

ACT 340

H.B. NO. 2805-86

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER TRANSIENT ACCOMMODATIONS TAX

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Director” means the director of taxation.

“Gross income” or “gross proceeds” means the same as defined in chapter 237, limited to the gross rental charged and collected for transient accommodations, except that any taxes passed on and collected under chapter 237 shall be deducted in order to determine gross proceeds or gross income for the purposes of this chapter.

“Operator” means any person operating a transient accommodation, whether as owner or proprietor or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business which involves the actual furnishing of transient accommodation.

“Transient” means that the accommodations furnished to a person are being furnished to a person who does not have the intention of making such accommodation a permanent place of domicile.

“Transient accommodations” means the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one-hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, horizontal property regime or apartment as defined in chapter 514A, cooperative apartment, rooming house, or other place in which lodgings are regularly furnished to transients for consideration.

§ -2 **Imposition and rates.** (a) There is levied and shall be assessed and collected each month a tax of five per cent on the gross income or gross proceeds derived from furnishing transient accommodations.

(b) Every operator shall pay to the State the tax imposed by this section as provided in this chapter.

§ -3 **Exemptions.** This chapter shall not apply to:

- (1) Health care facilities including all such facilities enumerated in section 321-11(10).
- (2) School dormitories of a public or private educational institution providing education in grades kindergarten through twelve, or of any institution of higher education.
- (3) Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes.
- (4) Living accommodations for persons in the military on permanent duty assignment to Hawaii.
- (5) Low-income renters receiving rental subsistence from the state or federal governments and whose rental periods are for durations shorter than sixty days.

§ -4 **Certificate of registration.** No later than seven days before January 1, 1987, each operator as a condition precedent to engaging or continuing in the business of furnishing transient accommodations shall register with the director the name and address of each place of business within the State subject to this chapter. The operator shall pay the sum of \$1 for each registration, upon receipt of which the director shall issue a certificate of registration for each place in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable, shall be valid only for the operator in whose name it is issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which it is issued. Any person

commencing business as an operator after January 1, 1987, shall register and obtain a certificate of registration before commencing business. Each certificate of registration shall expire on December 31 next succeeding the date of its issuance. Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section -17 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.

§ -5 **Renewal of registration.** The registration provided for by section -4 shall be renewed annually, on or before January 31, or within such extended period, not to exceed an additional sixty days, as shall be allowed by the department of taxation for good cause. It shall be a condition precedent to the renewal of the registration that the applicant therefor shall have complied with the condition of the previous registration requiring that the taxes accruing under this chapter be paid, provided:

- (1) The department shall not, because of nonpayment of taxes, refuse the renewal of a registration for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section -14 be invoked to restrain the exercise of such a privilege. All persons who are entitled to the protection of this paragraph further shall be entitled to register under section -4, and an annual renewal under this section, upon payment of the sum of \$1 for each registration renewal.
- (2) The department shall not refuse the renewal of a registration on account of the nonpayment of any amount of tax that, on or before December 31 of the previous year, had not become delinquent.
- (3) The department, notwithstanding tax delinquency, may renew a registration (A) if assured of the payment of the delinquent taxes within a reasonable time, subject to and upon the condition subsequent that the delinquent taxes shall be so paid, or (B) in a case of tax delinquency due to a loss sustained, for reasons beyond the taxpayer's control, from the business on which the tax is imposed, or in other cases of excusable delinquency in the payment of the tax.

§ -6 **Return and payments; remittance; penalties.** On or before the last day of each calendar month, every operator taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe. Sections 237-30, 237-31, and 237-32 shall apply to returns, remittances, and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

§ -7 **Annual return.** On or before April 20 in each year every person who has become liable for the payment of taxes under this chapter during the preceding tax year shall file a return summarizing that person's liability under this chapter for the year, in such form as the director prescribes. The operator shall transmit with the return a remittance covering the residue of the tax

chargeable to the operator, if any, to the office of the appropriate state district tax assessor designated in section -8.

§ -8 **Filing of returns.** All monthly and annual returns shall be transmitted to the office of the taxation district in which the transient accommodation upon which the tax is imposed is situated. Where a person is authorized to collect rent on behalf of an owner under an agreement subject to section 237-30.5, such person shall comply with section 237-30.5 with respect to the tax imposed under this chapter.

§ -9 **Assessment of tax upon failure to make return.** (a) If any operator fails to make a return as required by this chapter, the director shall make an estimate of the tax liability of the operator from any information the director obtains, and according to the estimate so made, assess the taxes, interest, and penalty due the State from the operator, give notice of the assessment to the operator, and make demand upon the operator for payment.

