

JAN 22 2016

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that, under certain
2 circumstances, allowing a private person to act as a tax
3 collection agent is likely to ease the burden of collecting
4 taxes. Section 237-9, Hawaii Revised Statutes, allows a person
5 engaged in network marketing, multi-level marketing, or other
6 similar business to enter into an agreement with the department
7 of taxation to act as a tax collection agent on behalf of its
8 direct sellers. The legislature finds that similarly allowing a
9 transient accommodations broker to act as a tax collection agent
10 on behalf of providers of transient accommodations that utilize
11 the services of the transient accommodations broker may
12 facilitate the collection of transient accommodations taxes and
13 general excise taxes.

14 The purpose of this Act is to allow a transient
15 accommodations broker to register to act as a tax collection
16 agent with respect to transient accommodations taxes and general
17 excise taxes for its operators and plan managers in a manner



1 that recognizes the dynamic changes that are occurring in the
2 transient accommodations business.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§237- Transient accommodations broker as tax
7 collection agent. (a) The director may permit a transient
8 accommodations broker to register as a tax collection agent on
9 behalf of all of its operators and plan managers by entering
10 into a tax collection agreement with the director or by
11 submitting a transient accommodations broker tax collection
12 agent registration statement to the director. The director may
13 deny an application for registration as a transient
14 accommodations broker tax collection agent under this section
15 for any cause authorized by law, including but not limited to
16 any violation of this chapter or rules adopted pursuant thereto,
17 or for violation of any prior tax collection agreement.

18 Execution of a tax collection agreement shall not be a
19 requirement for registration as a transient accommodations
20 broker tax collection agent, but the director may enter into a
21 tax collection agreement that waives or modifies the duties and



1 responsibilities of the transient accommodations broker tax
2 collection agent under this section.

3 The director shall issue a certificate of registration or
4 letter of denial within thirty days after a transient
5 accommodations broker submits to the director a completed and
6 signed transient accommodations broker tax collection agent
7 registration statement, in a form prescribed by the department.
8 The registration shall be valid only for the transient
9 accommodations broker tax collection agent in whose name it is
10 issued, and for the website or platform designated therein, and
11 shall not be transferable, except to a successor by merger or
12 acquisition of the transient accommodations broker's website or
13 platform designated in its application or tax collection
14 agreement.

15 A registered transient accommodations broker tax collection
16 agent shall be issued separate licenses under this chapter with
17 respect to taxes payable on behalf of its operators and plan
18 managers in its capacity as a registered transient
19 accommodations broker tax collection agent and, if applicable,
20 with respect to any taxes payable under this chapter for its own
21 business activities.



1 (b) In addition to its own responsibilities under this
2 chapter, a registered transient accommodations broker tax
3 collection agent shall report, collect, and pay over the taxes
4 due under this chapter on behalf of all of its operators and
5 plan managers from the date of registration until the
6 registration is canceled as provided in subsection (h); provided
7 that the registered transient accommodations broker tax
8 collection agent's obligation to report, collect, and pay taxes
9 on behalf of all of its operators and plan managers shall apply
10 solely to transient accommodations in the State arranged or
11 booked directly through the registered transient accommodations
12 broker tax collection agent.

13 (c) The registered transient accommodations broker tax
14 collection agent's operators and plan managers shall be deemed
15 licensed under this chapter; provided that the licensure shall
16 apply solely to the business activity conducted directly through
17 the registered transient accommodations broker tax collection
18 agent from the date of registration until the registration is
19 canceled as provided in subsection (h). For purposes of any
20 other business activity, the operators and plan managers are



1 subject to all requirements of title 14 as if this section did
2 not exist.

3 (d) Under this section, a registered transient
4 accommodations broker tax collection agent shall assume all
5 obligations, rights, and responsibilities imposed by this
6 chapter upon its operators and plan managers with respect to
7 their business activities conducted directly through the
8 registered transient accommodations broker tax collection agent
9 from the date of registration until the registration is canceled
10 as provided in subsection (h).

11 (e) A transient accommodations broker tax collection agent
12 shall be personally liable for the taxes imposed by this chapter
13 that are due and collected on behalf of operators and plan
14 managers, if taxes are collected, but not reported or paid,
15 together with penalties and interest as provided by law.

16 (f) All returns and other information provided by a
17 registered transient accommodations broker tax collection agent,
18 including the application for registration as a transient
19 accommodations broker tax collection agent or any tax collection
20 agreement, shall be confidential and disclosure thereof shall be
21 prohibited as provided in section 237-34; provided that no



1 disclosure of returns or information provided by the transient
2 accommodations broker tax collection agent with respect to its
3 operators and plan managers shall be made pursuant to section
4 237-34(b)(9), (10) or (11).

