
A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that pursuant to chapter
2 237, Hawaii Revised Statutes, every person engaging or
3 continuing any business in the State, casual sales excluded, is
4 required to register with the department of taxation and pay
5 general excise tax. In addition, section 237D-4, Hawaii Revised
6 Statutes, expressly requires that operators of short-term rental
7 lodging register as transient accommodations with the director
8 of taxation. Section 237D-2, Hawaii Revised Statutes, imposes a
9 transient accommodations tax on such operators based on a
10 percentage of gross rental or gross rental proceeds derived from
11 furnishing short-term rental lodging.

12 The legislature finds that, in conjunction with the
13 existing registration and taxation requirements, authorizing
14 collection and remission of transient accommodations tax and
15 general excise tax due from operators by a hosting platform that
16 facilitates short-term rental lodging will ease the State's
17 burden of tax collection. Section 237-9(e), Hawaii Revised



1 Statutes, already permits similar arrangements for persons
2 engaged in network marketing, multi-level marketing, and other
3 similar businesses to collect and remit general excise tax and
4 use tax on behalf of their direct sellers.

5 The legislature further finds that, in order for the
6 department to verify the taxes collected, hosting platforms
7 acting as tax collectors must provide sufficient and detailed
8 information to the department about the short-term rental
9 lodging operators on whose behalf they collect taxes. The
10 provided information must include the operators' registration
11 information, the addresses and locations of each short-term
12 rental lodging unit registered, and detailed information about
13 the underlying booking transactions. Tax collection by hosting
14 platforms must not compromise the ability of the department to
15 determine whether taxes are being properly remitted and
16 reported.

17 The purpose of this Act is to ensure that short term rental
18 lodging operators are able to easily pay appropriate taxes by:

19 (1) Allowing hosting platforms registered with the
20 department of taxation to act as tax collectors on
21 behalf of affiliated short-term rental lodging



1 operators for booking transactions made through the
2 hosting platforms and requiring hosting platforms to
3 report detailed information about operators in tax
4 returns;

5 (2) Applying the general excise tax to short-term rental
6 lodging operators;

7 (3) Requiring that short-term rental lodging operators
8 certify compliance with all applicable state and
9 county laws and ordinances as a condition of
10 participating in a hosting platform; and

11 (4) Requiring every short-term rental lodging operator to
12 keep records of any short-term rental lodging use,
13 along with information regarding each booking
14 transaction, for a period of three years.

15 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§237- Collection and remittance of general excise taxes
19 by registered hosting platforms on behalf of short-term rental
20 lodging operators. (a) The director may permit any hosting
21 platform to register with the department for the collection and



1 remission of any tax or imposed pursuant to this chapter on any
2 booking transaction facilitated by the hosting platform on
3 behalf of a short-term rental lodging operator within the State
4 and any county so authorized to collect such taxes.

5 (b) Any hosting platform that has registered with the
6 department pursuant to subsection (a) shall, for each booking
7 transaction facilitated by the hosting platform on behalf of a
8 short-term rental lodging operator within the State:

9 (1) Provide written notice to the operator that the
10 hosting platform is registered to collect, report, and
11 pay the tax imposed by this chapter on the operator's
12 behalf;

13 (2) Collect any taxes due under this chapter and remit the
14 total amount collected to the department on a monthly
15 or other periodic basis, together with a return, as
16 required under section 237-30;

17 (3) File an annual return for the taxes collected and
18 remitted under this section in accordance with section
19 237-33; and

20 (4) With each return filed pursuant to paragraphs (2) and
21 (3), provide a schedule listing:



1 (A) The name, address, and general excise tax number
2 of each operator from whom the hosting platform
3 collected taxes;

4 (B) With respect to each operator, the address of
5 each short-term rental lodging unit for which a
6 booking transaction was facilitated by the
7 hosting platform during the applicable period;
8 and

9 (C) For each such short-term rental lodging unit, for
10 the applicable period, the total number of
11 booking transactions, the total number of days
12 rented, and the gross rental or gross rental
13 proceeds.

14 The director may require the hosting platform to provide
15 any additional information required to ensure proper payment of
16 taxes under title 14.

