
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 purpose of this Act is to make numerous
2 amendments to the transient accommodations tax for the purpose
3 of simplifying and streamlining administration of the transient
4 accommodations tax.

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

7 1. By adding a new definition to be appropriately
8 inserted and to read as follows:

9 "Taxpayer" means any person liable for any tax hereunder."

10 2. By amending the definition of "operator" to read as
11 follows:

12 "Operator" means any person operating a transient
13 accommodation, whether as owner or proprietor or as lessee,
14 sublessee, mortgagee in possession, licensee, or otherwise, or
15 engaging or continuing in any service business ~~which~~ that
16 involves the actual furnishing of a transient accommodation[-]



1 or that results in the collection of any receipts defined as
2 gross rental proceeds under this chapter."

3 SECTION 3. Section 237D-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§237D-4 Certificate of registration.** (a) [~~Each operator~~
6 ~~or plan manager~~] Every person not required to register under
7 section 237D-4.5, as a condition precedent to engaging or
8 continuing in the business of furnishing transient
9 accommodations or in business as a resort time share vacation
10 plan, shall register with the director the name and address of
11 each place of business within the State subject to this chapter.
12 The [~~operator or plan manager~~] person shall make a one-time
13 payment as follows:

- 14 (1) \$5 for each registration for transient accommodations
15 consisting of one to five units;
16 (2) \$15 for each registration for transient accommodations
17 consisting of six or more units; and
18 (3) \$15 for each resort time share vacation plan within
19 the State;

20 upon receipt of which the director shall issue a certificate of
21 registration in [~~such~~] a form as the director determines,



1 attesting that the registration has been made. The registration
2 shall not be transferable and shall be valid only for the
3 [~~operator or plan manager~~] person in whose name it is issued and
4 for the transaction of business at the place designated therein.
5 Acquisition of additional transient accommodation units after
6 payment of the one-time fee shall not result in additional fees.

7 (b) The registration, or in lieu thereof a notice stating
8 where the registration may be inspected and examined, shall at
9 all times be conspicuously displayed at the place for which it
10 is issued. The name, phone number, and electronic mail address
11 of the local contact shall at all times be conspicuously
12 displayed in the same place as the registration or the same
13 place as the notice stating where the registration may be
14 inspected and examined. Failure to meet the requirements of
15 this subsection shall be unlawful. The department may issue
16 citations to any person who fails to conspicuously display the
17 registration or notice, or the local contact's name, phone
18 number, or electronic mail address as required by this
19 subsection. A citation issued pursuant to this subsection for
20 each transient accommodation or resort time share vacation



1 interest, plan, or unit in violation of this subsection shall
2 include a monetary fine of [~~not~~] no less than:

- 3 (1) \$500 per day, for a first violation for which a
4 citation is issued;
- 5 (2) \$1,000 per day, for a second violation for which a
6 citation is issued; and
- 7 (3) \$5,000 per day, for a third and any subsequent
8 violation for which a citation is issued.

9 (c) Any advertisement, including an online advertisement,
10 for any transient accommodation or resort time share vacation
11 interest, plan, or unit shall conspicuously provide:

- 12 (1) The registration identification number or an
13 electronic link to the registration identification
14 number [~~of the operator or plan manager~~] issued
15 pursuant to this section; and
- 16 (2) The local contact's name, phone number, and electronic
17 mail address[~~7~~]; provided that this paragraph shall be
18 considered satisfied if this information is provided
19 to the transient or occupant prior to the furnishing
20 of the transient accommodation or resort time share
21 vacation unit.



1 (d) Failure to meet the requirements of subsection (c)
2 shall be unlawful. The department may issue citations to any
3 person[, ~~including operators, plan managers, and transient~~
4 ~~accommodations brokers,~~] who violates subsection (c). A
5 citation issued pursuant to this subsection for each transient
6 accommodation or resort time share vacation interest, plan, or
7 unit in violation of subsection (c) shall include a monetary
8 fine of [~~not~~] no less than:

- 9 (1) \$500 per day, for a first violation for which a
10 citation is issued;
11 (2) \$1,000 per day, for a second violation for which a
12 citation is issued; and
13 (3) \$5,000 per day, for a third and any subsequent
14 violation for which a citation is issued.

