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# 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 by adding a new definition to be appropriately inserted  
7 and to read as follows:

8           "Taxpayer" means any person liable for any tax in this  
9 chapter."

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

12          "(b) Every transient accommodations broker, travel agency,  
13 and tour packager who arranges transient accommodations at  
14 noncommissioned negotiated contract rates and every operator or  
15 other taxpayer who receives gross rental proceeds shall pay to  
16 the State the tax imposed by subsection (a), as provided in this  
17 chapter."



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

3 "§237D-4 Certificate of registration. (a) [~~Each operator~~  
4 ~~or plan manager~~] Every taxpayer not required to register under  
5 section 237D-4.5, as a condition precedent to engaging or  
6 continuing in the business of furnishing transient  
7 accommodations or in business as a resort time share vacation  
8 plan, shall register with the director the name and address of  
9 each place of business within the State subject to this chapter.  
10 The [~~operator or plan manager~~] taxpayer shall make a one-time  
11 payment as follows:

- 12 (1) \$5 for each registration for transient accommodations  
13 consisting of one to five units;
- 14 (2) \$15 for each registration for transient accommodations  
15 consisting of six or more units; and
- 16 (3) \$15 for each resort time share vacation plan within  
17 the State;

18 upon receipt of which the director shall issue a certificate of  
19 registration in [~~such~~] a form [~~as~~] determined by the director  
20 [~~determines~~], attesting that the registration has been made.

21 The registration shall not be transferable and shall be valid



1 only for the [~~operator or plan manager~~] taxpayer in whose name  
2 it is issued and for the transaction of business at the place  
3 designated therein. Acquisition of additional transient  
4 accommodation units after payment of the one-time fee shall not  
5 result in additional fees.

6 (b) The registration, or in lieu thereof a notice stating  
7 where the registration may be inspected and examined, shall at  
8 all times be conspicuously displayed at the place for which it  
9 is issued. The name, phone number, and electronic mail address  
10 of the local contact shall at all times be conspicuously  
11 displayed in the same place as the registration or the same  
12 place as the notice stating where the registration may be  
13 inspected and examined. Failure to meet the requirements of  
14 this subsection shall be unlawful. The department may issue  
15 citations to any person who fails to conspicuously display the  
16 registration or notice, or the local contact's name, phone  
17 number, or electronic mail address as required by this  
18 subsection. A citation issued pursuant to this subsection for  
19 each transient accommodation or resort time share vacation  
20 interest, plan, or unit in violation of this subsection shall  
21 include a monetary fine of [~~not~~] no less than:



- 1 (1) \$500 per day, for a first violation for which a  
2 citation is issued;
- 3 (2) \$1,000 per day, for a second violation for which a  
4 citation is issued; and
- 5 (3) \$5,000 per day, for a third and any subsequent  
6 violation for which a citation is issued.
- 7 (c) Any advertisement, including an online advertisement,  
8 for any transient accommodation or resort time share vacation  
9 interest, plan, or unit shall conspicuously provide:
- 10 (1) The registration identification number or an  
11 electronic link to the registration identification  
12 number [~~of the operator or plan manager~~] issued  
13 pursuant to this section; and
- 14 (2) The local contact's name, phone number, and electronic  
15 mail address[  ]; provided that this paragraph shall be  
16 considered satisfied if this information is provided  
17 to the transient or occupant prior to the furnishing  
18 of the transient accommodation or resort time share  
19 vacation unit.
- 20 (d) Failure to meet the requirements of subsection (c)  
21 shall be unlawful. The department may issue citations to any



1 person [~~, including operators, plan managers, and transient~~  
2 ~~accommodations brokers,~~] who violates subsection (c). A  
3 citation issued pursuant to this subsection for each transient  
4 accommodation or resort time share vacation interest, plan, or  
5 unit in violation of subsection (c) shall include a monetary  
6 fine of [~~not~~] no less than:

- 7 (1) \$500 per day, for a first violation for which a
- 8 citation is issued;
- 9 (2) \$1,000 per day, for a second violation for which a
- 10 citation is issued; and
- 11 (3) \$5,000 per day, for a third and any subsequent
- 12 violation for which a citation is issued.

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

20 (f) If the license fee is paid, the department shall not  
21 refuse to issue a registration or revoke or cancel a



1 registration for the exercise of a privilege protected by the  
2 First Amendment of the Constitution of the United States, or for  
3 the carrying on of interstate or foreign commerce, or for any  
4 privilege the exercise of which, under the Constitution and laws  
5 of the United States, cannot be restrained on account of  
6 nonpayment of taxes, nor shall section 237D-14 be invoked to  
7 restrain the exercise of such a privilege, or the carrying on of  
8 such commerce.

9 ~~[(g) Any person who may lawfully be required by the State,~~  
10 ~~and who is required by this chapter, to register as a condition~~  
11 ~~precedent to engaging or continuing in the business of~~  
12 ~~furnishing transient accommodations or as a plan manager subject~~  
13 ~~to taxation under this chapter, who engages or continues in the~~  
14 ~~business without registering in conformity with this chapter,~~  
15 ~~shall be guilty of a misdemeanor. Any director, president,~~  
16 ~~secretary, or treasurer of a corporation who permits, aids, or~~  
17 ~~abets such corporation to engage or continue in business without~~  
18 ~~registering in conformity with this chapter, shall likewise be~~  
19 ~~guilty of a misdemeanor. The penalty for the misdemeanors shall~~  
20 ~~be the same as that prescribed by section 231-35 for~~



