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 "fair market rental value" to read:

"Fair market rental value" means an amount equal to \( \text{one hundred per cent of the gross daily maintenance fees} \) that are paid by the owner and are attributable to the time share unit located in Hawaii. Gross daily maintenance fees include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, resort fees, and other costs including
payments required for reserves or sinking funds. Amounts paid for optional goods and services such as food and beverage services or beach chair or umbrella rentals shall be excluded from fair market rental value."

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

"Gross rental" or "gross rental proceeds" means the gross [receipts,] sales or gross charges collected from consumers including but not limited to booking fees, resort fees, cleaning fees, lodging fees, transient fees, or any other fees collected, but does not include fees collected for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations, 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 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 or transient accommodations
intermediaries 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 intermediary 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] intermediary on the other hand, the tax imposed by this chapter shall apply to each operator and transient accommodations [broker, travel agency, or tour packager] intermediary 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."

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

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

SECTION 2. 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] intermediary 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 3. Section 237D-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Each operator or plan manager 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 physical address of each place of business within the State subject to this chapter. The operator or plan manager 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 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 operator or plan manager 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.

2. By amending subsection (d) to read:

"(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 intermediaries, 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 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."

SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is amended to read as follows:

"[4]$237D-4.5[4] Certificate of registration for transient accommodations broker, travel agency, and tour packager. Each transient accommodations [broker, travel agency, or tour packager] intermediary 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 intermediary shall
provide the physical address of each transient accommodation for
which it will enter into an arrangement to furnish transient
accommodations at noncommissioned negotiated contract rates;
provided that the transient accommodations intermediary has
obtained prior written consent from the operator or plan manager
to disclose the address of the transient accommodation. The
transient accommodations [broker, travel agency, or tour
package] intermediary 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
package] intermediary 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 5. 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] taxpayer liable under this chapter during the preceding calendar month shall file a sworn return with the director in [such] a form as 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 6. 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 director prescribes. The [operator or plan manager] taxpayer shall transmit with the return a remittance covering the residue of the tax chargeable
to the [operator or plan manager,] taxpayer, 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 7. Section 237D-9, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:
"(a) If any [operator or plan manager] taxpayer 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] taxpayer 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] taxpayer, give notice of the assessment to the [operator or plan manager] taxpayer, and make demand upon the [operator or plan manager] taxpayer 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 8. Section 237D-10, Hawaii Revised Statutes, is amended to read as follows:

"§237D-10 Overpayment; refunds. Upon application by [an operator or plan manager,] a taxpayer, 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] taxpayer or the [operator's or plan manager's] 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.

(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 9. 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] any other books, records of account, and invoices [as] that 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."
SECTION 10. Section 237D-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2019.
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 the calculation of the transient accommodations tax. 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 one hundred per cent of the gross daily maintenance fees. Requires transient accommodations intermediaries to register with the director of taxation before arranging to furnish transient accommodations at noncommissioned negotiated contract rates. 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 12/31/2019. (SD1)

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