
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(e), Hawaii Revised Statutes, allows a
5 person engaged in network marketing, multi-level marketing, or
6 other similar business to enter into an agreement with the
7 department of taxation to act as a tax collection agent on
8 behalf of its direct sellers. The legislature finds that
9 similarly allowing a transient accommodations broker to act as a
10 tax collection agent on behalf of providers of transient
11 accommodations that utilize the services of the transient
12 accommodations broker may facilitate the collection of transient
13 accommodations taxes and general excise taxes.

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



1 recognizes the dynamic changes occurring in the transient
2 accommodations sector. This Act is not intended to preempt or
3 otherwise limit the authority of the counties to adopt, monitor,
4 and enforce local land use regulations, nor is this Act intended
5 to transfer the authority to monitor and enforce such
6 regulations away from the counties.

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

10 "§237- Transient accommodations broker as tax collection
11 agent. (a) The director of taxation shall require a large
12 transient accommodations broker, and may allow all other
13 transient accommodations brokers, to register as a tax
14 collection agent on behalf of all of its operators and plan
15 managers by entering into a tax collection agreement with the
16 director or by submitting a transient accommodations broker tax
17 collection agent registration statement to the director.

18 The director may deny an application for registration as a
19 transient accommodations broker tax collection agent under this
20 section for any cause authorized by law, including any violation
21 of this chapter or rules adopted pursuant thereto, violation of



1 any prior tax collection agreement, or failure to meet minimum
2 criteria that may be set forth by the department in rules
3 adopted pursuant to chapter 91.

4 Execution of a tax collection agreement shall not be a
5 requirement for registration as a transient accommodations
6 broker tax collection agent.

7 The director shall issue a certificate of registration or
8 letter of denial within thirty days after a transient
9 accommodations broker submits to the director a completed and
10 signed transient accommodations broker tax collection agent
11 registration statement, in a form prescribed by the department.

12 The registration shall be valid only for the transient
13 accommodations broker tax collection agent in whose name it is
14 issued, and for the website or platform designated therein, and
15 shall not be transferable.

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



1 business activities. A registered transient accommodations
2 broker tax collection agent shall file with the department
3 monthly or other periodic returns as required by section 237-30.
4 The required reporting information shall include gross transient
5 accommodations rentals and exemptions, and taxable income from
6 the registered transient accommodations broker tax collection
7 agent's business activity.

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

20 (c) The registered transient accommodations broker tax
21 collection agent's operators and plan managers shall be deemed



1 licensed under this chapter; provided that the licensure shall
 2 apply solely to the business activity conducted directly through
 3 the registered transient accommodations broker tax collection
 4 agent from the date of registration until the registration is
 5 canceled as provided in subsection (h). For purposes of any
 6 other business activity, the operators and plan managers are
 7 subject to all requirements of title 14 as if this section did
 8 not exist.

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

17 (e) A transient accommodations broker tax collection agent
 18 shall collect taxes imposed by this chapter on behalf of
 19 operators and plan managers, but if the agent does not report or
 20 pay the taxes due, then the agent shall be personally liable for



1 the taxes due, together with penalties and interest as provided
2 by law.

3 (f) All returns and other information provided by a
4 registered transient accommodations broker tax collection agent,
5 including the application for registration as a transient
6 accommodations broker tax collection agent or any tax collection
7 agreement, shall be confidential, and disclosure thereof shall
8 be prohibited as provided in section 237-34; provided that:

9 (1) No disclosure of returns or information provided by
10 the transient accommodations broker tax collection
11 agent with respect to its operators and plan managers
12 shall be made pursuant to section 237-34(b)(9), (10),
13 or (11); and

14 (2) All returns and the names and addresses provided by a
15 registered transient accommodations broker tax
16 collection agent shall be disclosed to a duly
17 authorized county tax official for the limited purpose
18 of real property tax administration.

19 (g) A registered transient accommodations broker tax
20 collection agent shall notify all of its operators and plan
21 managers in the State that it has been designated to collect,



1 report, and pay over the tax imposed by this chapter on their
2 behalf.

3 The director may require the transient accommodations
4 broker tax collection agent, as a condition of obtaining a
5 license, to furnish with an annual return, a list including the
6 federal tax identification number of all operators and plan
7 managers for the taxable year to whom the transient
8 accommodations broker tax collection agent has provided
9 information returns required under the Internal Revenue Code,
10 and any other information that is relevant to ensure proper
11 payment of taxes under title 14.

