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# 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 "fair market rental  
10 value" to read:

11           "Fair market rental value" means an amount equal to [~~one-~~  
12 ~~half]~~        per cent of the gross daily maintenance fees that  
13 are paid by the owner and are attributable to the time share  
14 unit located in Hawaii. Gross daily maintenance fees include  
15 maintenance costs, operational costs, insurance, repair costs,  
16 administrative costs, taxes, other than transient accommodations  
17 taxes, resort fees, and other costs including payments required



1 for reserves or sinking funds. Amounts paid for optional goods  
2 and services such as food and beverage services or beach chair  
3 or umbrella rentals shall be excluded from fair market rental  
4 value."

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

7 "Gross rental" or "gross rental proceeds" means the gross  
8 [receipts,] sales or gross charges collected from consumers,  
9 including but not limited to booking fees, resort fees, cleaning  
10 fees, lodging fees, transient fees, or any other fees collected,  
11 but does not include fees collected for ground transportation,  
12 airfare, meals, excursions, tours, or other fees unrelated to  
13 the transient accommodations, cash or accrued, of the taxpayer  
14 received as compensation for the furnishing of transient  
15 accommodations or entering into arrangements to furnish  
16 transient accommodations and the value proceeding or accruing  
17 from the furnishing of [such] the accommodations or entering  
18 into arrangements to furnish transient accommodations without  
19 any deductions on account of the cost of property or services  
20 sold, the cost of materials used, labor cost, [taxes,]  
21 royalties, interest, discounts, or any other expenses



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

10 The words "gross rental" or "gross rental proceeds" shall  
11 not be construed to include the amounts of taxes imposed by  
12 chapter 237 or this chapter on operators of transient  
13 accommodations or transient accommodation intermediaries and  
14 passed on, collected, and received from the consumer as part of  
15 the receipts received as compensation for the furnishing of  
16 transient accommodations ~~[or]~~ or entering into arrangements to  
17 furnish transient accommodations. Where transient  
18 accommodations are furnished through arrangements made by a  
19 ~~[travel agency or tour packager]~~ transient accommodations  
20 intermediary at noncommissionable negotiated contract rates and  
21 the gross income is divided between the operator of transient



1 accommodations on the one hand and the [~~travel agency or tour~~  
2 ~~packager~~] transient accommodations intermediary on the other  
3 hand, [~~gross rental or gross rental proceeds to the operator~~  
4 ~~means only the respective portion allocated or distributed to~~  
5 ~~the operator,~~] the tax imposed by this chapter shall apply to  
6 each operator and transient accommodations intermediary with  
7 respect to that person's respective portion of the proceeds, and  
8 no more. For purposes of this definition, where the operator  
9 maintains a schedule of rates for identifiable groups of  
10 individuals, such as kamaainas, upon which the accommodations  
11 are leased, let, or rented, gross rental or gross rental  
12 proceeds means the receipts collected and received based upon  
13 the scheduled rates and recorded as receipts in its books and  
14 records."

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

17 ""Transient accommodations [~~broker~~] intermediary" means  
18 any person or entity[~~,~~] that offers, lists, advertises, markets,  
19 accepts reservations for, or collects whole or partial payment  
20 for transient accommodations or resort time share vacation  
21 interests, units, or plans, including but not limited to



1 ~~[persons who operate]~~ travel agencies, tour packagers, wholesale  
2 travel companies, online websites, online travel agencies, [ø]  
3 online booking agencies, [that offers, lists, advertises, or  
4 accepts reservations or collects whole or partial payment for  
5 transient accommodations or resort time share vacation  
6 interests, units, or plans.] and booking platforms."

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

9 "(b) Every ~~operator~~ transient accommodations  
10 intermediary who arranges transient accommodations at  
11 noncommissioned negotiated contract rates and every operator  
12 shall pay to the State the tax imposed by subsection (a), as  
13 provided in this chapter."

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

16 "**§237D-4 Certificate of registration.** (a) Each operator  
17 ~~[ø]~~, plan manager, or transient accommodations intermediary  
18 that has obtained prior consent from each operator and plan  
19 manager working with the transient accommodations intermediary,  
20 as a condition precedent to engaging or continuing in the  
21 business of furnishing transient accommodations or in business



1 as a resort time share vacation plan, shall register with the  
2 director the name and physical address of each place of business  
3 within the State subject to this chapter. The operator or plan  
4 manager shall make a one-time payment as follows:

- 5 (1) \$5 for each registration for transient accommodations  
6 consisting of one to five units;  
7 (2) \$15 for each registration for transient accommodations  
8 consisting of six or more units; and  
9 (3) \$15 for each resort time share vacation plan within  
10 the State;

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

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

19 (b) The registration, or in lieu thereof a notice stating  
20 where the registration may be inspected and examined, shall at  
21 all times be conspicuously displayed at the place for which it



