

JAN 19 2018

A BILL FOR AN ACT

RELATING TO TRANSIENT ACCOMMODATIONS TAX.

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

1 SECTION 1. The legislature finds that since the enactment
2 of Act 340, Session Laws of Hawaii 1986, codified as chapter
3 237D, Hawaii Revised Statutes (chapter 237D), occupants of
4 short-term accommodations, who are usually visitors to Hawaii,
5 have paid a tax on the retail value of their lodging. Known as
6 the transient accommodations tax or "TAT", this tax is assessed
7 and collected by the operator on the gross rental proceeds
8 derived from furnishing transient accommodations. Operators of
9 accommodations are obligated to impose the transient
10 accommodations tax, collect it from visitors, and pay the tax to
11 the State each month. Transient accommodations tax revenues are
12 distributed for various purposes, including allocations to:
13 support the Hawaii convention center and the Hawaii tourism
14 authority; protect, preserve, and maintain natural resources,
15 including beaches, that are important to the visitor industry;
16 and the counties to help support services relied upon by



1 tourists, such as police and fire protection, emergency medical
2 services, ocean safety personnel, and parks.

3 The legislature further finds that when chapter 237D was
4 originally codified, it did not contemplate the variety of
5 methods that would eventually be developed to market and sell
6 transient accommodations. As such, chapter 237D now fails to
7 capture the full amount of transient accommodations tax owed to
8 the State.

9 The legislature notes that there are a variety of ways
10 visitors can book transient accommodations, such as hotel rooms,
11 condominiums, bed and breakfast rooms, single family residences,
12 or rooms in residential homes. One such method is via direct or
13 commissioned sales. In a direct sale between the operator of a
14 licensed and permitted accommodation and a visitor, the full
15 retail price and taxes are paid to the operator, with the taxes
16 then being paid to the State. If the visitor uses the services
17 of a travel agency or an online travel agency that facilitates a
18 booking directly with the operator and is compensated by
19 commissions, the full retail price and taxes are transmitted to
20 the operator. The commissions paid cover the travel agency's



1 operating costs, such as marketing, advertising, payroll,
2 benefits, rent, and profit.

3 Another method is sales based on net contracted rates. A
4 significant number of bookings to Hawaii are made by a visitor
5 directly or by a travel agent on the visitor's behalf, through
6 wholesale travel companies and online travel agencies that have
7 established wholesale net rate contracts with accommodation
8 operators. The difference between the retail rate paid by the
9 visitor and the net rate is retained by the wholesale company.
10 As with travel agent commissions, this margin covers operating
11 costs, such as travel agent commissions, marketing, advertising,
12 payroll, benefits, rent, and profit.

13 Companies apply the general excise tax, and in some cases
14 the transient accommodations tax, to the gross retail price paid
15 by the visitor or the visitor's agent. The accommodation
16 operator is paid the net rate and associated general excise tax
17 and transient accommodations tax. However, the accommodation
18 operator is responsible for the payment of taxes on only the
19 portion of the revenue they receive, not the taxes on the margin
20 retained by the company or remarketer. Furthermore, remarketers



1 are currently required to pay the general excise tax on their
2 portion of revenue, but not the transient accommodations tax.

3 Finally, another method of reserving accommodations is via
4 sales subject to fees on booking platforms. Some booking
5 platforms commonly charge a booking fee and cleaning fee to the
6 visitor and may charge subscription, registration, membership,
7 marketing, booking, and other fees to the accommodations
8 operator. As with the wholesale margin, the amounts charged to
9 the visitor and the operator to cover the operating costs and
10 profits of the booking platforms are not currently covered under
11 the transient accommodations tax statute.

12 The legislature additionally finds that with these types of
13 booking platforms, there are also the questions of whether the
14 accommodation operators have the necessary county and state
15 permits or licenses and are paying general excise and transient
16 accommodations taxes on the value of the rental. There must be
17 a coordinated effort between the State and counties to ensure
18 all vacation accommodations are operating legally and paying all
19 appropriate taxes.

20 The legislature also finds that with each transaction that
21 is processed through a wholesale net rate contract, a booking



1 platform, or any other way in which the full amount paid by the
2 visitor is not currently subject to the transient accommodations
3 tax, the State loses significant tax revenues. Requiring the
4 following will remedy the current revenue loss for the State:

- 5 (1) If the accommodation is booked through an online
6 travel agency, the transient accommodations tax will
7 be paid by the online travel agency and the operator
8 (e.g., a hotel, condominium, or resort) and calculated
9 on their respective gross receipts, including any
10 added fees or commissions;
- 11 (2) If the accommodation is booked through an
12 international or domestic wholesale travel company,
13 the transient accommodations tax will be paid by the
14 operator and the wholesale travel company and
15 calculated on each of their respective gross receipts,
16 including any added fees, markups, or commissions; and
- 17 (3) If the accommodation is booked through a booking
18 platform, the full amount of transient accommodations
19 tax will be charged to the consumer at the time of the
20 sale, and the transient accommodations tax will be
21 paid by the booking platform, the operator, or both



1 and calculated on each of their respective gross
2 receipts from the sale, including any added fees or
3 markups.