12 A transient accommodations broker tax collection agent
13 shall provide the names or addresses of any of its operators and
14 plan managers to the director when such a request is made
15 through a lawful and valid administrative process or upon waiver
16 by the operator or plan manager.

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

19 A registered transient accommodations broker tax collection
20 agent may cancel its registration under this section by
21 delivering written notice of cancellation to the director and



1 each of its operators and plan managers furnishing transient
2 accommodations in the State no later than ninety days prior to
3 the effective date of cancellation.

4 The director may cancel a transient accommodations broker
5 tax collection agent's registration under this section for any
6 cause authorized by law, including any violation of this chapter
7 or rules adopted pursuant thereto, or for violation of any
8 applicable tax collection agreement, by delivering written
9 notice of cancellation to the transient accommodations broker
10 tax collection agent no later than ninety days prior to the
11 effective date of cancellation.

12 (i) All registered transient accommodations broker tax
13 collection agents shall:

14 (1) Prior to placing an advertisement, including an online
15 advertisement, on the availability of a property for
16 lease or rent on behalf of an operator or plan
17 manager, notify the operator or plan manager that the
18 subject property is required to be in compliance with
19 applicable land use laws prior to retaining the
20 services of the transient accommodations broker; and



1 (2) Require the operator or plan manager to attest that
2 the subject property is in compliance with applicable
3 land use laws by using the following language: "By
4 accepting the Terms of Service, I agree and attest
5 that I have reviewed all applicable laws and
6 regulations and that my listing is in compliance."

7 (j) Nothing contained in this section shall limit the
8 authority of the department under section 231-7 to conduct
9 audits, investigations, and hearings, and to issue subpoenas.
10 This shall include the authority to obtain transaction-level
11 data for specific transactions from a transient accommodations
12 broker tax collection agent.

13 (k) In addition to all other reporting requirements under
14 title 14, each transient accommodations broker tax collection
15 agent shall report annually to the director on an aggregate
16 basis:

17 (1) The total number of operators and plan managers by
18 county on whose behalf the transient accommodations
19 broker tax collection agent collected and remitted
20 taxes imposed by this chapter; and



1 (2) The total amount of taxes imposed, collected, and
2 remitted under this chapter by the county.

3 (1) For the purposes of this section:

4 "Large transient accommodations broker" has the same
5 meaning as in section 237D-1.

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

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

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

10 SECTION 3. Chapter 237D, Hawaii Revised Statutes, is
11 amended by adding two new sections to be appropriately
12 designated and to read as follows:

13 **"§237D-A Transient accommodations broker as tax collection**
14 **agent.** (a) The director shall require a large transient
15 accommodations broker, and may allow all other transient
16 accommodations brokers, to register as a tax collection agent on
17 behalf of all of its operators and plan managers by entering
18 into a tax collection agreement with the director or by
19 submitting a transient accommodations broker tax collection
20 agent registration statement to the director.



1 The director may deny an application for registration as a
2 transient accommodations broker tax collection agent under this
3 section for any cause authorized by law, including any violation
4 of this chapter or rules adopted pursuant thereto, violation of
5 any prior tax collection agreement, or failure to meet minimum
6 criteria that may be set forth by the department in rules
7 adopted pursuant to chapter 91.

8 Execution of a tax collection agreement shall not be a
9 requirement for registration as a transient accommodations
10 broker tax collection agent.

11 The director shall issue a certificate of registration or
12 letter of denial within thirty days after a transient
13 accommodations broker submits to the director a completed and
14 signed transient accommodations broker tax collection agent
15 registration statement, in a form prescribed by the department.

16 The registration shall be valid only for the transient
17 accommodations broker tax collection agent in whose name it is
18 issued, and for the website or platform designated therein, and
19 shall not be transferable.

20 A registered transient accommodations broker tax collection
21 agent shall be issued separate certificates of registration



1 under this chapter with respect to taxes payable on behalf of
2 its operators and plan managers in its capacity as a registered
3 transient accommodations broker tax collection agent and, if
4 applicable, with respect to any taxes payable under this chapter
5 for its own business activities. A registered transient
6 accommodations broker tax collection agent shall file with the
7 department monthly or other periodic returns as required by
8 section 237D-6, reporting information including gross rentals or
9 gross rental proceeds, exemptions or deductions, taxable
10 proceeds, and taxes, each separated by taxation district.