1 is issued. The name, phone number, and electronic mail address  
2 of the local contact shall at all times be conspicuously  
3 displayed in the same place as the registration or the same  
4 place as the notice stating where the registration may be  
5 inspected and examined. Failure to meet the requirements of  
6 this subsection shall be unlawful. The department may issue  
7 citations to any person who fails to conspicuously display the  
8 registration or notice, or the local contact's name, phone  
9 number, or electronic mail address as required by this  
10 subsection. A citation issued pursuant to this subsection for  
11 each transient accommodation or resort time share vacation  
12 interest, plan, or unit in violation of this subsection shall  
13 include a monetary fine of not less than:

- 14 (1) \$500 per day, for a first violation for which a  
15 citation is issued;
- 16 (2) \$1,000 per day, for a second violation for which a  
17 citation is issued; and
- 18 (3) \$5,000 per day, for a third and any subsequent  
19 violation for which a citation is issued.



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 operator or plan manager issued pursuant  
7 to this section; and

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

14 (d) Failure to meet the requirements of subsection (c)  
15 shall be unlawful. The department may issue citations to any  
16 person, including operators, plan managers, and transient  
17 accommodations [~~brokers,~~] intermediaries, who violates  
18 subsection (c). A citation issued pursuant to this subsection  
19 for each transient accommodation or resort time share vacation  
20 interest, plan, or unit in violation of subsection (c) shall  
21 include a monetary fine of not less than:



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

3 (2) \$1,000 per day, for a second violation for which a  
4 citation is issued; and

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

7 (e) The registration provided for by this section shall be  
8 effective until canceled in writing. Any application for the  
9 reissuance of a previously canceled registration identification  
10 number shall be regarded as a new registration application and  
11 shall be subject to the payment of the one-time registration  
12 fee. The director may revoke or cancel any license issued under  
13 this chapter for cause as provided by rule under chapter 91.

14 (f) If the license fee is paid, the department shall not  
15 refuse to issue a registration or revoke or cancel a  
16 registration for the exercise of a privilege protected by the  
17 First Amendment of the Constitution of the United States, or for  
18 the carrying on of interstate or foreign commerce, or for any  
19 privilege the exercise of which, under the Constitution and laws  
20 of the United States, cannot be restrained on account of  
21 nonpayment of taxes, nor shall section 237D-14 be invoked to



1 restrain the exercise of such a privilege, or the carrying on of  
2 such commerce.

3 (g) Any person who may lawfully be required by the State,  
4 and who is required by this chapter, to register as a condition  
5 precedent to engaging or continuing in the business of  
6 furnishing transient accommodations or as a plan manager subject  
7 to taxation under this chapter, who engages or continues in the  
8 business without registering in conformity with this chapter,  
9 shall be guilty of a misdemeanor. Any director, president,  
10 secretary, or treasurer of a corporation who permits, aids, or  
11 abets [~~such~~] the corporation to engage or continue in business  
12 without registering in conformity with this chapter, shall  
13 likewise be guilty of a misdemeanor. The penalty for the  
14 misdemeanors shall be the same as that prescribed by section  
15 231-35 for individuals, corporations, or officers of  
16 corporations, as the case may be, for violation of that section.

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

20 Citations may be appealed to the director of taxation or the  
21 director's designee.



1        (i) Each transient accommodations intermediary, as a  
2 condition precedent to entering into an arrangement to furnish  
3 transient accommodations at noncommissioned negotiated contract  
4 rates, shall register with the director. The transient  
5 accommodations intermediary shall make a one-time payment of \$15  
6 for each registration, upon receipt of which the director shall  
7 issue a certificate of registration in a form as the director  
8 determines, attesting that the registration has been made. The  
9 registration shall not be transferable and shall be valid only  
10 for the transient accommodations intermediary in whose name it  
11 is issued."

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

14        "(a) On or before the twentieth day of each calendar  
15 month, every [~~operator taxable, or plan manager~~] taxpayer liable  
16 under this chapter during the preceding calendar month shall  
17 file a sworn return with the director in [~~such~~] a form as the  
18 director shall prescribe together with a remittance for the  
19 amount of the tax in the form required by section 237D-6.5.  
20 Sections 237-30 and 237-32 shall apply to returns and penalties



1 made under this chapter to the same extent as if the sections  
2 were set forth specifically in this section."

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

5 "§237D-7 Annual return. On or before the twentieth day of  
6 the fourth month following the close of the taxable year, every  
7 person who has become liable for the payment of the taxes under  
8 this chapter during the preceding tax year shall file a return  
9 summarizing that person's liability under this chapter for the  
10 year, in [~~such~~] a form as the director prescribes. The  
11 [~~operator or plan manager~~] taxpayer shall transmit with the  
12 return a remittance covering the residue of the tax chargeable  
13 to the [~~operator or plan manager,~~] taxpayer, if any, to the  
14 office of the appropriate state district tax assessor designated  
15 in section 237D-8. The return shall be signed by the taxpayer,  
16 if made by an individual, or by the president, vice-president,  
17 secretary, or treasurer of a corporation, if made on behalf of a  
18 corporation. If made on behalf of a partnership, firm, society,  
19 unincorporated association, group, hui, joint adventure, joint  
20 stock company, corporation, trust estate, decedent's estate,  
21 trust, or other entity, any individual delegated by the entity



1 shall sign the same on behalf of the taxpayer. If for any  
2 reason it is not practicable for the individual taxpayer to sign  
3 the return, it may be done by any duly authorized agent. The  
4 department, for good cause shown, may extend the time for making  
5 the return on the application of any taxpayer and grant [such]  
6 reasonable additional time within which to make the return as  
7 the department may deem advisable.

