

---

---

## 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. The legislature recognizes on that on March 17,  
2 2015, the supreme court of Hawai'i held in *Travelocity.com, L.P.*  
3 *v. Director of Taxation*, 135 Hawaii 88, 346 P.3d 157 (2015),  
4 that online travel companies are not subject to the State's  
5 transient accommodations tax, which is imposed on the gross  
6 proceeds derived from furnishing transient accommodations.

7           In the case before the court, the department of taxation  
8 attempted to recover approximately \$430,000,000 in transient  
9 accommodation taxes and penalties based on the argument that the  
10 online travel companies were operators subject to the tax. The  
11 supreme court disagreed, and held that online travel companies  
12 are not operators and, therefore, not subject to the transient  
13 accommodations tax.

14           As a result of the supreme court's decision, the amount of  
15 the transient accommodations tax owed to the State when a person  
16 stays in a guest room may differ based on the method of booking.  
17 If a guest books a guest room directly through a hotel, the



1 transient accommodations tax is imposed on the gross amount  
2 charged to the customer. However, if a guest books a room  
3 through an online travel company, the transient accommodations  
4 tax is only imposed on the net amount that the hotel receives  
5 from the online travel company for the room. This means, for  
6 example, that if the advertised rate for a hotel room is \$100  
7 for one night, the transient accommodations tax imposed is \$9.25  
8 if the guest booked the room with the hotel directly, but the  
9 transient accommodations tax may be only \$7.40 if the guest  
10 booked the hotel room through an online travel company. The  
11 latter can occur because the online travel company may collect a  
12 fee of \$20 and pass the remaining \$80 to the hotel. Thus, the  
13 transient accommodations tax is based only on the amount  
14 actually collected by the hotel and not the total amount of the  
15 sale. The legislature believes that the transient  
16 accommodations tax should also be imposed on the travel company.

17 Accordingly, the purpose of this Act is to create parity in  
18 the taxation of transient accommodations by imposing the  
19 transient accommodations tax on the portion of the booking sale  
20 kept by the online travel companies. As a result of this Act,  
21 the legislature intends for the transient accommodations tax to



1 be imposed on the gross proceeds collected from the customer,  
2 regardless of whether a guest books a hotel room directly  
3 through a hotel or through an online travel company.

4 SECTION 2. Chapter 237D, Hawaii Revised Statutes, is  
5 amended by adding two new sections to be appropriately  
6 designated and to read as follows:

7 "§237D- Application to travel agencies and tour  
8 packagers. If a travel agency or tour packager enters into an  
9 agreement to furnish transient accommodations at noncommissioned  
10 negotiated contract rates, this chapter shall apply to the  
11 travel agency or tour packager in the same manner as it applies  
12 to an operator, except as otherwise provided.

13 §237D- Certificates of registration for travel agencies  
14 and tour packagers. (a) Each travel agency or tour packager,  
15 as a condition precedent to entering into an arrangement to  
16 furnish transient accommodations at noncommissioned negotiated  
17 contract rates, shall register with the director. The travel  
18 agency or tour packager shall make a one-time payment of \$15 for  
19 each registration, upon receipt of which the director shall  
20 issue a certificate of registration in the form determined by  
21 the director, attesting that the registration has been made.



1 The registration shall not be transferable and shall be valid  
2 only for the travel agency or tour packager in whose name it is  
3 issued.

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

12 (c) Any:

13 (1) Person required by this section to register as a  
14 condition precedent to entering into an arrangement to  
15 furnish transient accommodations at noncommissioned  
16 negotiated contract rates but who enters into that  
17 arrangement without registering pursuant to this  
18 section shall be guilty of a misdemeanor; and

19 (2) Director, president, secretary, or treasurer of a  
20 corporation or other business entity who permits,  
21 aids, or abets that corporation or other business



1           entity to engage or continue in business without  
2           registering pursuant to this section shall be guilty  
3           of a misdemeanor and subject to one or any combination  
4           of the following:

5           (A) A fine of not more than \$25,000;

6           (B) Imprisonment of not more than one year; or

7           (C) Probation."

8           SECTION 3. Section 40-81.5, Hawaii Revised Statutes, is  
9 amended by amending subsection (e) to read as follows:

10           "(e) For the purposes of this section, "rapid  
11 transportation authority" means any entity established by a  
12 county in the State for the purpose of constructing, operating,  
13 or maintaining a locally preferred alternative for a mass  
14 transit project and that receives moneys from a surcharge on  
15 state tax established pursuant to section 46-16.8, transient  
16 accommodations tax revenues pursuant to section [~~237D-2(e),~~]  
17 237D-2(f), or both.