4 Accordingly, the purpose of this Act is to ensure the State
5 receives the full amount of transient accommodations tax
6 calculated based upon the full or gross rental price paid by the
7 visitor, whether that amount is collected by the local Hawaii
8 operator, travel agent, wholesale travel company, or online by
9 an online travel agency or booking platform.

10 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By adding a new definition to be appropriately inserted
13 and to read:

14 "Travel agency" shall have the same meaning as in section
15 468L-1."

16 2. By amending the definition of "gross rental" or "gross
17 rental proceeds" to read:

18 "Gross rental" or "gross rental proceeds" means the gross
19 [receipts,] sale or gross charges collected from consumers,
20 including but not limited to booking fees, cleaning fees,
21 lodging fees, transient fees, or any other fees collected, but



1 does not include fees collected for ground transportation,
2 airfare, meals, excursions, tours, or other items included in a
3 travel package, other than accommodations, cash or accrued, of
4 the taxpayer received as compensation for the furnishing of
5 transient accommodations and the value proceeding or accruing
6 from the furnishing of such accommodations without any
7 deductions on account of the cost of property or services sold,
8 the cost of materials used, labor cost, [~~taxes,~~] royalties,
9 interest, discounts, or any other expenses whatsoever. Every
10 taxpayer shall be presumed to be dealing on a cash basis unless
11 the taxpayer proves to the satisfaction of the department of
12 taxation that the taxpayer is dealing on an accrual basis and
13 the taxpayer's books are so kept, or unless the taxpayer employs
14 or is required to employ the accrual basis for the purposes of
15 the tax imposed by chapter 237 for any taxable year in which
16 event the taxpayer shall report the taxpayer's gross income for
17 the purposes of this chapter on the accrual basis for the same
18 period.

19 The words "gross rental" or "gross rental proceeds" shall
20 not be construed to include the amounts of taxes imposed by
21 chapter 237 or this chapter on operators of transient



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



1 3. By amending the definition of "lease", "let", or
2 "rental" to read:

3 "Lease", "let", or "rental" means the leasing or renting
4 of living quarters or sleeping or housekeeping accommodations in
5 hotels, apartment hotels, motels, single family dwellings,
6 condominium property regimes or apartments defined in chapter
7 514A or units defined in chapter 514B, cooperative apartments,
8 rooming houses, or other places in which lodgings are regularly
9 furnished to transients for a consideration, without transfer of
10 the title of such property."

11 4. By amending the definition of "transient accommodations
12 broker" to read:

13 "Transient accommodations [~~broker~~] remarketer" means any
14 person or entity, including but not limited to persons who
15 operate or market transient accommodations through wholesale
16 travel companies, online websites, online travel agencies, [~~or~~]
17 online booking agencies, or booking platforms, that offers,
18 lists, advertises, or accepts reservations or collects whole or
19 partial payment for transient accommodations or resort time
20 share vacation interests, units, or plans."



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

3 "(b) Every operator, transient accommodations remarketer,
4 or travel agency who collects whole or partial payment for
5 transient accommodations shall pay to the State the tax imposed
6 by subsection (a), as provided in this chapter."

7 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) Each operator, transient accommodations remarketer,
11 or travel agency or plan manager as a condition precedent to
12 engaging or continuing in the business of furnishing transient
13 accommodations or in business as a resort time share vacation
14 plan shall register with the director the name and physical
15 address of each [~~place of business~~] transient accommodation
16 within the State subject to this chapter. The operator or plan
17 manager shall make a one-time payment as follows:

- 18 (1) \$5 for each registration for transient accommodations
19 consisting of one to five units;
- 20 (2) \$15 for each registration for transient accommodations
21 consisting of six or more units; and



1 (3) \$15 for each resort time share vacation plan within
2 the State;
3 upon receipt of which the director shall issue a certificate of
4 registration in such form as the director determines, attesting
5 that the registration has been made. The registration shall not
6 be transferable and shall be valid only for the operator or plan
7 manager in whose name it is issued and for the transaction of
8 business at the place designated therein. Acquisition of
9 additional transient accommodation units after payment of the
10 one-time fee shall not result in additional fees."

11 2. By amending subsection (d) to read:

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

20 (1) \$500 per day, for a first violation for which a
21 citation is issued;



- 1 (2) \$1,000 per day, for a second violation for which a
- 2 citation is issued; and
- 3 (3) \$5,000 per day, for a third and any subsequent
- 4 violation for which a citation is issued."