11 (b) In addition to its own responsibilities under this
12 chapter, a registered transient accommodations broker tax
13 collection agent shall report, collect, and pay over the taxes
14 due under this chapter on behalf of all of its operators and
15 plan managers from the date of registration until the
16 registration is canceled as provided in subsection (h); provided
17 that the registered transient accommodations broker tax
18 collection agent's obligation to report, collect, and pay taxes
19 on behalf of all of its operators and plan managers shall apply
20 solely to transient accommodations in the State arranged or



1 booked directly through the registered transient accommodations
2 broker tax collection agent.

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

13 (d) Under this section, a registered transient
14 accommodations broker tax collection agent shall assume all
15 obligations, rights, and responsibilities imposed by this
16 chapter upon its operators and plan managers with respect to
17 their business activities conducted directly through the
18 registered transient accommodations broker tax collection agent
19 from the date of registration until the registration is canceled
20 as provided in subsection (h).



1 (e) A transient accommodations broker tax collection agent
2 collects taxes imposed by this chapter on behalf of operators
3 and plan managers, but if the agent does not report or pay the
4 taxes due, then the agent shall be personally liable for the
5 taxes due and penalties and interest as provided by law.

6 (f) All returns and other information provided by a
7 registered transient accommodations broker tax collection agent,
8 including the application for registration as a transient
9 accommodations broker tax collection agent or any tax collection
10 agreement, shall be confidential, and disclosure thereof shall
11 be prohibited as provided in section 237D-13; provided that:

12 (1) No disclosure of returns or information provided by
13 the transient accommodations broker tax collection
14 agent with respect to its operators and plan managers
15 shall be made pursuant to section 237D-13(a)(9), (10),
16 or (11); and

17 (2) All returns and the names and addresses provided by a
18 registered transient accommodations broker tax
19 collection agent shall be disclosed to a duly
20 authorized county tax official for the limited purpose
21 of real property tax administration.



1 (g) A registered transient accommodations broker tax
2 collection agent shall notify all of its operators and plan
3 managers in the State that it has been designated to collect,
4 report, and pay over the tax imposed by this chapter on their
5 behalf.

6 The director may require the transient accommodations
7 broker tax collection agent, as a condition of obtaining a
8 license, to furnish with an annual return, a list including the
9 federal tax identification number of all operators and plan
10 managers for the taxable year to whom the transient
11 accommodations broker tax collection agent has provided
12 information returns required under the Internal Revenue Code,
13 and any other information that is relevant to ensure proper
14 payment of taxes under title 14.

15 A transient accommodations broker tax collection agent
16 shall provide the names or addresses of any of its operators and
17 plan managers to the director when such a request is made
18 through a lawful and valid administrative process or upon waiver
19 by the operator or plan manager.

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



1 A registered transient accommodations broker tax collection
2 agent may cancel its registration under this section by
3 delivering written notice of cancellation to the director and
4 each of its operators and plan managers furnishing transient
5 accommodations in the State no later than ninety days prior to
6 the effective date of cancellation.

7 The director may cancel a transient accommodations broker
8 tax collection agent's registration under this section for any
9 cause authorized by law, including but not limited to any
10 violation of this chapter or rules adopted pursuant thereto, or
11 for violation of any applicable tax collection agreement, by
12 delivering written notice of cancellation to the transient
13 accommodations broker tax collection agent no later than ninety
14 days prior to the effective date of cancellation.

15 (i) All registered transient accommodations broker tax
16 collection agents shall:

17 (1) Prior to placing an advertisement, including an online
18 advertisement, on the availability of a property for
19 lease or rent on behalf of an operator or plan
20 manager, notify the operator or plan manager that the
21 subject property is required to be in compliance with



1 applicable land use laws prior to retaining the
2 services of the transient accommodations broker; and
3 (2) Require the operator or plan manager to attest that
4 the subject property is in compliance with applicable
5 land use laws by using the following language: "By
6 accepting the Terms of Service, I agree and attest
7 that I have reviewed all applicable laws and
8 regulations and that my listing is in compliance."
9 (j) Nothing contained in this section shall limit the
10 authority of the department under section 231-7 to conduct
11 audits, investigations, and hearings, and to issue subpoenas.
12 This shall include the authority to obtain transaction-level
13 data for specific transactions from a transient accommodations
14 broker tax collection agent.
15 (k) In addition to all other reporting requirements under
16 title 14, each transient accommodations broker tax collection
17 agent shall report annually to the director on an aggregate
18 basis:
19 (1) The total number of operators and plan managers by
20 county on whose behalf the transient accommodations



1 broker tax collection agent collected and remitted
2 taxes imposed by this chapter; and

3 (2) The total amount of taxes imposed, collected, and
4 remitted under this chapter.