(b) After a return is filed under this chapter, the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any tax due under this chapter, the director shall assess the taxes and interest due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment. No assessment under this section shall be made after three years from the date the return was due, unless the return was fraudulent.

§ -10 **Overpayment; refunds.** Upon application by an operator, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty shall be credited by the director on any taxes then due from the operator under this chapter. The director shall refund the balance to the operator or the operator's successors, administrators, executors, or assigns in accordance with section 231-23. No credit or refund shall be allowed after three years from the date the return was due.

§ -11 **Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided the tax so assessed shall have been paid.

§ -12 **Records to be kept; examination; penalties.** Every operator shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross proceeds and gross income relating to transient accommodations taxed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. Any person violating this section shall be guilty of a misdemeanor; and any director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor; the penalty for such misdemeanor shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.

§ -13 **Disclosure of returns unlawful; destruction of returns.** (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return,

shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to willfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; and
- (11) The Multistate Tax Commission or its authorized representative.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly returns filed pursuant to section -6, or any of them, upon the expiration of three years after the end of the calendar year in which the taxes so returned accrued.

§ -14 **Collection by suit; injunction.** The department of taxation may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the taxes arose. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a certificate as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the certificate, or if any person lawfully required so to do under this chapter shall fail to apply for and secure, on or before April 1, or shall fail to maintain in effect, a renewal of a certificate as provided by this chapter, the department may proceed in the circuit court of the judicial circuit in which the transient accommodations are taxed, to obtain an injunction restraining the further furnishing of transient accommodations until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such certificate is secured, or both, as the circumstances of the case may require.

§ -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 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.

§ -16 **Administration and enforcement; rules.** (a) The director of taxation shall administer and enforce this chapter. In respect of:

- (1) The examinations of books and records and of taxpayers and other persons,
- (2) Procedure and powers upon failure or refusal by a taxpayer to make a return or proper return, and
- (3) The general administration of this chapter,

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

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

§ -17 **Evasion of tax, etc.; penalties.** (a) It shall be unlawful for any person to refuse to make the return required to be made in section -7; or to make any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of tax imposed by this chapter; or for any person to aid or abet another in any attempt to evade the payment of any tax imposed by this chapter; or for the president, vice-president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required by this chapter, with the intent to evade the payment of any tax hereunder. Any person violating this section or violating any of the provisions of section 231-34 in relation to the tax imposed by this chapter, shall be punished as provided in section 231-34. Any corporation for which a false return, or a return containing a false statement shall be made, shall be fined in the amount provided in section 231-34.

(b) Any operator or person entering into an agreement or letting, where the agreement or letting is based on a time period or other provision in the

agreement, with the intention of avoiding the tax imposed under this chapter shall be guilty of a misdemeanor.”

SECTION 2. Section 231-3, Hawaii Revised Statutes, is amended to read as follows:

“§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To assess, pursuant to law, all real property for taxation and to make any other assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed by chapters 231 to 249, 236D, [and] 244D, and , except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department’s duties, whenever requested by any officer acting under such laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department’s duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of his deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws in respect to the assessment and taxation of property;
- (5) Forms: To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of property for taxation or any other assessment of or for taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules and regulations: To make such rules and regulations as the department may deem proper effectually to carry out the purposes

- for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) **Compromises:** With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
 - (11) **Retroactivity of rulings:** To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;
 - (12) **Remission of delinquency penalties and interest:** Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
 - (13) **Closing agreements:** To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
 - (14) **Other powers and duties:** In addition to the powers and duties contained in this chapter, the powers and duties contained in chapter 246 for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, and receiving and enforcing payment of the taxes imposed under the authority of chapters 235, 237 to 239, 243 to 245, 236D, [and] 244D, and , as far as the provisions of chapter 246 are not

superseded by and are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions and regulations prescribed under chapter 246, except as aforesaid, shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner.”

SECTION 3. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

“§231-6 Oaths, power to administer. The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters 231 to 249, 236D, [and] 244D, and___, with respect to any matters coming within the scope of the duties of the department.”

SECTION 4. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

“§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections. Except as otherwise specifically provided by chapters 231 to 249, 236D, [and] 244D, and___, the several district judges shall have jurisdiction to try misdemeanors arising under such chapters and all complaints for the violation of such chapters and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.”

