share vacation
9 interests, units, or plans, including but not limited to
10 [persons who operate] travel agencies, tour packagers, wholesale
11 travel companies, online websites, online travel agencies, [or]
12 online booking agencies, [that offers, lists, advertises, or
13 accepts reservations or collects whole or partial payment for
14 transient accommodations or resort time share vacation
15 interests, units, or plans.] and booking platforms."

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

18 "(b) Every ~~[operator]~~ transient accommodations
19 intermediary who arranges transient accommodations at
20 noncommissioned negotiated contract rates and every operator



1 shall pay to the State the tax imposed by subsection (a), as
2 provided in this chapter."

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

5 "§237D-4 Certificate of registration. (a) Each operator
6 [~~or~~], plan manager, or transient accommodations intermediary
7 that has obtained prior consent from each operator and plan
8 manager working with the transient accommodations intermediary,
9 as a condition precedent to engaging or continuing in the
10 business of furnishing transient accommodations or in business
11 as a resort time share vacation plan, shall register with the
12 director the name and physical address of each place of business
13 within the State subject to this chapter. The operator or plan
14 manager shall make a one-time payment as follows:

- 15 (1) \$5 for each registration for transient accommodations
16 consisting of one to five units;
17 (2) \$15 for each registration for transient accommodations
18 consisting of six or more units; and
19 (3) \$15 for each resort time share vacation plan within
20 the State;



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

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

9 (b) The registration, or in lieu thereof a notice stating
10 where the registration may be inspected and examined, shall at
11 all times be conspicuously displayed at the place for which it
12 is issued. The name, phone number, and electronic mail address
13 of the local contact shall at all times be conspicuously
14 displayed in the same place as the registration or the same
15 place as the notice stating where the registration may be
16 inspected and examined. Failure to meet the requirements of
17 this subsection shall be unlawful. The department may issue
18 citations to any person who fails to conspicuously display the
19 registration or notice, or the local contact's name, phone
20 number, or electronic mail address as required by this
21 subsection. A citation issued pursuant to this subsection for



1 each transient accommodation or resort time share vacation
2 interest, plan, or unit in violation of this subsection shall
3 include a monetary fine of not less than:

4 (1) \$500 per day, for a first violation for which a
5 citation is issued;

6 (2) \$1,000 per day, for a second violation for which a
7 citation is issued; and

8 (3) \$5,000 per day, for a third and any subsequent
9 violation for which a citation is issued.

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

13 (1) The registration identification number or an
14 electronic link to the registration identification
15 number of the operator or plan manager issued pursuant
16 to this section; and

17 (2) The local contact's name, phone number, and electronic
18 mail address, provided that this paragraph shall be
19 considered satisfied if this information is provided
20 to the transient or occupant prior to the furnishing



1 of the transient accommodation or resort time share
2 vacation unit.

3 (d) Failure to meet the requirements of subsection (c)
4 shall be unlawful. The department may issue citations to any
5 person, including operators, plan managers, and transient
6 accommodations [~~brokers,~~] intermediaries, who violates
7 subsection (c). A citation issued pursuant to this subsection
8 for each transient accommodation or resort time share vacation
9 interest, plan, or unit in violation of subsection (c) shall
10 include a monetary fine of not less than:

- 11 (1) \$500 per day, for a first violation for which a
12 citation is issued;
- 13 (2) \$1,000 per day, for a second violation for which a
14 citation is issued; and
- 15 (3) \$5,000 per day, for a third and any subsequent
16 violation for which a citation is issued.

17 (e) The registration provided for by this section shall be
18 effective until canceled in writing. Any application for the
19 reissuance of a previously canceled registration identification
20 number shall be regarded as a new registration application and
21 shall be subject to the payment of the one-time registration



1 fee. The director may revoke or cancel any license issued under
2 this chapter for cause as provided by rule under chapter 91.

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

13 (g) Any person who may lawfully be required by the State,
14 and who is required by this chapter, to register as a condition
15 precedent to engaging or continuing in the business of
16 furnishing transient accommodations or as a plan manager subject
17 to taxation under this chapter, who engages or continues in the
18 business without registering in conformity with this chapter,
19 shall be guilty of a misdemeanor. Any director, president,
20 secretary, or treasurer of a corporation who permits, aids, or
21 abets [~~such~~] the corporation to engage or continue in business



1 without registering in conformity with this chapter, shall
2 likewise be guilty of a misdemeanor. The penalty for the
3 misdemeanors shall be the same as that prescribed by section
4 231-35 for individuals, corporations, or officers of
5 corporations, as the case may be, for violation of that section.

6 (h) Any monetary fine assessed under this section shall be
7 due and payable thirty days after issuance of the citation,
8 subject to appeal rights provided under this subsection.