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

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

12 "(a) If any [~~operator or plan manager~~] taxpayer fails to  
13 make a return as required by this chapter, the director shall  
14 make an estimate of the tax liability of the [~~operator or plan~~  
15 ~~manager~~] taxpayer from any information the director obtains, and  
16 according to the estimate so made, assess the taxes, interest,  
17 and penalty due the State from the [~~operator or plan manager,~~]  
18 taxpayer, give notice of the assessment to the [~~operator or plan~~  
19 ~~manager,~~] taxpayer, and make demand upon the [~~operator or plan~~  
20 ~~manager~~] taxpayer for payment. The assessment shall be presumed  
21 to be correct until and unless, upon an appeal duly taken as



1 provided in section 237D-11, the contrary shall be clearly  
2 proved by the person assessed, and the burden of proof upon  
3 [~~such~~] appeal shall be upon the person assessed to disprove the  
4 correctness of assessment."

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

7 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~  
8 ~~operator or plan manager,~~] a taxpayer, if the director  
9 determines that any tax, interest, or penalty has been paid more  
10 than once, or has been erroneously or illegally collected or  
11 computed, the tax, interest, or penalty shall be credited by the  
12 director on any taxes then due from the [~~operator or plan~~  
13 ~~manager~~] taxpayer under this chapter. The director shall refund  
14 the balance to the [~~operator or plan manager~~] taxpayer or the  
15 [~~operator's or plan manager's~~] taxpayer's successors,  
16 administrators, executors, or assigns in accordance with section  
17 231-23. No credit or refund shall be allowed for any tax  
18 imposed by this chapter, unless a claim for [~~such~~] the credit or  
19 refund is filed as follows:

20 (1) If an annual return is timely filed, or is filed  
21 within three years after the date prescribed for



1 filing the annual return, then the credit or refund  
2 shall be claimed within three years after the date the  
3 annual return was filed or the date prescribed for  
4 filing the annual return, whichever is later.

5 (2) If an annual return is not filed, or is filed more  
6 than three years after the date prescribed for filing  
7 the annual return, a claim for credit or refund shall  
8 be filed within:

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

10 (B) Three years after the date prescribed for the  
11 filing of the annual return,  
12 whichever is later.

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

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

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



1           **"§237D-12 Records to be kept; examination.** Every  
2   ~~[operator and plan manager]~~ taxpayer shall keep in the English  
3   language within the State, and preserve for a period of three  
4   years, suitable records of gross rental, gross rental proceeds,  
5   or fair market rental value relating to the business taxed under  
6   this chapter, and ~~[such]~~ any other books, records of account,  
7   and invoices ~~[as]~~ that may be required by the department, and  
8   all such books, records, and invoices shall be open for  
9   examination at any time by the department or the Multistate Tax  
10   Commission pursuant to chapter 255, or the authorized  
11   representative thereof."

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

14           **"§237D-15 Application of tax.** (a) The tax imposed by  
15   this chapter shall be in addition to any other taxes imposed by  
16   any other laws of the State, except as otherwise specifically  
17   provided in this chapter; provided that if it be held by any  
18   court of competent jurisdiction that the tax imposed by this  
19   chapter may not legally be imposed in addition to any other tax.  
20   or taxes imposed by any other law or laws with respect to the  
21   same property or the use thereof, then this chapter shall be



1 deemed not to apply to such property and the use thereof under  
2 the specific circumstances, but the other laws shall be given  
3 full effect with respect to such property and use.

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

7 (1) If a person lets a transient accommodation for less  
8 than one hundred eighty consecutive days, it shall be  
9 presumed that the accommodation furnished is for a  
10 transient purpose.

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

15 The operator shall have the burden of proving to the  
16 department whether an accommodation is not being furnished for a  
17 transient purpose. If the department is satisfied that an  
18 accommodation is not furnished for a transient purpose, then the  
19 department shall not levy any tax under this chapter. The  
20 department shall adopt rules to implement this section.



1        (c) Except as otherwise provided, this chapter shall apply  
2 to a transient accommodations intermediary who furnishes or  
3 enters into an agreement to furnish transient accommodations at  
4 noncommissioned negotiated contract rates in the same manner as  
5 it applies to an operator."

6        SECTION 10. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

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



**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 that the transient accommodations tax shall be calculated based on the gross rental. 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 an unspecified per cent. 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. (Proposed SD1)

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