17 No operator shall be responsible for collecting or
18 remitting any taxes due under this chapter on any booking
19 transaction for which it has received notice from a hosting
20 platform that the hosting platform has or will be collecting and



1 remitting such taxes. Any notice shall itself be sufficient
2 proof regarding any liability of an operator for such taxes.

3 (c) Information provided to or obtained by the department
4 from a hosting platform pursuant to this chapter, including
5 information contained in a return filed by a hosting platform,
6 information on underlying booking transactions, and information
7 relating to an audit or investigation, shall be considered
8 confidential pursuant to section 237-34 and shall not be
9 disclosed except as provided therein; provided however that
10 general, aggregated information shall not be considered
11 confidential and may be provided by the department to state
12 tourism authorities for the purpose of assisting with tourism
13 promotion.

14 (d) Nothing in this section shall limit the ability of the
15 department, in accordance with section 231-7, to conduct audits,
16 investigations, or hearings, or to issue subpoenas, with respect
17 to any hosting platform registered under subsection (a), any
18 operator of short-term rental lodging, or any underlying booking
19 transaction.

20 (e) Any hosting platform that has registered with the
21 department pursuant to subsection (a) and that fails to file a



1 required return or pay the full amount of applicable tax due as
2 required under this chapter shall be subject to penalties and
3 interest as provided in section 237-32.

4 (f) Registration under this section shall be effective
5 until it is canceled in writing.

6 A hosting platform registered under subsection (a) may
7 cancel its registration by delivering written notice of
8 cancellation to the director and each of the operators on whose
9 behalf it collects and remits taxes no later than ninety days
10 prior to the effective date of cancellation.

11 The director may cancel a hosting platform's registration
12 under this section for any cause, including but not limited to
13 any violation of this chapter or rules adopted pursuant thereto,
14 or for violation of any applicable agreement with the
15 department, by delivering written notice of cancellation to the
16 hosting platform no later than ninety days prior to the
17 effective date of cancellation.

18 (g) Registration of a hosting platform under subsection
19 (a) shall be separate from registration of a hosting platform
20 under this chapter with respect to its own business activities,



1 and separate licenses shall be issued under this chapter with
2 respect to each such registration.

3 (h) For the purposes of this section:

4 "Booking transaction" has the same meaning as in section
5 237D-1.

6 "Hosting platform" has the same meaning as in section 237D-
7 1.

8 "Operator" has the same meaning as in section 237D-1.

9 "Short-term rental lodging" has the same meaning as in
10 section 237D-1."

11 SECTION 3. Chapter 237D, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§237D- Collection and remittance of transient
15 accommodations taxes by registered hosting platform on behalf of
16 short-term rental lodging operators. (a) The director may
17 permit any hosting platform to register with the department for
18 the collection and remission of any tax imposed pursuant to this
19 chapter on any booking transaction facilitated by the hosting
20 platform on behalf of a short-term rental lodging operator
21 within the State.



1 (b) Any hosting platform that has registered with the
2 department pursuant to subsection (a) shall, for each booking
3 transaction facilitated by the hosting platform on behalf of a
4 short-term rental lodging operator within the State:

5 (1) Provide written notice to the operator that the
6 hosting platform has been registered to collect,
7 report, and pay the tax imposed by this chapter on the
8 operator's behalf;

9 (2) Collect any taxes due under this chapter and remit the
10 total amount collected to the department on a monthly
11 or other periodic basis, together with a return, as
12 required under section 237D-6;

13 (3) File an annual return for the taxes collected and
14 remitted under this section in accordance with section
15 237D-7; and

16 (4) With each return filed pursuant to paragraphs (2) and
17 (3), provide a schedule listing:

18 (A) The name, address, and transient accommodations
19 tax number of each operator from whom the hosting
20 platform collected taxes;



1 (B) With respect to each operator, the address of
2 each short-term rental lodging unit for which a
3 booking transaction was facilitated by the
4 hosting platform during the applicable period;
5 and

6 (C) For each such short-term rental lodging unit, for
7 the applicable period, the total number of
8 booking transactions, the total number of days
9 rented, and the gross rental or gross rental
10 proceeds.

11 The director may require the hosting platform to provide
12 any additional information required to ensure proper payment of
13 taxes under title 14.