18           SECTION 4. Section 237D-1, Hawaii Revised Statutes, is  
19 amended by amending the definitions of "gross rental" and "gross  
20 rental proceeds" to read as follows:



1            "\"Gross rental\" or \"gross rental proceeds\" means the gross  
2 receipts, cash or accrued, of the taxpayer received as  
3 compensation for the furnishing of transient accommodations or  
4 entering into arrangements to furnish transient accommodations  
5 and the value proceeding or accruing from the furnishing of  
6 [~~such~~] transient accommodations or entering into arrangements to  
7 furnish transient accommodations without any deductions on  
8 account of the cost of property or services sold, the cost of  
9 materials used, labor cost, taxes, royalties, interest,  
10 discounts, or any other expenses whatsoever. Every taxpayer  
11 shall be presumed to be dealing on a cash basis unless the  
12 taxpayer proves to the satisfaction of the department of  
13 taxation that the taxpayer is dealing on an accrual basis and  
14 the taxpayer's books are so kept, or unless the taxpayer employs  
15 or is required to employ the accrual basis for the purposes of  
16 the tax imposed by chapter 237 for any taxable year in which  
17 event the taxpayer shall report the taxpayer's gross income for  
18 the purposes of this chapter on the accrual basis for the same  
19 period.

20            The words \"gross rental\" or \"gross rental proceeds\" shall  
21 not be construed to include the amounts of taxes imposed by



1 chapter 237 or this chapter on operators of transient  
2 accommodations, travel agencies, and tour packagers and passed  
3 on, collected, and received from the consumer as part of the  
4 receipts received as compensation for the furnishing of  
5 transient accommodations[-] or entering into arrangements to  
6 furnish transient accommodations. [~~Where transient~~  
7 ~~accommodations are furnished through arrangements made by a~~  
8 ~~travel agency or tour packager at noncommissionable negotiated~~  
9 ~~contract rates and the gross income is divided between the~~  
10 ~~operator of transient accommodations on the one hand and the~~  
11 ~~travel agency or tour packager on the other hand, gross rental~~  
12 ~~or gross rental proceeds to the operator means only the~~  
13 ~~respective portion allocated or distributed to the operator, and~~  
14 ~~no more.] For purposes of this definition, where the operator  
15 maintains a schedule of rates for identifiable groups of  
16 individuals, such as kamaainas, upon which the accommodations  
17 are leased, let, or rented, gross rental or gross rental  
18 proceeds means the receipts collected and received based upon  
19 the scheduled rates and recorded as receipts in its books and  
20 records."~~



1 SECTION 5. Section 237D-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237D-2 Imposition and rates. (a) There is levied and  
4 shall be assessed and collected each month a tax of:

5 (1) Five per cent for the period beginning on January 1,  
6 1987, to June 30, 1994;

7 (2) Six per cent for the period beginning on July 1, 1994,  
8 to December 31, 1998;

9 (3) 7.25 per cent for the period beginning on January 1,  
10 1999, to June 30, 2009;

11 (4) 8.25 per cent for the period beginning on July 1,  
12 2009, to June 30, 2010; and

13 (5) 9.25 per cent for the period beginning on July 1,  
14 2010, and thereafter;

15 on the gross rental or gross rental proceeds derived from  
16 furnishing transient accommodations[-] or entering into  
17 arrangements to furnish transient accommodations as described in  
18 subsection (c).

19 (b) Every operator shall pay to the State the tax imposed  
20 by subsection (a), as provided in this chapter.



1        (c) Where transient accommodations are furnished through  
2 an arrangement made by a travel agency or tour packager at  
3 noncommissioned negotiated contract rates and the gross income  
4 is divided between:

- 5        (1) The operator of transient accommodations; and  
6        (2) The travel agency or tour packager,  
7 the tax imposed by subsection (a) shall apply to each party to  
8 the contract with respect to the party's respective portion of  
9 the proceeds.

10        [~~e~~] (d) There is levied and shall be assessed and  
11 collected each month, on the occupant of a resort time share  
12 vacation unit, a transient accommodations tax of:

- 13        (1) 7.25 per cent on the fair market rental value until  
14            December 31, 2015;  
15        (2) 8.25 per cent on the fair market rental value for the  
16            period beginning on January 1, 2016, to December 31,  
17            2016; and  
18        (3) 9.25 per cent on the fair market rental value for the  
19            period beginning on January 1, 2017, and thereafter.

20        [~~d~~] (e) Every plan manager shall be liable for and pay  
21 to the State the transient accommodations tax imposed by



1 subsection (c) as provided in this chapter. Every resort time  
2 share vacation plan shall be represented by a plan manager who  
3 shall be subject to this chapter.

4 ~~(e)~~ (f) Notwithstanding the tax rates established in  
5 subsections (a) (5) and (c) (3), the tax rates levied, assessed,  
6 and collected pursuant to subsections (a) and (c) shall be 10.25  
7 per cent for the period beginning on January 1, 2018, to  
8 December 31, 2030; provided that:

9 (1) The tax revenues levied, assessed, and collected  
10 pursuant to this subsection that are in excess of the  
11 revenues realized from the levy, assessment, and  
12 collection of tax at the 9.25 per cent rate shall be  
13 deposited quarterly into the mass transit special fund  
14 established under section 248-2.7; and

15 (2) If a court of competent jurisdiction determines that  
16 the amount of county surcharge on state tax revenues  
17 deducted and withheld by the State, pursuant to  
18 section 248-2.6, violates statutory or constitutional  
19 law and, as a result, awards moneys to a county with a  
20 population greater than five hundred thousand, then an  
21 amount equal to the monetary award shall be deducted



1           and withheld from the tax revenues deposited under  
2           paragraph (1) into the mass transit special fund, and  
3           those funds shall be a general fund realization of the  
4           State.