5 §237D-B Transient accommodations broker; surcharge tax;

6 imposition. (a) There is levied and shall be assessed and
7 collected on each transient accommodations broker a surcharge
8 tax of _____ per cent of the transient accommodations broker's
9 gross proceeds that are derived from the rental or rental
10 proceeds realized by the transient accommodations broker's
11 operators and plan managers for the furnishing of transient
12 accommodations.

13 (b) Every transient accommodations broker shall pay to the
14 State the surcharge tax imposed by subsection (a), as provided
15 in this chapter.

16 (c) All surcharge tax revenues collected under this
17 section shall be deposited into the rental housing revolving
18 fund established under section 201H-202."

19 SECTION 4. Section 237D-1, Hawaii Revised Statutes, is
20 amended by adding a new definition to be appropriately inserted
21 and to read as follows:



1 "Large transient accommodations broker" means a transient
 2 accommodations broker that offers, lists, advertises, or accepts
 3 reservations or collects whole or partial payment for at least
 4 three thousand transient accommodations or resort time share
 5 vacation interests, units, or plans within the State."

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

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

11 (1) The registration identification number or an
 12 electronic link to the registration identification
 13 number of ~~the~~ either:

14 (A) The operator or plan manager issued pursuant to
 15 this section; ~~and~~ or

16 (B) The transient accommodations broker tax
 17 collection agent registered under section
 18 237D- , if applicable; and

19 (2) The local contact's name, phone number, and electronic
 20 mail address, provided that this paragraph shall be
 21 considered satisfied if this information is provided



1 to the transient or occupant prior to the furnishing
2 of the transient accommodation or resort time share
3 vacation unit."

4 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Revenues collected under this chapter shall be
7 distributed in the following priority, with the excess revenues
8 to be deposited into the general fund:

9 (1) \$1,500,000 shall be allocated to the Turtle Bay
10 conservation easement special fund beginning July 1,
11 2015, for the reimbursement to the state general fund
12 of debt service on reimbursable general obligation
13 bonds, including ongoing expenses related to the
14 issuance of the bonds, the proceeds of which were used
15 to acquire the conservation easement and other real
16 property interests in Turtle Bay, Oahu, for the
17 protection, preservation, and enhancement of natural
18 resources important to the State, until the bonds are
19 fully amortized;



- 1 (2) \$26,500,000 shall be allocated to the convention
2 center enterprise special fund established under
3 section 201B-8;
- 4 (3) \$82,000,000 shall be allocated to the tourism special
5 fund established under section 201B-11; provided that:
- 6 (A) Beginning on July 1, 2012, and ending on June 30,
7 2015, \$2,000,000 shall be expended from the
8 tourism special fund for development and
9 implementation of initiatives to take advantage
10 of expanded visa programs and increased travel
11 opportunities for international visitors to
12 Hawaii;
- 13 (B) Of the \$82,000,000 allocated:
- 14 (i) \$1,000,000 shall be allocated for the
15 operation of a Hawaiian center and the
16 museum of Hawaiian music and dance at the
17 Hawaii convention center; and
- 18 (ii) 0.5 per cent of the \$82,000,000 shall be
19 transferred to a sub-account in the tourism
20 special fund to provide funding for a safety