15 (e) The registration provided for by this section shall be
16 effective until canceled in writing. Any application for the
17 reissuance of a previously canceled registration identification
18 number shall be regarded as a new registration application and
19 shall be subject to the payment of the one-time registration
20 fee. The director may revoke or cancel any license issued under
21 this chapter for cause as provided by rule under chapter 91.



1 (f) If the license fee is paid, the department shall not
2 refuse to issue a registration or revoke or cancel a
3 registration for the exercise of a privilege protected by the
4 First Amendment of the Constitution of the United States, or for
5 the carrying on of interstate or foreign commerce, or for any
6 privilege the exercise of which, under the Constitution and laws
7 of the United States, cannot be restrained on account of
8 nonpayment of taxes, nor shall section 237D-14 be invoked to
9 restrain the exercise of such a privilege, or the carrying on of
10 such commerce.

11 ~~[(g) Any person who may lawfully be required by the State,~~
12 ~~and who is required by this chapter, to register as a condition~~
13 ~~precedent to engaging or continuing in the business of~~
14 ~~furnishing transient accommodations or as a plan manager subject~~
15 ~~to taxation under this chapter, who engages or continues in the~~
16 ~~business without registering in conformity with this chapter,~~
17 ~~shall be guilty of a misdemeanor. Any director, president,~~
18 ~~secretary, or treasurer of a corporation who permits, aids, or~~
19 ~~abets such corporation to engage or continue in business without~~
20 ~~registering in conformity with this chapter, shall likewise be~~
21 ~~guilty of a misdemeanor. The penalty for the misdemeanors shall~~



1 ~~be the same as that prescribed by section 231-35 for~~
2 ~~individuals, corporations, or officers of corporations, as the~~
3 ~~case may be, for violation of that section.~~

4 ~~(h)]~~ (g) Any monetary fine assessed under this section
5 shall be due and payable thirty days after issuance of the
6 citation, subject to appeal rights provided under this
7 subsection. Citations may be appealed to the director [~~of~~
8 ~~taxation]~~ or the director's designee.

9 (h) Any person who is required by this section to
10 register, as a condition precedent to engaging or continuing in
11 the business of furnishing transient accommodations or in
12 business as a resort time share vacation plan subject to
13 taxation under this chapter, who engages or continues in the
14 business without registering in conformity with this section,
15 shall be subject to the citation process and monetary fines
16 under subsections (d) and (g).

17 (i) For purposes of this section, "engaging or continuing
18 in the business of furnishing transient accommodations" includes
19 posting any advertisement for the furnishing of a transient
20 accommodation."



1 SECTION 4. Section 237D-4.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~237D-4.5[~~]~~] **Certificate of registration for transient**
4 **accommodations broker, travel agency, and tour packager.** (a)

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

17 The registration shall be effective until canceled in
18 writing. Any application for the reissuance of a previously
19 canceled registration identification number shall be regarded as
20 a new application for registration and shall be subject to the
21 payment of the one-time registration fee. The director may



1 revoke or cancel any registration issued under this section for
2 cause, as provided by rule under chapter 91.

3 (b) Any person who enters into an agreement to furnish
4 transient accommodations without registering in conformity with
5 this section shall be subject to the citation process and
6 monetary fines under section 237D-4(d) and (g)."

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

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

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

20 "(a) All remittances of taxes imposed under this chapter
21 shall be made by cash, bank drafts, cashier's check, money



1 order, or certificate of deposit [~~to the office of the taxation~~
2 ~~district to which the return was transmitted~~]."

