
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."



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

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

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

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

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

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

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

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

(b) Every operator shall pay to the State the tax imposed 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."



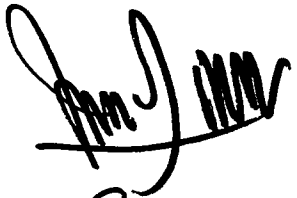
1 SECTION 9. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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:


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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.

