

# SENATE FLOOR AMENDMENT

FLOOR AMENDMENT NO. 11 Date MAR 06 2018

TO: S.B. 2699, S.D. 1

SECTION 1. Senate Bill No. 2699, S.D. 1, is amended as follows:

1. By amending SECTION 1, item 2, on page 1, line 9 to page 3, line 18, to read:

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

"Gross rental" or "gross rental proceeds" means the gross ~~[receipts,]~~ sales or gross charges collected from consumers, including but not limited to booking fees, resort fees, cleaning fees, lodging fees, transient fees, or any other fees collected, but does not include fees collected for ground transportation, airfare, meals, excursions, tours, or other fees unrelated to the transient accommodations, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations or entering into arrangements to furnish transient accommodations and the value proceeding or accruing from the furnishing of ~~[such]~~ the accommodations or entering into arrangements to furnish transient accommodations without any deductions on account of the cost of property or services sold, the cost of materials used, labor cost, ~~[taxes,]~~ royalties, interest, discounts, or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the



department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer's books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 237 for any taxable year in which event the taxpayer shall report the taxpayer's gross income for the purposes of this chapter on the accrual basis for the same period.

The words "gross rental" or "gross rental proceeds" shall not be construed to include the amounts of taxes imposed by chapter 237 or this chapter on operators of transient accommodations or transient accommodation intermediaries and passed on, collected, and received from the consumer as part of the receipts received as compensation for the furnishing of transient accommodations~~[-]~~ or entering into arrangements to furnish transient accommodations. Where transient accommodations are furnished through arrangements made by a ~~[travel agency or tour packager]~~ transient accommodations intermediary at noncommissionable negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the ~~[travel agency or tour packager]~~ transient accommodations intermediary on the other hand, ~~[gross rental or gross rental proceeds to the operator means only the respective portion allocated or distributed to the operator,]~~ the tax imposed by this chapter shall apply to



each operator and transient accommodations intermediary with respect to that person's respective portion of the proceeds, and no more. For purposes of this definition, where the operator maintains a schedule of rates for identifiable groups of individuals, such as kamaainas, upon which the accommodations are leased, let, or rented, gross rental or gross rental proceeds means the receipts collected and received based upon the scheduled rates and recorded as receipts in its books and records.""

2. By adding a new SECTION 9 to the bill to read:

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

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



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

- (1) If a person lets a transient accommodation for less than one hundred eighty consecutive days, it shall be presumed that the accommodation furnished is for a transient purpose.
- (2) If a person lets a transient accommodation for one hundred eighty days or more, there is no presumption one way or another as to the purpose for which the accommodation is furnished.

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

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



3. By renumbering SECTIONS 9 and 10 of the bill as SECTIONS 10 and 11.

Offered by:

Frank J. Soto

Carried

Failed to Carry

Withdrawn