5           The remaining tax revenues levied, assessed, and collected  
6           at the 9.25 per cent tax rate pursuant to subsections (a) and  
7           (c) shall be distributed in accordance with section 237D-  
8           6.5(b)."

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

11          "(b) Except for the revenues collected pursuant to section  
12          [~~237D-2(e)~~,] 237D-2(f), revenues collected under this chapter  
13          shall be distributed in the following priority, with the excess  
14          revenues to be deposited into the general fund:

15          (1) \$1,500,000 shall be allocated to the Turtle Bay  
16          conservation easement special fund beginning July 1,  
17          2015, for the reimbursement to the state general fund  
18          of debt service on reimbursable general obligation  
19          bonds, including ongoing expenses related to the  
20          issuance of the bonds, the proceeds of which were used  
21          to acquire the conservation easement and other real



1 property interests in Turtle Bay, Oahu, for the  
2 protection, preservation, and enhancement of natural  
3 resources important to the State, until the bonds are  
4 fully amortized;

5 (2) \$26,500,000 shall be allocated to the convention  
6 center enterprise special fund established under  
7 section 201B-8;

8 (3) \$82,000,000 shall be allocated to the tourism special  
9 fund established under section 201B-11; provided that:

10 (A) Beginning on July 1, 2012, and ending on June 30,  
11 2015, \$2,000,000 shall be expended from the  
12 tourism special fund for development and  
13 implementation of initiatives to take advantage  
14 of expanded visa programs and increased travel  
15 opportunities for international visitors to  
16 Hawaii;

17 (B) Of the \$82,000,000 allocated:

18 (i) \$1,000,000 shall be allocated for the  
19 operation of a Hawaiian center and the  
20 museum of Hawaiian music and dance at the  
21 Hawaii convention center; and



- 1                   (ii) 0.5 per cent of the \$82,000,000 shall be  
2                                   transferred to a sub-account in the tourism  
3                                   special fund to provide funding for a safety  
4                                   and security budget, in accordance with the  
5                                   Hawaii tourism strategic plan 2005-2015; and
- 6           (C) Of the revenues remaining in the tourism special  
7                                   fund after revenues have been deposited as  
8                                   provided in this paragraph and except for any sum  
9                                   authorized by the legislature for expenditure  
10                                  from revenues subject to this paragraph,  
11                                  beginning July 1, 2007, funds shall be deposited  
12                                  into the tourism emergency special fund,  
13                                  established in section 201B-10, in a manner  
14                                  sufficient to maintain a fund balance of  
15                                  \$5,000,000 in the tourism emergency special fund;
- 16           (4) \$103,000,000 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.

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

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

11           SECTION 7. Section 237D-16, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13           "(a) The director of taxation shall administer and enforce  
14 this chapter. In respect of:

15           (1) The examinations of books and records and of taxpayers  
16                   and other persons,

17           (2) Procedure and powers upon failure or refusal by a  
18                   taxpayer to make a return or proper return, and

19           (3) The general administration of this chapter,  
20 the director of taxation shall have all rights and powers  
21 conferred by chapter 237 with respect to taxes thereby or



1 thereunder imposed; and, without restriction upon these rights  
2 and powers, sections 237-8, 237-9.3, and 237-36 to [~~237-41~~] 237-  
3 41.5 are made applicable to and with respect to the taxes,  
4 taxpayers, tax officers, and other persons, and the matters and  
5 things affected or covered by this chapter, insofar as not  
6 inconsistent with this chapter, in the same manner, as nearly as  
7 may be, as in similar cases covered by chapter 237."

8 SECTION 8. Section 248-2.7, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

10 "(b) For the period beginning on January 1, 2018, to  
11 December 31, 2030, transient accommodations tax and surcharge on  
12 state tax revenues allocated to the mass transit special fund  
13 pursuant to sections [~~237D-2(e)~~] 237D-2(f) and 248-2.6 shall be  
14 deposited into the special fund. All interest earned on the  
15 moneys in the special fund shall be credited to the general  
16 fund. The mass transit special fund shall be exempt from the  
17 central service expenses deduction under section 36-27 and  
18 departmental administrative expenses deduction under section 36-  
19 30."



# H.B. NO. 2551

1 SECTION 9. This Act does not affect rights and duties that  
 2 matured, penalties that were incurred, and proceedings that were  
 3 begun before its effective date.

4 SECTION 10. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6 SECTION 11. This Act shall take effect on July 1, 2018.

7

INTRODUCED BY:

D. L. Holt

Al St

Byron

Boyd

Ch. K. A.

Melanie K. Park

Sam J. ...  
Sen. ...

JAN 24 2018



# H.B. NO. 2551

**Report Title:**

TAT; Travel Agencies; Tour Packagers

**Description:**

Provides that transient accommodations tax is imposed on gross proceeds collected from a customer whether the customer booked a room directly through a hotel or through an online travel company.

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