SECTION 5. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue [his] a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to 246, 236D, [and] 244D, and___, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund, shall be made out of the tax reserve fund. The director of taxation may, from time to time, deposit taxes collected [by him] under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The

amounts deposited shall be made from the taxes with respect to which a particular refund is made, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated.”

SECTION 6. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“**§231-29 Joinder of party defendant when State claims tax liens.** The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters 233, 235, 237 to 239, 241, 243, 244D, 245, ___, and 383; provided that the jurisdiction herein conferred shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action herein contemplated, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action.”

SECTION 7. Section 237-18, Hawaii Revised Statutes, is amended to read as follows:

“**§237-18 Further provisions as to application of tax.** (a) Where a coin operated device produces gross income which is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each such person with respect to his portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter shall, if the promoter [be] is subject to the tax imposed by this chapter, apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by him upon such portion. No tax shall apply to a promoter with respect to such portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon such activity.

[(c) [DELETED.]

(d) (c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of

the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

[(e)] (d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection [(d),] (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on him as elsewhere provided.

[(f)] (e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salesmen, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salesmen, as the case may be, the tax levied under section 237-13(6) or under section 237-16 as to real estate brokers or salesmen, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to his portion of the commissions, and no more.

(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, and sightseeing tours not subject to chapter 239."

SECTION 8. Section 237-20, Hawaii Revised Statutes, is amended to read as follows:

"§237-20 Principles applicable in certain situations. A person or company having shareholders or members (a corporation, association, group, trust, partnership, joint adventure, or other person) is taxable upon its business with them, and they are taxable upon their business with it. A person or company, whether or not called a cooperative, through which shareholders or members are pursuing a common objective (for example, the obtaining of property or services for their individual businesses or use, or the marketing of their individual products) is a taxable person, and such facts do not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. The reimbursement of costs or advances made for or on behalf of one person by another shall not constitute gross income of the latter[. Where], unless the person receiving such reimbursement also receives additional monetary consideration for making such costs or advances [such additional consideration shall constitute gross income.

Funds paid by a customer or the customer's agent to a travel agent or tour packager for tickets or reservations for a particular tour or package of

travel services or accommodations, or both, which are not transmitted to the persons or entities who are to furnish the tour or package of travel services or accommodations shall be presumed not to be part of the gross proceeds or gross income received or accrued by such persons or entities. This presumption may be rebutted by showing an agreement to the contrary].”

SECTION 9. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

“§237-24 Amounts not taxable. This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on “liquid fuel” imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale, and the amounts of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected from him and collects the same from those purchasing from him as provided by chapter 245;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
- (14) Amounts received by an organization enumerated under section 237-23(a)(5) to (8) from the sale of brooms which are manufactured by blind persons working at the adult blind broom shop;
- (15) Amounts received by a producer of sugarcane from the manufacturer to whom he sells the sugarcane, where (A) the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and (B) the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and (C) the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and (D) the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
- (16) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;
- (17) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative corporation is a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;
 - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation;
- (18) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1;
- (19) Amounts received from sales of (A) intoxicating liquor as defined in chapter 244D, (B) tobacco products as defined in chapter 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;

- (20) Amounts received by the manager or board of directors of an association of apartment owners of a horizontal property regime established in accordance with chapter 514A in reimbursement of sums paid for common expenses;
- (21) Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, for amounts received by any person or common carrier engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter to the extent and under the conditions such exemptions or exclusions have theretofore been previously allowed in the State under the provisions of the Constitution of the United States or an act of the Congress of the United States; [and]
- (22) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended[.];
- (23) Taxes on transient accommodations imposed by chapter and passed on and collected by operators holding certificates of registration under that chapter; and
- (24) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership."

SECTION 10. The department of taxation is directed to submit to the legislature ten days before the regular session of 1987, rules which have been adopted under chapter 91, Hawaii Revised Statutes, which clarify the operation of, and notify the public of the department's interpretation of, sections 237-18(f) and 237-20, Hawaii Revised Statutes.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$779,920, or so much thereof as may be necessary for fiscal year 1986-1987, to carry out the purposes of section 1 of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of taxation.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that the tax imposed under section 1 of this Act shall take effect on January 1, 1987; provided that sections 7 and 8 of this Act are retroactive and shall apply to general excise taxes imposed under chapter 237, Hawaii Revised Statutes, on gross proceeds or gross income arising after June 30, 1985; and provided that section 9 of this Act shall apply to general excise taxes imposed under chapter

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237, Hawaii Revised Statutes, on gross proceeds or gross income arising after June 30, 1986.

(Approved June 13, 1986.)