5 (g) A registered transient accommodations broker tax
6 collection agent shall not be required to disclose to the
7 director the names or addresses of any of its operators and plan
8 managers in connection with any return, reconciliation, payment,
9 or other filing by the registered transient accommodations
10 broker tax collection agent under this chapter; provided that
11 the name and address of an operator or plan manager shall be
12 disclosed in response to a lawful and valid subpoena or upon
13 waiver by the operator or plan manager.

14 (h) The registration provided for under this section shall
15 be effective until canceled in writing.

16 A registered transient accommodations broker tax collection
17 agent may cancel its registration under this section by
18 delivering written notice of cancellation to the director and
19 each of its operators and plan managers furnishing transient
20 accommodations in the State not later than ninety days prior to
21 the effective date of cancellation.



1 The director may cancel a transient accommodations broker
2 tax collection agent's registration under this section for any
3 cause authorized by law, including but not limited to any
4 violation of this chapter or rules adopted pursuant thereto, or
5 for violation of any applicable tax collection agreement, by
6 delivering written notice of cancellation to the transient
7 accommodations broker tax collection agent not later than ninety
8 days prior to the effective date of cancellation.

9 (i) For the purposes of this section:

10 "Operator" has the same meaning as in section 237D-1.

11 "Plan manager" has the same meaning as in section 237D-1.

12 "Transient accommodations broker" has the same meaning as
13 in section 237D-1.

14 (j) Acting as a registered transient accommodations broker
15 tax collection agent under this section shall not cause a
16 transient accommodations broker to be, or to assume the duties,
17 obligations, or liabilities of, an operator, plan manager, or
18 provider of transient accommodations under any other law of this
19 State or of any county."



1 SECTION 3. Chapter 237D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237D- Transient accommodations broker as tax
5 collection agent. (a) The director may permit a transient
6 accommodations broker to register as a tax collection agent on
7 behalf of all of its operators and plan managers by entering
8 into a tax collection agreement with the director or by
9 submitting a transient accommodations broker tax collection
10 agent registration statement to the director. The director may
11 deny an application for registration as a transient
12 accommodations broker tax collection agent under this section
13 for any cause authorized by law, including but not limited to
14 any violation of this chapter or rules adopted pursuant thereto,
15 or for violation of any prior tax collection agreement.

16 Execution of a tax collection agreement shall not be a
17 requirement for registration as a transient accommodations
18 broker tax collection agent, but the director may enter into a
19 tax collection agreement that waives or modifies the duties and
20 responsibilities of the transient accommodations broker tax
21 collection agent under this section.



1 The director shall issue a certificate of registration or
2 letter of denial within thirty days after a transient
3 accommodations broker submits to the director a completed and
4 signed transient accommodations broker tax collection agent
5 registration statement, in a form prescribed by the department.
6 The registration shall be valid only for the transient
7 accommodations broker tax collection agent in whose name it is
8 issued, and for the website or platform designated therein, and
9 shall not be transferable, except to a successor by merger or
10 acquisition of the transient accommodations broker's website or
11 platform designated in its application or tax collection
12 agreement.

13 A registered transient accommodations broker tax collection
14 agent shall be issued separate registrations under this chapter
15 with respect to taxes payable on behalf of its operators and
16 plan managers in its capacity as a registered transient
17 accommodations broker tax collection agent and, if applicable,
18 with respect to any taxes payable under this chapter for its own
19 business activities.

20 (b) In addition to its own responsibilities under this
21 chapter, a registered transient accommodations broker tax



1 collection agent shall report, collect, and pay over the taxes
2 due under this chapter on behalf of all of its operators and
3 plan managers from the date of registration until the
4 registration is canceled as provided in subsection (h); provided
5 that the registered transient accommodations broker tax
6 collection agent's obligation to report, collect, and pay taxes
7 on behalf of all of its operators and plan managers shall apply
8 solely to transient accommodations in the State arranged or
9 booked directly through the registered transient accommodations
10 broker tax collection agent.

11 (c) The registered transient accommodations broker tax
12 collection agent's operators and plan managers shall be deemed
13 registered under this chapter; provided that the registration
14 shall apply solely to the business activity conducted directly
15 through the registered transient accommodations broker tax
16 collection agent from the date of registration until the
17 registration is canceled as provided in subsection (h). For
18 purposes of any other business activity, the operators and plan
19 managers are subject to all requirements of title 14 as if this
20 section did not exist.



