

JAN 19 2018

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. On March 17, 2015, the Hawaii supreme court
2 held in *Travelocity.com, L.P. v. Director of Taxation*, 135
3 *Hawaii* 88, 346 P.3d 157 (2015) that online travel companies are
4 not subject to Hawaii's transient accommodations tax as
5 operators of transient accommodations.

6 As a result of the court's decision, the amount of
7 transient accommodations tax for a guest room differs based on
8 the method of booking. If a guest room is booked directly
9 through a hotel, the transient accommodations tax is imposed on
10 the gross amount charged to the customer. If, however, a guest
11 room is booked through an online travel company, the transient
12 accommodations tax is only imposed on the net amount that the
13 hotel receives from the online travel company for the room.

14 The purpose of this Act is to create parity in the taxation
15 of transient accommodations by imposing the transient
16 accommodations tax on the portion kept by the online travel
17 companies. As a result, the transient accommodations tax will



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

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

7 "§237D- Certificate of registration for travel agency
8 and tour packager. Each travel agency or tour packager, as a
9 condition precedent to entering into an arrangement to furnish
10 transient accommodations at noncommissioned negotiated contract
11 rates, shall register with the director. The travel agency or
12 tour packager shall make a one-time payment of \$15 for each
13 registration, upon receipt of which the director shall issue a
14 certificate of registration in a form as the director
15 determines, attesting that the registration has been made. The
16 registration shall not be transferable and shall be valid only
17 for the travel agency or tour packager in whose name it is
18 issued.

19 The registration shall be effective until canceled in
20 writing. Any application for the reissuance of a previously
21 canceled registration identification number shall be regarded as



1 a new registration application and shall be subject to the
2 payment of the one-time registration fee. The director may
3 revoke or cancel any license issued under this chapter for cause
4 as provided by rule under chapter 91."

5 SECTION 3. Section 237D-1, Hawaii Revised Statutes, is
6 amended by amending the definition of "gross rental" and "gross
7 rental proceeds" to read as follows:

8 "Gross rental" or "gross rental proceeds" means the gross
9 receipts, cash or accrued, of the taxpayer received as
10 compensation for the furnishing of transient accommodations or
11 entering into arrangements to furnish transient accommodations
12 and the value proceeding or accruing from the furnishing of
13 [~~such~~] transient accommodations or entering into arrangements to
14 furnish transient accommodations without any deductions on
15 account of the cost of property or services sold, the cost of
16 materials used, labor cost, taxes, royalties, interest,
17 discounts, or any other expenses whatsoever. Where transient
18 accommodations are furnished through arrangements made by a
19 travel agency or tour packager at noncommissionable negotiated
20 contract rates and the gross income is divided between the
21 operator of transient accommodations on the one hand and the



1 travel agency or tour packager on the other hand, gross rental
2 or gross rental proceeds means the respective portion allocated
3 or distributed to each person, and no more. Every taxpayer
4 shall be presumed to be dealing on a cash basis unless the
5 taxpayer proves to the satisfaction of the department of
6 taxation that the taxpayer is dealing on an accrual basis and
7 the taxpayer's books are so kept, or unless the taxpayer employs
8 or is required to employ the accrual basis for the purposes of
9 the tax imposed by chapter 237 for any taxable year in which
10 event the taxpayer shall report the taxpayer's gross income for
11 the purposes of this chapter on the accrual basis for the same
12 period.

13 The words "gross rental" or "gross rental proceeds" shall
14 not be construed to include the amounts of taxes imposed by
15 chapter 237 or this chapter on operators of transient
16 accommodations, travel agencies, and tour packagers and passed
17 on, collected, and received from the consumer as part of the
18 receipts received as compensation for the furnishing of
19 transient accommodations[+] or entering into arrangements to
20 furnish transient accommodations. [~~Where transient~~
21 ~~accommodations are furnished through arrangements made by a~~



1 ~~travel agency or tour packager at noncommissionable negotiated~~
2 ~~contract rates and the gross income is divided between the~~
3 ~~operator of transient accommodations on the one hand and the~~
4 ~~travel agency or tour packager on the other hand, gross rental~~
5 ~~or gross rental proceeds to the operator means only the~~
6 ~~respective portion allocated or distributed to the operator, and~~
7 ~~no more.]~~ For purposes of this definition, where the operator
8 maintains a schedule of rates for identifiable groups of
9 individuals, such as kamaainas, upon which the accommodations
10 are leased, let, or rented, gross rental or gross rental
11 proceeds means the receipts collected and received based upon
12 the scheduled rates and recorded as receipts in its books and
13 records."

14 SECTION 4. Section 237D-2, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Every operator, travel agency or tour packager
17 licensed pursuant to section 237D- , shall pay to the State the
18 tax imposed by subsection (a) as provided in this chapter."

19 SECTION 5. Section 237D-15, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§237D-15 Application of tax. (a) The tax imposed by
2 this chapter shall be in addition to any other taxes imposed by
3 any other laws of the State, except as otherwise specifically
4 provided in this chapter; provided that if it be held by any
5 court of competent jurisdiction that the tax imposed by this
6 chapter may not legally be imposed in addition to any other tax
7 or taxes imposed by any other law or laws with respect to the
8 same property or the use thereof, then this chapter shall be
9 deemed not to apply to such property and the use thereof under
10 the specific circumstances, but the other laws shall be given
11 full effect with respect to such property and use.

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

15 (1) If a person lets a transient accommodation for less
16 than one hundred eighty consecutive days, it shall be
17 presumed that the accommodation furnished is for a
18 transient purpose.

19 (2) If a person lets a transient accommodation for one
20 hundred eighty days or more, there is no presumption



1 one way or another as to the purpose for which the
2 accommodation is furnished.

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

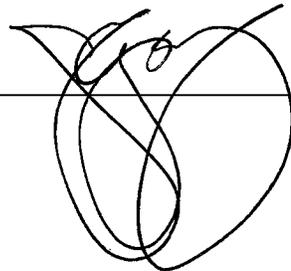
9 (c) Except as otherwise provided, this chapter shall apply
10 to a travel agency or tour packager who enters into an agreement
11 to furnish transient accommodations at noncommissioned
12 negotiated contract rates in the same manner as it applies to an
13 operator."

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2018.

17

INTRODUCED BY: _____

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S.B. NO. 2697

Report Title:

Transient Accommodations Tax; Travel Agencies and Tour Packagers

Description:

Imposes registration requirements and transient accommodations tax on travel agencies and tour packagers that enter into arrangements to furnish transient accommodations at noncommissioned negotiated contract rates on their share of the proceeds.

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