14 No operator shall be responsible for collecting or
15 remitting any taxes due under this chapter on any booking
16 transaction for which it has received notice from a hosting
17 platform that the hosting platform has or will be collecting and
18 remitting such taxes. Any notice shall itself be sufficient
19 proof regarding any liability of an operator for such taxes.

20 (c) Information provided to or obtained by the department
21 from a hosting platform pursuant to this chapter, including



1 information contained in a return filed by a hosting platform,
2 information on underlying booking transactions, and information
3 relating to an audit or investigation, shall be considered
4 confidential pursuant to section 237D-13 and shall not be
5 disclosed except as provided therein; provided however that
6 general, aggregated information shall not be considered
7 confidential and may be provided by the department to state
8 tourism authorities for the purpose of assisting with tourism
9 promotion.

10 (d) Nothing in this section shall limit the ability of the
11 department, in accordance with section 231-7, to conduct audits,
12 investigations, or hearings, or to issue subpoenas, with respect
13 to any hosting platform registered under subsection (a), any
14 operator of short-term rental lodging, or any underlying booking
15 transaction.

16 (e) Any hosting platform that has registered with the
17 department pursuant to subsection (a) and that fails to file a
18 required return or pay the full amount of applicable tax due as
19 required under this chapter shall be subject to penalties and
20 interest as provided in section 237D-6.



1 (f) Registration under this section shall be effective
2 until it is canceled in writing.

3 A hosting platform registered under subsection (a) may
4 cancel its registration by delivering written notice of
5 cancellation to the director and each of the operators on whose
6 behalf it collects and remits taxes no later than ninety days
7 prior to the effective date of cancellation.

8 The director may cancel a hosting platform's registration
9 under this section for any cause, including but not limited to
10 any violation of this chapter or rules adopted pursuant thereto,
11 or for violation of any applicable agreement with the
12 department, by delivering written notice of cancellation to the
13 hosting platform no later than ninety days prior to the
14 effective date of cancellation.

15 (g) Registration of a hosting platform under subsection
16 (a) shall be separate from registration of a hosting platform
17 under this chapter with respect to its own business activities,
18 and separate certificates of registration shall be issued under
19 this chapter with respect to each such registration."

20 SECTION 4. Section 235-20.5, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) There is established a tax administration special
2 fund, into which shall be deposited:

3 (1) Fees collected under sections 235-20, 235-110.9, and
4 235-110.91;

5 (2) Revenues collected by the special enforcement section
6 pursuant to section 231-85; provided that in each
7 fiscal year, of the total revenues collected by the
8 special enforcement section, all revenues in excess of
9 \$700,000 shall be deposited into the general fund; and

10 (3) Fines and fees assessed pursuant to section 237D-4[-],
11 which shall be used specifically by the special
12 enforcement section for enforcing compliance with
13 section 237D-4."

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

16 1. By adding six new definitions to be appropriately
17 inserted and to read:

18 "Booking transaction" means any transaction in which there
19 is a charge to a short-term lodger by an operator for any short-
20 term rental lodging.



1 "Control" means the possession, direct or indirect, of the
2 power to direct or cause the direction of the management and
3 policies of an operator, whether through the ownership of voting
4 securities, by contract, or otherwise.

5 "Dwelling unit" shall have the same meaning as in section
6 521-8.

7 "Hosting platform" means any person or entity that
8 facilitates reservations or collects payments for a booking
9 transaction on behalf of or for an operator through an online
10 digital platform.

11 "Short-term lodger" means a person who occupies any
12 residential or commercial unit for the purpose of short-term
13 rental lodging.

14 "Short-term rental lodging" means the accessory or
15 secondary use of a residential dwelling unit or portion thereof
16 by an operator to provide room or space to short-term lodgers
17 for less than one hundred eighty consecutive days for each
18 letting."

19 2. By amending the definition of "local contact" to read:

20 ""Local contact" means an individual residing on the same
21 island as the transient accommodation [e~~x~~], resort time share



1 vacation unit, or short-term rental lodging, or an entity with a
2 place of business and at least one employee, officer, partner,
3 member, or other person working on behalf of the company who is
4 residing on the same island as the transient accommodation [~~e~~],
5 resort time share vacation unit [~~r~~], or short-term rental
6 lodging."