1 (d) Under this section, a registered transient
2 accommodations broker tax collection agent shall assume all
3 obligations, rights, and responsibilities imposed by this
4 chapter upon its operators and plan managers with respect to
5 their business activities conducted directly through the
6 registered transient accommodations broker tax collection agent
7 from the date of registration until the registration is canceled
8 as provided in subsection (h).

9 (e) A transient accommodations broker tax collection agent
10 shall be personally liable for the taxes imposed by this chapter
11 that are due and collected on behalf of operators and plan
12 managers, if taxes are collected, but not reported or paid,
13 together with penalties and interest as provided by law.

14 (f) All returns and other information provided by a
15 registered transient accommodations broker tax collection agent,
16 including the application for registration as a transient
17 accommodations broker tax collection agent or any tax collection
18 agreement, shall be confidential and disclosure thereof shall be
19 prohibited as provided in section 237D-13; provided that no
20 disclosure of returns or information provided by the transient
21 accommodations broker tax collection agent with respect to its



1 operators and plan managers shall be made pursuant to section
2 237D-13(a)(9), (10) or (11).

3 (g) A registered transient accommodations broker tax
4 collection agent shall not be required to disclose to the
5 director the names or addresses of any of its operators and plan
6 managers in connection with any return, reconciliation, payment,
7 or other filing by the registered transient accommodations
8 broker tax collection agent under this chapter; provided that
9 the name and address of an operator or plan manager shall be
10 disclosed in response to a lawful and valid subpoena or upon
11 waiver by the operator or plan manager.

12 (h) The registration provided for under this section shall
13 be effective until canceled in writing.

14 A registered transient accommodations broker tax collection
15 agent may cancel its registration under this section by
16 delivering written notice of cancellation to the director and
17 each of its operators and plan managers furnishing transient
18 accommodations in the State not later than ninety days prior to
19 the effective date of cancellation.

20 The director may cancel a transient accommodations broker
21 tax collection agent's registration under this section for any



1 cause authorized by law, including but not limited to any
2 violation of this chapter or rules adopted pursuant thereto, or
3 for violation of any applicable tax collection agreement, by
4 delivering written notice of cancellation to the transient
5 accommodations broker tax collection agent not later than ninety
6 days prior to the effective date of cancellation.

7 (i) Acting as a registered transient accommodations broker
8 tax collection agent under this section shall not cause a
9 transient accommodations broker to be, or to assume the duties,
10 obligations, or liabilities of, an operator, plan manager, or
11 provider of transient accommodations under any other law of this
12 State or of any county."

13 SECTION 4. Section 237-30.5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Every person authorized under an agreement by the
16 owner of real property located within this State to collect rent
17 on behalf of ~~[such]~~ the owner, other than a transient
18 accommodations broker tax collection agent registered under
19 section 237-___, shall be subject to this section."

20 SECTION 5. Section 237D-4, Hawaii Revised Statutes, is
21 amended by amending subsection (c) to read as follows:



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

4 (1) The registration identification number or an
5 electronic link to the registration identification
6 number of ~~the~~ either:

7 (A) The operator or plan manager issued pursuant to
8 this section; or

9 (B) The transient accommodations broker tax
10 collection agent registered under section 237D-
11 _____ , if applicable; and

12 (2) The local contact's name, phone number, and electronic
13 mail address, provided that this paragraph shall be
14 considered satisfied if this information is provided
15 to the transient or occupant prior to the furnishing
16 of the transient accommodation or resort time share
17 vacation unit."

18 SECTION 6. Section 237D-8.5, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Every person authorized under an agreement by the
21 owner of transient accommodations located within this State to



1 collect rent on behalf of [~~such~~] the owner, other than a
2 transient accommodations broker tax collection agent registered
3 under section 237D-___, shall be subject to this section."

4 SECTION 7. Within ninety days after the effective date of
5 this Act, the director of taxation shall make available to
6 transient accommodations brokers a form of application for
7 registration as a transient accommodations broker tax collection
8 agent under the new section of chapter 237, Hawaii Revised
9 Statutes, added by section 2 of this Act, and under the new
10 section of chapter 237D, Hawaii Revised Statutes, added by
11 section 3 of this Act.

12 SECTION 8. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 9. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



S.B. NO. 2693

1 SECTION 10. This Act shall take effect upon its approval.

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S.B. NO. 2693

Report Title:

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

Description:

Allows transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services.

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