1 ~~individuals, corporations, or officers of corporations, as the~~  
2 ~~case may be, for violation of that section.~~

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

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

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

20 SECTION 5. Section 237D-4.5, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           " [{}§237D-4.5[{}] Certificate of registration for transient  
2 accommodations broker, travel agency, and tour packager. (a)  
3 Each transient accommodations broker, travel agency, or tour  
4 packager, as a condition precedent to entering into an  
5 arrangement to furnish transient accommodations at  
6 noncommissioned negotiated contract rates, shall register with  
7 the director. The transient accommodations broker, travel  
8 agency, or tour packager shall make a one-time payment of \$15  
9 for each registration, upon receipt of which the director shall  
10 issue a certificate of registration in a form as the director  
11 determines, attesting that the registration has been made. The  
12 registration shall not be transferable and shall be valid only  
13 for the transient accommodations broker, travel agency, or tour  
14 packager in whose name it is issued.

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



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

5       SECTION 6. 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~~] person liable  
9 under this chapter during the preceding calendar month shall  
10 file a sworn return with the director in [~~such~~] a form [~~as the~~  
11 prescribed by the director [~~shall prescribe~~] together with a  
12 remittance for the amount of the tax [~~in the form required by~~  
13 ~~section 237D-6.5~~]. Sections 237-30 and 237-32 shall apply to  
14 returns and penalties made under this chapter to the same extent  
15 as if the sections were set forth specifically in this section."

16       SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18       "(a) All remittances of taxes imposed under this chapter  
19 shall be made by cash, bank drafts, cashier's check, money  
20 order, or certificate of deposit [~~to the office of the taxation~~  
21 ~~district to which the return was transmitted~~]."



1 SECTION 8. Section 237D-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

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



1 the individual taxpayer to sign the return, it may be done by  
2 any duly authorized agent. The department, for good cause  
3 shown, may extend the time for making the return on the  
4 application of any taxpayer and grant ~~[such]~~ reasonable  
5 additional time within which to make the return as the  
6 department may deem advisable.

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

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

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



1 proved by the person assessed, and the burden of proof upon  
2 [~~such~~] appeal shall be upon the person assessed to disprove the  
3 correctness of assessment."

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

6 "**§237D-10 Overpayment; refunds.** Upon application [~~by an~~  
7 ~~operator or plan manager~~], if the director determines that any  
8 tax, interest, or penalty has been paid more than once, or has  
9 been erroneously or illegally collected or computed, the tax,  
10 interest, or penalty shall be credited by the director on any  
11 taxes then due from the [~~operator or plan manager~~] taxpayer  
12 under this chapter. The director shall refund the balance to  
13 the [~~operator or plan manager or the operator's or plan~~  
14 ~~manager's~~] taxpayer or the taxpayer's successors,  
15 administrators, executors, or assigns in accordance with section  
16 231-23. No credit or refund shall be allowed for any tax  
17 imposed by this chapter, unless a claim for [~~such~~] the credit or  
18 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[-]; or

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 11. Section 237D-12, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "§237D-12 Records to be kept; examination. Every  
2    ~~[operator and plan manager]~~ taxpayer shall keep in the English  
3    language within the State, and preserve for a period of three  
4    years, suitable records of gross rental, gross rental proceeds,  
5    or fair market rental value relating to the business taxed under  
6    this chapter, and such other books, records of account, and  
7    invoices as may be required by the department, and all such  
8    books, records, and invoices shall be open for examination at  
9    any time by the department or the Multistate Tax Commission  
10   pursuant to chapter 255, or the authorized representative  
11   thereof."

12           SECTION 12. Section 237D-16, Hawaii Revised Statutes, is  
13   amended by amending subsection (a) to read as follows:

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

- 16           (1) The examinations of books and records and of taxpayers  
17               and other persons~~[ ]~~;
- 18           (2) Procedure and powers upon failure or refusal by a  
19               taxpayer to make a return or proper return~~[ ]~~; and
- 20           (3) The general administration of this chapter,



1 the director of taxation shall have all rights and powers  
2 conferred by chapter 237 with respect to taxes thereby or  
3 thereunder imposed; and, without restriction upon these rights  
4 and powers, sections 237-8 and 237-36 to [~~237-41~~] 237-41.5 are  
5 made applicable to and with respect to the taxes, taxpayers, tax  
6 officers, and other persons, and the matters and things affected  
7 or covered by this chapter, insofar as not inconsistent with  
8 this chapter, in the same manner, as nearly as may be, as in  
9 similar cases covered by chapter 237."

10 SECTION 13. Section 237D-8, Hawaii Revised Statutes, is  
11 repealed.

12 [~~"§237D-8 Filing of returns. All monthly, quarterly,~~  
13 ~~semiannual, and annual returns shall be transmitted to the~~  
14 ~~office of the taxation district in which the taxes arose or to~~  
15 ~~the office of the first taxation district in Honolulu."]~~

16 SECTION 14. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 15. This Act shall take effect on January 1, 2022.



**Report Title:**

Transient Accommodations Tax; Fines; Operator or Plan Manager;  
Personal Liability

**Description:**

Amends chapter 237D, HRS, relating to the transient accommodations tax, to repeal the misdemeanor criminal penalty for failing to register under that chapter and replace it with a monetary fine structure; replace references to operator or plan manager with person or taxpayer; clarify that a certificate of registration is required for persons advertising transient accommodations; apply personal liability provision under general excise tax law to transient accommodations tax; and make various technical amendments. Effective 1/1/2022. (SD1)

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