7 3. By amending the definition of "transient
8 accommodations" to read:

9 "Transient accommodations" means the furnishing of a room,
10 apartment, suite, single family dwelling, or the like to a
11 transient for less than one hundred eighty consecutive days for
12 each letting in a hotel, apartment hotel, motel, condominium
13 property regime or apartment as defined in chapter 514A or unit
14 as defined in chapter 514B, cooperative apartment, dwelling
15 unit, or rooming house that provides living quarters, sleeping,
16 or housekeeping accommodations, or other place in which lodgings
17 are regularly furnished to transients. "Transient
18 accommodations" include short-term rental lodgings."

19 SECTION 6. Section 237D-4, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§237D-4 Certificate of registration. (a) Each operator
2 or plan manager as a condition precedent to engaging or
3 continuing in the business of furnishing transient
4 accommodations or in business as a resort time share vacation
5 plan shall register with the director the name and address of
6 each place of business within the State subject to this chapter.
7 The operator or plan manager registering pursuant to this
8 section shall make a one-time payment as follows:

9 (1) \$5 for each registration for transient accommodations
10 consisting of one to five units;

11 (2) \$15 for each registration for transient accommodations
12 consisting of six or more units; and

13 (3) \$15 for each resort time share vacation plan within
14 the State;

15 upon receipt of which the director shall issue a certificate of
16 registration in such form as the director determines, attesting
17 that the registration has been made. The registration shall not
18 be transferable and shall be valid only for the operator or plan
19 manager in whose name it is issued and for the transaction of
20 business at the place designated therein. Acquisition of



1 additional transient accommodation units after payment of the
2 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 [~~eonspicueously display the~~
13 ~~registration or notice, or the local contact's name, phone~~
14 ~~number, or electronic mail address as required by]~~ comply with
15 this section. 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;



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

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

5 (c) Any advertisement, including an online advertisement,
6 for any transient accommodation [~~ex~~]; resort time share vacation
7 interest, plan, or unit; or short-term rental lodging unit shall
8 conspicuously provide:

9 (1) The registration identification number or an
10 electronic link to the registration identification
11 number of the operator or plan manager issued pursuant
12 to this section; and

13 (2) The local contact's name, phone number, and electronic
14 mail address, provided that this paragraph shall be
15 considered satisfied if this information is provided
16 to the transient or occupant prior to the furnishing
17 of the transient accommodation [~~ex~~], resort time share
18 vacation unit[-], or short-term rental lodging.

19 No short-term rental lodging unit shall be listed on a
20 hosting platform unless the operator first demonstrates to the
21 hosting platform that the operator and the short-term rental



1 lodging unit are in compliance with this chapter and other
 2 applicable land use, zoning, and tax requirements, including any
 3 and all applicable county ordinances and requirements, and
 4 including, without limitation, by providing the hosting platform
 5 with the registration number described in subsection (c)(1) and
 6 by attesting that the operator and the short-term rental lodging
 7 unit are in compliance with applicable land use, zoning, and tax
 8 requirements, including any and all applicable county ordinances
 9 and requirements.

10 (d) Failure to meet the requirements of subsection (c)
 11 shall be unlawful. The department may issue citations to any
 12 person, including operators, plan managers, and transient
 13 accommodations brokers, who violates subsection (c). A citation
 14 issued pursuant to this subsection for each transient
 15 accommodation [~~or~~]; resort time share vacation interest, plan,
 16 or unit; or short-term rental lodging unit in violation of
 17 subsection (c) shall include a monetary fine of not less than:

- 18 (1) \$500 per day, for a first violation for which a
- 19 citation is issued;
- 20 (2) \$1,000 per day, for a second violation for which a
- 21 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 (e) The registration provided for by this section shall be
4 effective until canceled in writing. Any application for the
5 reissuance of a previously canceled registration identification
6 number shall be regarded as a new registration application and
7 shall be subject to the payment of the one-time registration
8 fee. The director may revoke or cancel any license issued under
9 this chapter for cause as provided by rule under chapter 91.

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

20 (g) Any person who may lawfully be required by the State,
21 and who is required by this chapter, to register as a condition



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

13 (h) Any monetary fine assessed under this section shall be
14 due and payable thirty days after issuance of the citation,
15 subject to appeal rights provided under this subsection.

