



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1320

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2018, the following bill was signed into law:

SB2868 SD3 HD1

RELATING TO TAXATION
ACT 211 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. 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- Certificate of registration for transient
5 accommodations broker, travel agency, and tour packager. Each
6 transient accommodations broker, travel agency, or tour
7 packager, as a condition precedent to entering into an
8 arrangement to furnish transient accommodations at
9 noncommissioned negotiated contract rates, shall register with
10 the director. The transient accommodations broker, travel
11 agency, or tour packager shall make a one-time payment of \$15
12 for each registration, upon receipt of which the director shall
13 issue a certificate of registration in a form as the director
14 determines, attesting that the registration has been made. The
15 registration shall not be transferable and shall be valid only
16 for the transient accommodations broker, travel agency, or tour
17 packager in whose name it is issued.



1 The registration shall be effective until canceled in
2 writing. Any application for the reissuance of a previously
3 canceled registration identification number shall be regarded as
4 a new application for registration and shall be subject to the
5 payment of the one-time registration fee. The director may
6 revoke or cancel any registration issued under this section for
7 cause as provided by rule under chapter 91."

8 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is
9 amended by amending the definition of "gross rental" or "gross
10 rental proceeds" to read as follows:

11 "Gross rental" or "gross rental proceeds" means the gross
12 receipts, cash or accrued, of the taxpayer received as
13 compensation for the furnishing of transient accommodations or
14 entering into arrangements to furnish transient accommodations
15 and the value proceeding or accruing from the furnishing of
16 [such] transient accommodations or entering into arrangements to
17 furnish transient accommodations without any deductions on
18 account of the cost of property or services sold, the cost of
19 materials used, labor cost, taxes, royalties, interest,
20 discounts, or any other expenses whatsoever. Every taxpayer
21 shall be presumed to be dealing on a cash basis unless the



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

9 The words "gross rental" or "gross rental proceeds" shall
10 not be construed to include the amounts of taxes imposed by
11 chapter 237 or this chapter on operators of transient
12 accommodations, transient accommodations brokers, travel
13 agencies, and tour packagers and passed on, collected, and
14 received from the consumer as part of the receipts received as
15 compensation for the furnishing of transient accommodations[-]
16 or entering into arrangements to furnish transient
17 accommodations.

18 Where transient accommodations are furnished through
19 arrangements made by a transient accommodations broker, travel
20 agency, or tour packager at noncommissionable negotiated
21 contract rates and the gross income is divided between the



1 operator of transient accommodations on the one hand and the
2 transient accommodations broker, travel agency, or tour packager
3 on the other hand, [~~gross rental or gross rental proceeds to the~~
4 ~~operator means only the respective portion allocated or~~
5 ~~distributed to the operator,] the tax imposed by this chapter
6 shall apply to each operator and transient accommodations
7 broker, travel agency, or tour packager with respect to that
8 person's respective portion of the proceeds and no more.~~

9 For purposes of this definition, where the operator
10 maintains a schedule of rates for identifiable groups of
11 individuals, such as kamaainas, upon which the accommodations
12 are leased, let, or rented, gross rental or gross rental
13 proceeds means the receipts collected and received based upon
14 the scheduled rates and recorded as receipts in its books and
15 records."

16 SECTION 3. Section 237D-2, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Every transient accommodations broker, travel agency,
19 and tour packager 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 4. Section 237D-15, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

19 (1) If a person lets a transient accommodation for less
20 than one hundred eighty consecutive days, it shall be



1 presumed that the accommodation furnished is for a
2 transient purpose.

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

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

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

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 2018, and
21 shall apply to taxable years beginning after December 31, 2018.

S.B. NO. 2868
S.D. 3
H.D. 1

APPROVED this 10 day of JUL, 2018

A handwritten signature in black ink, appearing to read "David I. Byrne". The signature is written in a cursive style with a large, sweeping initial "D".

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: April 5, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives