

JAN 27 2021

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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 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 transient accommodation[~~+~~] or  
17 that results in the collection of any receipts defined as gross  
18 rental proceeds under this chapter."

1 SECTION 3. 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 person 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  
10 chapter. The [~~operator or plan manager~~] person shall make a  
11 one-time 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 the director determines,  
20 attesting that the registration has been made. The registration  
21 shall not be transferable and shall be valid only for the  
22 [~~operator or plan manager~~] person in whose name it is issued and  
23 for the transaction of business at the place designated therein.

1 Acquisition of additional transient accommodation units after  
2 payment of the one-time fee shall not result in additional fees.

3 (b) The registration, or in lieu thereof a notice stating  
4 where the registration may be inspected and examined, shall at  
5 all times be conspicuously displayed at the place for which it  
6 is issued. The name, phone number, and electronic mail address  
7 of the local contact shall at all times be conspicuously  
8 displayed in the same place as the registration or the same  
9 place as the notice stating where the registration may be  
10 inspected and examined. Failure to meet the requirements of  
11 this subsection shall be unlawful. The department may issue  
12 citations to any person who fails to conspicuously display the  
13 registration or notice, or the local contact's name, phone  
14 number, or electronic mail address as required by this  
15 subsection. A citation issued pursuant to this subsection for  
16 each transient accommodation or resort time share vacation  
17 interest, plan, or unit in violation of this subsection shall  
18 include a monetary fine of not less than:

19 (1) \$500 per day, for a first violation for which a  
20 citation is issued;

21 (2) \$1,000 per day, for a second violation for which a  
22 citation is issued; and

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

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

6 (1) The registration identification number or an  
7 electronic link to the registration identification  
8 number [~~of the operator or plan manager~~] issued  
9 pursuant to this section; and

10 (2) The local contact's name, phone number, and electronic  
11 mail address[~~7~~]; provided that this paragraph shall be  
12 considered satisfied if this information is provided  
13 to the transient or occupant prior to the furnishing  
14 of the transient accommodation or resort time share  
15 vacation unit.

16 (d) Failure to meet the requirements of subsection (c)  
17 shall be unlawful. The department may issue citations to any  
18 person[~~, including operators, plan managers, and transient~~  
19 ~~accommodations brokers,~~] who violates subsection (c). A  
20 citation issued pursuant to this subsection for each transient  
21 accommodation or resort time share vacation interest, plan, or  
22 unit in violation of subsection (c) shall include a monetary  
23 fine of not 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 (e) The registration provided for by this section shall be  
8 effective until canceled in writing. Any application for the  
9 reissuance of a previously canceled registration identification  
10 number shall be regarded as a new registration application and  
11 shall be subject to the payment of the one-time registration  
12 fee. The director may revoke or cancel any license issued under  
13 this chapter for cause as provided by rule under chapter 91.

14 (f) If the license fee is paid, the department shall not  
15 refuse to issue a registration or revoke or cancel a  
16 registration for the exercise of a privilege protected by the  
17 First Amendment of the Constitution of the United States, or for  
18 the carrying on of interstate or foreign commerce, or for any  
19 privilege the exercise of which, under the Constitution and laws  
20 of the United States, cannot be restrained on account of  
21 nonpayment of taxes, nor shall section 237D-14 be invoked to  
22 restrain the exercise of such a privilege, or the carrying on of  
23 such commerce.

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

15       ~~(h)]~~ (g) Any monetary fine assessed under this section  
16 shall be due and payable thirty days after issuance of the  
17 citation, subject to appeal rights provided under this  
18 subsection. Citations may be appealed to the director of  
19 taxation or the director's designee.

20       (h) Any person who is required by this section to  
21 register, as a condition precedent to engaging or continuing in  
22 the business of furnishing transient accommodations or in  
23 business as a resort time share vacation plan subject to

1 taxation under this chapter, who engages or continues in the  
2 business without registering in conformity with this section,  
3 shall be subject to the citation process and monetary fines  
4 under subsections (d) and (g).

5 (i) For purposes of this section, "engaging or continuing  
6 in the business of furnishing transient accommodations" includes  
7 posting any advertisement for the furnishing of a transient  
8 accommodation."

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

11 "[+]§237D-4.5[+] **Certificate of registration for transient**  
12 **accommodations broker, travel agency, and tour packager.** (a)

13 Each transient accommodations broker, travel agency, or tour  
14 packager, as a condition precedent to entering into an  
15 arrangement to furnish transient accommodations at  
16 noncommissioned negotiated contract rates, shall register with  
17 the director. The transient accommodations broker, travel  
18 agency, or tour packager shall make a one-time payment of \$15  
19 for each registration, upon receipt of which the director shall  
20 issue a certificate of registration in a form as the director  
21 determines, attesting that the registration has been made. The  
22 registration shall not be transferable and shall be valid only

1 for the transient accommodations broker, travel agency, or tour  
2 packager in whose name it is issued.

3 The registration shall be effective until canceled in  
4 writing. Any application for the reissuance of a previously  
5 canceled registration identification number shall be regarded as  
6 a new application for registration and shall be subject to the  
7 payment of the one-time registration fee. The director may  
8 revoke or cancel any registration issued under this section for  
9 cause, as provided by rule under chapter 91.

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

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

16 "(a) On or before the twentieth day of each calendar  
17 month, every [~~operator taxable, or plan manager~~] person liable  
18 under this chapter during the preceding calendar month shall  
19 file a sworn return with the director in [~~such~~] a form as the  
20 director shall prescribe together with a remittance for the  
21 amount of the tax [~~in the form required by section 237D-6.5~~].

22 Sections 237-30 and 237-32 shall apply to returns and penalties

1 made under this chapter to the same extent as if the sections  
2 were set forth specifically in this section."

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

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

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

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

1 corporation. If made on behalf of a partnership, firm, society,  
2 unincorporated association, group, hui, joint adventure, joint  
3 stock company, corporation, trust estate, decedent's estate,  
4 trust, or other entity, any individual delegated by the entity  
5 shall sign the same on behalf of the taxpayer. If for any  
6 reason it is not practicable for the individual taxpayer to sign  
7 the return, it may be done by any duly authorized agent. The  
8 department, for good cause shown, may extend the time for making  
9 the return on the application of any taxpayer and grant ~~[such]~~  
10 reasonable additional time within which to make the return as  
11 the department may deem advisable.

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

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

16 "(a) If any ~~[operator or plan manager]~~ person fails to  
17 make a return as required by this chapter, the director shall  
18 make an estimate of the tax liability of the ~~[operator or plan~~  
19 ~~manager]~~ person from any information the director obtains, and  
20 according to the estimate so made, assess the taxes, interest,  
21 and penalty due the State from the ~~[operator or plan~~  
22 ~~manager,]~~ person, give notice of the assessment to the ~~[operator~~  
23 ~~or plan manager,]~~ person, and make demand upon the ~~[operator or~~

1 ~~plan manager]~~ person for payment. The assessment shall be  
2 presumed to be correct until and unless, upon an appeal duly  
3 taken as provided in section 237D-11, the contrary shall be  
4 clearly proved by the person assessed, and the burden of proof  
5 upon [~~such~~] appeal shall be upon the person assessed to disprove  
6 the correctness of assessment."

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

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

21 (1) If an annual return is timely filed, or is filed  
22 within three years after the date prescribed for  
23 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 to read as follows:

21 "[~~§~~237D-16~~]~~ **Administration and enforcement;**

22 **rules.** (a) The director of taxation shall administer and  
23 enforce this chapter. In respect of:

1 (1) The examinations of books and records and of taxpayers  
2 and other persons[~~τ~~];

3 (2) Procedure and powers upon failure or refusal by a  
4 taxpayer to make a return or proper return[~~τ~~]; and

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

15 (b) The director may adopt, amend, or repeal rules under  
16 chapter 91 to carry out this chapter."

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

S.B. NO. 1197

1 SECTION 12. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

INTRODUCED BY: *M. H. U.*

BY REQUEST

**Report Title:**

Transient Accommodations Tax

**Description:**

Amends chapter 237D, Hawaii Revised Statutes, to repeal the misdemeanor for failing to register under chapter 237D and replacing it with a fine structure and to make various technical amendments.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TRANSIENT ACCOMMODATIONS TAX.

PURPOSE: To amend chapter 237D, Hawaii Revised Statutes (HRS), by updating various sections for consistency and clarity.

MEANS: Amend sections 237D-1, 237D-4, 237D-4.5, 237D-6(a), 237D-6.5(a), 237D-7, 237D-9(a), 237D-10, and 237D-16 and repeal section 237D-8, HRS.

JUSTIFICATION: Many provisions of chapter 237D, HRS, are out of date and must be updated. The references to "operator or plan manager" must be updated as recent amendments subject additional taxpayers to the transient accommodations tax. The criminal penalty for failure to register is not consistent with the monetary fines imposed for the same violation under general excise tax (GET) law, thus, this measure proposes replacing the criminal penalty with a monetary fine. Provisions requiring taxpayers to file and pay at specific taxation districts are out of date and are therefore removed. Finally, section 237D-16, HRS, is amended to update the applicable penalties that are adopted from GET law. Specifically, section 237-41.5, HRS, which provides for personal liability, is made applicable to chapter 237D, HRS.

Impact on the public: There will be minimal impact on the general public.

Impact on the department and other agencies: The Department will benefit from a more streamlined transient accommodations tax law.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.