1 and security budget, in accordance with the
2 Hawaii tourism strategic plan 2005-2015; and
3 (C) Of the revenues remaining in the tourism special
4 fund after revenues have been deposited as
5 provided in this paragraph and except for any sum
6 authorized by the legislature for expenditure
7 from revenues subject to this paragraph,
8 beginning July 1, 2007, funds shall be deposited
9 into the tourism emergency special fund,
10 established in section 201B-10, in a manner
11 sufficient to maintain a fund balance of
12 \$5,000,000 in the tourism emergency special fund;
13 (4) \$103,000,000 for fiscal year 2014-2015, \$103,000,000
14 for fiscal year 2015-2016, \$103,000,000 for fiscal
15 year 2016-2017, and \$93,000,000 for each fiscal year
16 thereafter shall be allocated as follows: Kauai
17 county shall receive 14.5 per cent, Hawaii county
18 shall receive 18.6 per cent, city and county of
19 Honolulu shall receive 44.1 per cent, and Maui county
20 shall receive 22.8 per cent; provided that commencing
21 with fiscal year 2018-2019, a sum that represents the



1 difference between a county public employer's annual
 2 required contribution for the separate trust fund
 3 established under section 87A-42 and the amount of the
 4 county public employer's contributions into that trust
 5 fund shall be retained by the state director of
 6 finance and deposited to the credit of the county
 7 public employer's annual required contribution into
 8 that trust fund in each fiscal year, as provided in
 9 section 87A-42, if the respective county fails to
 10 remit the total amount of the county's required annual
 11 contributions, as required under section 87A-43; [~~and~~]

12 (5) \$3,000,000 shall be allocated to the special land and
 13 development fund established under section 171-19;
 14 provided that the allocation shall be expended in
 15 accordance with the Hawaii tourism authority strategic
 16 plan for:

17 (A) The protection, preservation, maintenance, and
 18 enhancement of natural resources, including
 19 beaches, important to the visitor industry;

20 (B) Planning, construction, and repair of facilities;
 21 and



1 (C) Operation and maintenance costs of public lands,
 2 including beaches, connected with enhancing the
 3 visitor experience[-]; and

4 (6) \$4,000,000 shall be allocated to the counties for
 5 compliance and enforcement of county ordinances
 6 regulating transient vacation rentals as follows:
 7 \$1,000,000 for fiscal year 2017-2018 to Kauai county,
 8 \$1,000,000 for fiscal year 2017-2018 to Maui county,
 9 \$1,000,000 for fiscal year 2017-2018 to Hawaii county,
 10 and \$1,000,000 for fiscal year 2017-2018 to the city
 11 and county of Honolulu.

12 All transient accommodations taxes shall be paid into the
 13 state treasury each month within ten days after collection and
 14 shall be kept by the state director of finance in special
 15 accounts for distribution as provided in this subsection.

16 As used in this subsection, "fiscal year" means the twelve-
 17 month period beginning on July 1 of a calendar year and ending
 18 on June 30 of the following calendar year."

19 SECTION 7. A transient accommodations broker shall remain
 20 subject to the conditions of Act 204, Session Laws of Hawaii
 21 2015, unless the transient accommodations broker enters into a



1 tax collection agreement with the director of taxation as
2 provided for in sections 2 and 3 of this Act.

3 SECTION 8. By January 1, 2018, the director of taxation
4 shall make available to transient accommodations brokers a form
5 of application for registration as a transient accommodations
6 broker tax collection agent under the new section of chapter
7 237, Hawaii Revised Statutes, added by section 2 of this Act,
8 and under the new section 237D-A of chapter 237D, Hawaii Revised
9 Statutes, added by section 3 of this Act.

10 SECTION 9. If any provision of this Act, or the
11 application thereof to any person or circumstance, is held
12 invalid, the invalidity does not affect other provisions or
13 applications of the Act that can be given effect without the
14 invalid provision or application, and to this end the provisions
15 of this Act are severable.

16 SECTION 10. In codifying the new sections added by section
17 3 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

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



1 SECTION 12. This Act shall take effect on July 1, 2117,
2 and shall apply to taxable years beginning after December 31,
3 2017, and:

4 (1) Shall be repealed on December 31, 2022;

5 (2) Shall not apply to taxable years beginning after
6 December 31, 2022; and

7 (3) Section 237D-4, Hawaii Revised Statutes, shall be
8 reenacted in the form in which it read on the day
9 prior to the effective date of this Act.



Report Title:

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

Description:

Requires large transient accommodations brokers and permits all other 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. Ensures that the subject property is in compliance with applicable land use laws. Allocates \$1,000,000 of TAT revenues to each county for FY 2017-2018 to comply and enforce county ordinances regulating transient vacation rentals. Creates a surcharge tax on transient accommodations brokers. Sunsets on 12/31/2022.
(HB1471 HD3)

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