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

7 "(a) On or before the twentieth day of each calendar
8 month, every [~~operator taxable, or plan manager~~] taxpayer liable
9 under this chapter during the preceding calendar month shall
10 file a sworn return with the director in such form as the
11 director shall prescribe together with a remittance for the
12 amount of the tax in the form required by section 237D-6.5.
13 Sections 237-30 and 237-32 shall apply to returns and penalties
14 made under this chapter to the same extent as if the sections
15 were set forth specifically in this section."

16 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§237D-6.5 Remittances; distribution to counties. (a)
19 All remittances of taxes imposed under this chapter shall be
20 made by cash, bank drafts, cashier's check, money order, or



1 certificate of deposit to the office of the taxation district to
2 which the return was transmitted.

3 (b) Except for the revenues collected pursuant to section
4 237D-2(e), revenues collected under this chapter shall be
5 distributed in the following priority, with the excess revenues
6 to be deposited into the general fund:

7 (1) \$1,500,000 shall be allocated to the Turtle Bay
8 conservation easement special fund beginning July 1,
9 2015, for the reimbursement to the state general fund
10 of debt service on reimbursable general obligation
11 bonds, including ongoing expenses related to the
12 issuance of the bonds, the proceeds of which were used
13 to acquire the conservation easement and other real
14 property interests in Turtle Bay, Oahu, for the
15 protection, preservation, and enhancement of natural
16 resources important to the State, until the bonds are
17 fully amortized;

18 (2) \$26,500,000 shall be allocated to the convention
19 center enterprise special fund established under
20 section 201B-8;



- 1 (3) \$82,000,000 shall be allocated to the tourism special
2 fund established under section 201B-11; provided that:
- 3 (A) Beginning on July 1, 2012, and ending on June 30,
4 2015, \$2,000,000 shall be expended from the
5 tourism special fund for development and
6 implementation of initiatives to take advantage
7 of expanded visa programs and increased travel
8 opportunities for international visitors to
9 Hawaii;
- 10 (B) Of the \$82,000,000 allocated:
- 11 (i) \$1,000,000 shall be allocated for the
12 operation of a Hawaiian center and the
13 museum of Hawaiian music and dance at the
14 Hawaii convention center; and
- 15 (ii) 0.5 per cent of the \$82,000,000 shall be
16 transferred to a sub-account in the tourism
17 special fund to provide funding for a safety
18 and security budget, in accordance with the
19 Hawaii tourism strategic plan 2005-2015; and
- 20 (C) Of the revenues remaining in the tourism special
21 fund after revenues have been deposited as



1 provided in this paragraph and except for any sum
2 authorized by the legislature for expenditure
3 from revenues subject to this paragraph,
4 beginning July 1, 2007, funds shall be deposited
5 into the tourism emergency special fund,
6 established in section 201B-10, in a manner
7 sufficient to maintain a fund balance of
8 \$5,000,000 in the tourism emergency special fund;

9 (4) \$103,000,000 shall be allocated as follows: Kauai
10 county shall receive 14.5 per cent, Hawaii county
11 shall receive 18.6 per cent, city and county of
12 Honolulu shall receive 44.1 per cent, and Maui county
13 shall receive 22.8 per cent; provided that commencing
14 with fiscal year 2018-2019, a sum that represents the
15 difference between a county public employer's annual
16 required contribution for the separate trust fund
17 established under section 87A-42 and the amount of the
18 county public employer's contributions into that trust
19 fund shall be retained by the state director of
20 finance and deposited to the credit of the county
21 public employer's annual required contribution into



1 that trust fund in each fiscal year, as provided in
2 section 87A-42, if the respective county fails to
3 remit the total amount of the county's required annual
4 contributions, as required under section 87A-43; and
5 (5) \$3,000,000 shall be allocated to the special land and
6 development fund established under section 171-19;
7 provided that the allocation shall be expended in
8 accordance with the Hawaii tourism authority strategic
9 plan for:

- 10 (A) The protection, preservation, maintenance, and
11 enhancement of natural resources, including
12 beaches, important to the visitor industry;
13 (B) Planning, construction, and repair of facilities;
14 and
15 (C) Operation and maintenance costs of public lands,
16 including beaches, connected with enhancing the
17 visitor experience.

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



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

4 (c) In addition to the allocations apportioned to the
5 counties pursuant to subsection (b) (4), any portion of the
6 transient accommodations taxes collected from transient
7 accommodations remarketers or travel agencies and paid directly
8 to the department shall be allocated to the counties in the same
9 percentage as set forth in subsection (b) (4) and placed into a
10 fund, which shall be named the tourism impact fund, that is
11 established, maintained, and managed by each county.