16 Citations may be appealed to the director of taxation or the
17 director's designee.

18 (i) A hosting platform shall remove any listing for a
19 short-term rental lodging unit located in the State:



- 1 (1) That fails to list the registration number for the
2 short-term rental lodging unit described in section
3 (c) (1);
- 4 (2) If the operator fails to attest to compliance with
5 applicable land use, zoning, and tax requirements,
6 including any and all applicable county ordinances and
7 requirements; or
- 8 (3) If the hosting platform has received written notice
9 from a state or local governmental authority that the
10 operator or short-term rental lodging unit has failed
11 to comply with applicable land use, zoning, or tax
12 requirements.
- 13 (j) The department may issue citations to any hosting
14 platform that violates subsection (i). A citation issued
15 pursuant to this subsection for each failure of a hosting
16 platform to remove a listing in violation of subsection (i)
17 shall include a monetary fine of not less than:
- 18 (1) \$500 per day, for a first violation for which a
19 citation is issued;
- 20 (2) \$1,000 per day, for a second violation for which a
21 citation is issued; and



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

3 (k) Unless the owner or occupant is residing in a
4 residential dwelling unit while renting out other bedrooms in
5 the dwelling, such dwelling shall not be advertised or used as
6 short-term rental lodging, if the owner or occupant of such
7 dwelling has received affordable housing funds with respect to
8 such dwelling from the federal, state, or local government,
9 including, without limitation, section 8 housing assistance,
10 housing choice vouchers or rent supplements pursuant to chapter
11 356D, low or moderate income homeowners loans for home repair,
12 rehabilitation, down payments, solar installation, or other
13 similar programs."

14 SECTION 7. Section 237D-12, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§237D-12 Records to be kept; examination.** (a) Every
17 operator and plan manager shall keep in the English language
18 within the State, and preserve for a period of three years,
19 suitable records of gross rental, gross rental proceeds, or fair
20 market rental value relating to the business taxed under this
21 chapter, and such other books, records of account, and invoices



1 as may be required by the department, and all such books,
2 records, and invoices shall be open for examination at any time
3 by the department or the Multistate Tax Commission pursuant to
4 chapter 255, or the authorized representative thereof.

5 (b) In addition to the records required to be kept under
6 subsection (a), every short-term rental lodging operator shall
7 keep in the English language within the State, and preserve for
8 a period of three years, suitable records of the dates of any
9 short-term rental lodging use, along with information regarding
10 each booking transaction, including the number of occupants and
11 number of days associated with each such booking transaction and
12 the rental charged. All such records shall be open for
13 examination at any time by the department or the Multistate Tax
14 Commission pursuant to chapter 255, or the authorized
15 representative thereof."

16 SECTION 8. Except as expressly provided herein, this Act
17 is not intended to preempt or otherwise limit the authority of
18 counties to adopt, monitor, and enforce local land use
19 regulations, nor is this Act intended to transfer the authority
20 to monitor and enforce such regulations away from the counties.



1 SECTION 9. By January 1, 2019, the director of taxation
2 shall make available to hosting platforms a form of application
3 for registration for collection and remittance of taxes on
4 behalf of short-term rental lodging operators under the new
5 section of chapter 237, Hawaii Revised Statutes, added by
6 section 2 of this Act, and under the new section of chapter
7 237D, Hawaii Revised Statutes, added by section 3 of this Act.

8 SECTION 10. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of this Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable. Without limitation of the generality
14 of the foregoing, this section is expressly intended to apply to
15 any provision regarding hosting platform liability in section 6
16 of this Act.

17 SECTION 11. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 12. This Act, upon its approval, shall apply to
20 taxable years beginning after December 31, 2018.



Report Title:

Short-Term Rental Lodging; Hosting Platforms; Transient Accommodations Tax; Excise Tax

Description:

Allows hosting platforms registered with the Department of Taxation to act as tax collectors on behalf of the short-term rental lodging operators. Applies the general excise tax to short-term rental lodging. Requires hosting platforms to report detailed operator information with filing of tax returns. Requires operators to keep records for at least three years. (HB1470 HD1)

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