9 Citations may be appealed to the director of taxation or the
10 director's designee.

11 (i) Each transient accommodations intermediary, as a
12 condition precedent to entering into an arrangement to furnish
13 transient accommodations at noncommissioned negotiated contract
14 rates, shall register with the director. The transient
15 accommodations intermediary shall make a one-time payment of \$15
16 for each registration, upon receipt of which the director shall
17 issue a certificate of registration in a form as the director
18 determines, attesting that the registration has been made. The
19 registration shall not be transferable and shall be valid only
20 for the transient accommodations intermediary in whose name it
21 is issued."



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

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

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

14 "**§237D-7 Annual return.** On or before the twentieth day of
15 the fourth month following the close of the taxable year, every
16 person who has become liable for the payment of the taxes under
17 this chapter during the preceding tax year shall file a return
18 summarizing that person's liability under this chapter for the
19 year, in [~~such~~] a form as the director prescribes. The
20 [~~operator or plan manager~~] taxpayer shall transmit with the
21 return a remittance covering the residue of the tax chargeable



1 to the [~~operator or plan manager,~~] taxpayer, if any, to the
2 office of the appropriate state district tax assessor designated
3 in section 237D-8. The return shall be signed by the taxpayer,
4 if made by an individual, or by the president, vice-president,
5 secretary, or treasurer of a corporation, if made on behalf of a
6 corporation. If made on behalf of a partnership, firm, society,
7 unincorporated association, group, hui, joint adventure, joint
8 stock company, corporation, trust estate, decedent's estate,
9 trust, or other entity, any individual delegated by the entity
10 shall sign the same on behalf of the taxpayer. If for any
11 reason it is not practicable for the individual taxpayer to sign
12 the return, it may be done by any duly authorized agent. The
13 department, for good cause shown, may extend the time for making
14 the return on the application of any taxpayer and grant [~~such~~]
15 reasonable additional time within which to make the return as
16 the department may deem advisable.

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

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



1 "(a) If any [~~operator or plan manager~~] taxpayer fails to
2 make a return as required by this chapter, the director shall
3 make an estimate of the tax liability of the [~~operator or plan~~
4 ~~manager~~] taxpayer from any information the director obtains, and
5 according to the estimate so made, assess the taxes, interest,
6 and penalty due the State from the [~~operator or plan manager,~~]
7 taxpayer, give notice of the assessment to the [~~operator or plan~~
8 ~~manager,~~] taxpayer, and make demand upon the [~~operator or plan~~
9 ~~manager~~] taxpayer for payment. The assessment shall be presumed
10 to be correct until and unless, upon an appeal duly taken as
11 provided in section 237D-11, the contrary shall be clearly
12 proved by the person assessed, and the burden of proof upon
13 [~~such~~] appeal shall be upon the person assessed to disprove the
14 correctness of assessment."

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

17 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~
18 ~~operator or plan manager,~~] a taxpayer, if the director
19 determines that any tax, interest, or penalty has been paid more
20 than once, or has been erroneously or illegally collected or
21 computed, the tax, interest, or penalty shall be credited by the



1 director on any taxes then due from the [~~operator or plan~~
2 manager] taxpayer under this chapter. The director shall refund
3 the balance to the [~~operator or plan manager~~] taxpayer or the
4 [~~operator's or plan manager's~~] taxpayer's successors,
5 administrators, executors, or assigns in accordance with section
6 231-23. No credit or refund shall be allowed for any tax
7 imposed by this chapter, unless a claim for [~~such~~] the credit or
8 refund is filed as follows:

9 (1) If an annual return is timely filed, or is filed
10 within three years after the date prescribed for
11 filing the annual return, then the credit or refund
12 shall be claimed within three years after the date the
13 annual return was filed or the date prescribed for
14 filing the annual return, whichever is later.

15 (2) If an annual return is not filed, or is filed more
16 than three years after the date prescribed for filing
17 the annual return, a claim for credit or refund shall
18 be filed within:

19 (A) Three years after the payment of the tax; or

20 (B) Three years after the date prescribed for the
21 filing of the annual return,



1 whichever is later.

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

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

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

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



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

3 "§237D-15 Application of tax. (a) The tax imposed by
4 this chapter shall be in addition to any other taxes imposed by
5 any other laws of the State, except as otherwise specifically
6 provided in this chapter; provided that if it be held by any
7 court of competent jurisdiction that the tax imposed by this
8 chapter may not legally be imposed in addition to any other tax
9 or taxes imposed by any other law or laws with respect to the
10 same property or the use thereof, then this chapter shall be
11 deemed not to apply to such property and the use thereof under
12 the specific circumstances, but the other laws shall be given
13 full effect with respect to such property and use.

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

17 (1) If a person lets a transient accommodation for less
18 than one hundred eighty consecutive days, it shall be
19 presumed that the accommodation furnished is for a
20 transient purpose.



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

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

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

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

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



Report Title:

Transient Accommodations Tax; Hotel Resort Fees; Gross Rental Price; Transient Accommodations Intermediaries

Description:

Imposes the transient accommodations tax on hotel 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. 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. (SD2)

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