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

5 "**§237D-7 Annual return.** On or before the twentieth day of
6 the fourth month following the close of the taxable year, every
7 person who has become liable for the payment of the taxes under
8 this chapter during the preceding tax year shall file a return
9 summarizing that person's liability under this chapter for the
10 year, in [~~such~~] a form as the director prescribes[~~.—The~~
11 ~~operator or plan manager~~], and shall transmit with the return a
12 remittance covering the residue of the tax [~~chargeable to the~~
13 ~~operator or plan manager,~~] due, if any[~~, to the office of the~~
14 ~~appropriate state district tax assessor designated in section~~
15 ~~237D-8~~]. The return shall be signed by the taxpayer, if made by
16 an individual, or by the president, vice-president, secretary,
17 or treasurer of a corporation, if made on behalf of a
18 corporation. If made on behalf of a partnership, firm, society,
19 unincorporated association, group, hui, joint adventure, joint
20 stock company, corporation, trust estate, decedent's estate,
21 trust, or other entity, any individual delegated by the entity



1 shall sign the same on behalf of the taxpayer. If for any
2 reason it is not practicable for the individual taxpayer to sign
3 the return, it may be done by any duly authorized agent. The
4 department, for good cause shown, may extend the time for making
5 the return on the application of any taxpayer and grant ~~[such]~~
6 reasonable additional time within which to make the return as
7 the department may deem advisable.

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

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

12 "(a) If any ~~[operator or plan manager]~~ person fails to
13 make a return as required by this chapter, the director shall
14 make an estimate of the tax liability of the ~~[operator or plan~~
15 ~~manager]~~ person from any information the director obtains, and
16 according to the estimate so made, assess the taxes, interest,
17 and penalty due the State from the ~~[operator or plan manager,]~~
18 person, give notice of the assessment to the ~~[operator or plan~~
19 ~~manager,]~~ person, and make demand upon the ~~[operator or plan~~
20 ~~manager]~~ person for payment. The assessment shall be presumed
21 to be correct until and unless, upon an appeal duly taken as



1 provided in section 237D-11, the contrary shall be clearly
2 proved by the person assessed, and the burden of proof upon
3 ~~[such]~~ appeal shall be upon the person assessed to disprove the
4 correctness of assessment."

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

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

19 (1) If an annual return is timely filed, or is filed
20 within three years after the date prescribed for
21 filing the annual return, then the credit or refund



1 shall be claimed within three years after the date the
2 annual return was filed or the date prescribed for
3 filing the annual return, whichever is later.

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

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

9 (B) Three years after the date prescribed for the
10 filing of the annual return,

11 whichever is later.

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

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

19 SECTION 10. Section 237D-16, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



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

3 (1) The examinations of books and records and of taxpayers
4 and other persons[~~7~~];

5 (2) Procedure and powers upon failure or refusal by a
6 taxpayer to make a return or proper return[~~7~~]; and

7 (3) The general administration of this chapter,
8 the director of taxation shall have all rights and powers
9 conferred by chapter 237 with respect to taxes thereby or
10 thereunder imposed; and, without restriction upon these rights
11 and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are
12 made applicable to and with respect to the taxes, taxpayers, tax
13 officers, and other persons, and the matters and things affected
14 or covered by this chapter, insofar as not inconsistent with
15 this chapter, in the same manner, as nearly as may be, as in
16 similar cases covered by chapter 237."

17 SECTION 11. Section 237D-8, Hawaii Revised Statutes, is
18 repealed.

19 [~~"§237D-8 Filing of returns. All monthly, quarterly,~~
20 ~~semiannual, and annual returns shall be transmitted to the~~



1 ~~office of the taxation district in which the taxes arose or to~~
2 ~~the office of the first taxation district in Honolulu."]~~

3 SECTION 12. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect upon its approval.



H.B. NO. 1043
H.D. 1

Report Title:

Transient Accommodations Tax; Operator or Plan Manager; Personal Liability

Description:

Amends chapter 237D, Hawaii Revised Statutes, to repeal the misdemeanor criminal penalty for failing to register under that chapter and replace it with a fine structure. Applies personal liability provision under general excise tax law to transient accommodations tax. Makes various technical amendments to chapter 237D, HRS. (HD1)

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