

TAX FOUNDATION

O F H A W A I I

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October 16, 2018

Rules Office
Hawaii Department of Taxation
830 Punchbowl Street, Room 221
Honolulu, HI 96813

Re: **Proposed HAR § 18-237D, Relating to Act 204, SLH 2015**
Public Hearing: October 19, 2018

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Ladies and Gentlemen:

Act 204, Session Laws of Hawaii 2015, requires that operators and plan managers of transient accommodations designate an on-island local contact and display the contact's name, phone number and email address inside the unit, as well as in online advertisements or to the guest upon check-in. Act 204 also requires that Transient Accommodations Tax (TAT) license numbers be displayed both inside the unit and in all online advertisements, either directly in the advertisement or by a link, and imposes fines on operators, plan managers, and transient accommodations brokers for failure to comply. Act 204 provides fines for violation of its provisions and provides that fines may be appealed to the director of taxation or the director's designee.

The proposed rules explain how the Department will issue citations and fines for violations of Act 204, explain instances where the Department will issue a written warning in lieu of a citation, and provide procedures for appeals.

Overall, the proposed rules appear to provide a reasonable interpretation of Act 204. We do have some technical comments and suggestions, which are set forth below.

1. References to Postmark

There are references in the rules to a "postmark" or "United States mail" to establish a date for a particular action. See sections 18-237D-4-22, 18-237D-4-23(a) and (g)(2). To be consistent with section 231-8(c), HRS, we suggest that approved private delivery services (FedEx, UPS, etc.) be allowed as well.

2. Fines Greater than \$5,000

In section 18-237D-4-11(a)(3) and (c)(3), the Department allows itself to issue a fine of greater than \$5,000 per day, but requires that it provide a written explanation of why the fine amount is greater. In order to avoid the impression that the Department is giving itself unbridled discretion in this matter, we would urge the Department to include standards or at least examples of aggravating circumstances that would justify a greater fine.

Thank you for considering these comments.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas Yamachika".

Thomas Yamachika
President