12 ~~[(e)]~~ (d) On or before January or July 1 of each year or
13 after the disposition of any tax appeal with respect to an
14 assessment for periods after June 30, 1990, the state director
15 of finance shall compute and pay the amount due as provided in
16 subsection (b) to the director of finance of each county to
17 become a general realization of the county expendable as such,
18 except as otherwise provided by law."

19 SECTION 7. Section 237D-7, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§237D-7 Annual return. On or before the twentieth day of
2 the fourth month following the close of the taxable year, every
3 person who has become liable for the payment of the taxes under
4 this chapter during the preceding tax year shall file a return
5 summarizing that person's liability under this chapter for the
6 year, in such form as the director prescribes. The [~~operator or~~
7 ~~plan manager~~] taxpayer shall transmit with the return a
8 remittance covering the residue of the tax chargeable to the
9 [~~operator or plan manager,~~] taxpayer, if any, to the office of
10 the appropriate state district tax assessor designated in
11 section 237D-8. The return shall be signed by the taxpayer, if
12 made by an individual, or by the president, vice-president,
13 secretary, or treasurer of a corporation, if made on behalf of a
14 corporation. If made on behalf of a partnership, firm, society,
15 unincorporated association, group, hui, joint adventure, joint
16 stock company, corporation, trust estate, decedent's estate,
17 trust, or other entity, any individual delegated by the entity
18 shall sign the same on behalf of the taxpayer. If for any
19 reason it is not practicable for the individual taxpayer to sign
20 the return, it may be done by any duly authorized agent. The
21 department, for good cause shown, may extend the time for making



1 the return on the application of any taxpayer and grant such
2 reasonable additional time within which to make the return as
3 the department may deem advisable.

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

6 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) If any [~~operator or plan manager~~] taxpayer fails to
9 make a return as required by this chapter, the director shall
10 make an estimate of the tax liability of the [~~operator or plan~~
11 ~~manager~~] taxpayer from any information the director obtains, and
12 according to the estimate so made, assess the taxes, interest,
13 and penalty due the State from the [~~operator or plan manager,~~
14 taxpayer, give notice of the assessment to the [~~operator or plan~~
15 ~~manager,~~] taxpayer, and make demand upon the [~~operator or plan~~
16 ~~manager~~] taxpayer for payment. The assessment shall be presumed
17 to be correct until and unless, upon an appeal duly taken as
18 provided in section 237D-11, the contrary shall be clearly
19 proved by the person assessed, and the burden of proof upon such
20 appeal shall be upon the person assessed to disprove the
21 correctness of assessment."



1 SECTION 9. Section 237D-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237D-10 **Overpayment; refunds.** Upon application by [an
4 ~~operator or plan manager,~~] a taxpayer, if the director
5 determines that any tax, interest, or penalty has been paid more
6 than once, or has been erroneously or illegally collected or
7 computed, the tax, interest, or penalty shall be credited by the
8 director on any taxes then due from the [~~operator or plan~~
9 ~~manager~~] taxpayer under this chapter. The director shall refund
10 the balance to the [~~operator or plan manager~~] taxpayer or the
11 [~~operator's or plan manager's~~] taxpayer's successors,
12 administrators, executors, or assigns in accordance with section
13 231-23. No credit or refund shall be allowed for any tax
14 imposed by this chapter, unless a claim for such credit or
15 refund is filed as follows:

16 (1) If an annual return is timely filed, or is filed
17 within three years after the date prescribed for
18 filing the annual return, then the credit or refund
19 shall be claimed within three years after the date the
20 annual return was filed or the date prescribed for
21 filing the annual return, whichever is later.



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

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

6 (B) Three years after the date prescribed for the
 7 filing of the annual return,

8 whichever is later.

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

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

16 SECTION 10. Section 237D-12, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§237D-12 Records to be kept; examination.** Every
 19 [~~operator and plan manager~~] taxpayer shall keep in the English
 20 language within the State, and preserve for a period of three
 21 years, suitable records of gross rental, gross rental proceeds,



1 or fair market rental value relating to the business taxed under
 2 this chapter, and such other books, records of account, and
 3 invoices as may be required by the department, and all such
 4 books, records, and invoices shall be open for examination at
 5 any time by the department or the Multistate Tax Commission
 6 pursuant to chapter 255, or the authorized representative
 7 thereof."

8 SECTION 11. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 12. This Act shall take effect on July 1, 2018.

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INTRODUCED BY:

Clarence K. Richardson

Rosely H. Baker

Jane Mercado K.

J. Kelly G. G.

Breene H.

Pat E. R.

Ernie L. Hooper



S.B. NO. 2657

Report Title:

Transient Accommodations Tax; Gross Rental Price; Travel Agencies; Operators; Booking Platforms

Description:

Ensures the State receives the full amount of transient accommodations tax, calculated based upon the gross rental price paid by a visitor, whether that amount is collected by a local Hawaii operator, travel agent, wholesale travel company, or online by an online travel agency or booking platform.

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

