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TAX INFORMATION RELEASE NO. 2018-05

Re: Transient Accommodations Tax Obligations for Rooms Rented to Airline Crew Members

The purpose of this Tax Information Release (TIR) is to remind taxpayers that Transient Accommodations Tax (TAT) is owed on gross income received in exchange for furnishing rooms to airlines for use by crew members unless the airline is obligated to pay for the room for a period of 180 consecutive days or more, regardless of whether airline crew is actually physically present in the room for the entire period. Contracts that provide the airline with the option of renting a room for a period of 180 days or longer, but which obligate the airline to pay only for rooms the airline actually elects to rent for use by its crew are not long-term rental agreements, and gross rental proceeds from such contracts are subject to TAT regardless of the rental period contained in the contract. Taxpayers who fail to report and pay the TAT owed are subject to applicable penalties and interest.

Relevant Law

Section 237D-2, Hawaii Revised Statutes (HRS), levies the TAT on every operator for the gross rental or gross rental proceeds derived from furnishing transient accommodations.

"Transient accommodations" is defined in section 237D-1, HRS, as: "the furnishing of a room, apartment, suite, single family dwelling, or the like to a transient for less than one hundred eighty consecutive days."

The term "transient" is defined in section 18-237D-1-06, Hawaii Administrative Rules (HAR), as "any person who stays for only a short and temporary period, such as a person who comes and goes with only a brief stop."

Section 18-237D-1-07(h), HAR, further provides:

The transient accommodations tax does not apply to transient accommodations that are occupied by a party pursuant to a long-term rental agreement (e.g., over 180 consecutive days) and used by its employees as an integral part of conducting

its business operations. A party entering into a long-term rental agreement with an operator is not a “transient” ... because the contracting party is not occupying the premises for a “short and temporary period”, but has agreed to rent the accommodations for an extended period. The fact that a contracting party allows its employees to occupy the hotel rooms or apartments for a shorter period of time is irrelevant because the contracting party is considered the occupant of the accommodations under the long-term rental agreement.

Section 18-237D-1-07(h) also adds the following example:

An airline enters into a one-year contract with a hotel operator to rent several rooms for use by its crew members who regularly lay over in Hawaii. The transient accommodations tax does not apply to the gross income received by the hotel operator because the hotel rooms are occupied by the airline for an extended period of time and used by the airline’s employees as an integral part of the airline’s flight operations.

Analysis

In the transient accommodations industry, it is common for hotels to enter into contracts with airlines whereby the hotel agrees to make available a minimum number of rooms long term for the airline's crew every night. Under some of these agreements, the airline is only required to pay the hotel for rooms actually physically occupied by airline crew despite a larger number of rooms, or a "pool" of rooms, being made available to the airline on a regular basis. An operator will not be subject to the TAT for rooms furnished pursuant to a contract entered into with an airline if the agreement provides for the rental of rooms for at least 180 consecutive days.

If an airline is obligated by its agreement to pay for rooms for a period of at least 180 consecutive days, regardless of whether any of its crew is actually physically present in the rooms every night for the entire period, the TAT will not apply. By contrast, if the airline is not obligated to pay for the rooms for at least 180 consecutive days, such as when an agreement allows the airline to determine the number of rooms it needs for its crew on a night-by-night or short-term (less than 180 consecutive days) basis, the TAT will apply to all gross rental proceeds received under the agreement.

The Department notes that the number of rooms the hotel agrees to set aside under the contract is irrelevant. What is relevant instead is the number of rooms let for a period of 180 consecutive days or longer, for which the airline is required to pay regardless of whether its crew in fact physically occupies the rooms. Such rooms are not subject to TAT. All other rooms let to airlines are generally subject to TAT.

Example 1:

Harry's Hotel (Hotel) and Kapua Airlines (Airline) enter into a contract for hotel accommodations for Airline’s crew members to use during layovers. The

contract states in relevant part that Hotel shall reserve 10 rooms for Airline crew members every night for a period of one year, running from January 1 until December 31. The contract provides that Airline shall pay Hotel a \$100 rate per night per room actually occupied. If Airline requires more than 10 rooms for a given night, it may rent the additional rooms from Hotel at the agreed upon \$100 rate, if they are available.

Hotel and Airline have not entered into a long-term rental agreement for 180 consecutive days because the contract only requires Airline to pay Hotel for the rooms that are physically occupied. Accordingly, all gross rental proceeds Airline pays Hotel under this rental agreement are subject to TAT. Even if Airline elects to rent all 10 reserved rooms for 180 consecutive days for use by its crew, Hotel still owes TAT on the gross rental proceeds.

Example 2:

Assume the same facts as in Example 1, except that Airline is not allowed to pay Hotel for only the rooms that are physically occupied. Airline is obligated to pay \$365,000 (10 rooms x \$100 a night x 365 days) regardless of whether its crew members physically occupy all of the rooms for all of the nights.

Hotel and Airline have entered into a long-term rental agreement for at least 180 consecutive days. Accordingly, the gross proceeds Airline pays Hotel for these 10 rooms are not subject to TAT.

Example 3:

Assume the same facts as in Example 2, except that in addition to obligating Airline to pay for 10 rooms under a long-term contract, the agreement also contains language giving Airline the options to rent additional rooms at a rate of \$100 per night on a night-by-night basis.

Airline elects to rent three rooms at \$100 per night for 30 days pursuant to the agreement. The \$9,000 (3 rooms x \$100 a night x 30 days) Hotel receives for the three rooms is subject to TAT because Hotel and Airline do not have a long-term rental agreement for 180 consecutive days for the three additional rooms.

The Department encourages all taxpayers furnishing rooms to the crews of airlines to review their accounting and tax filings to ensure they are reporting the correct gross rental subject to TAT in accordance with the Tax Law and this TIR. Taxpayers who fail to report and pay the TAT owed are subject to assessment for underreporting, including applicable penalties and interest.

For more information on this issue, please contact the Rules Office at (808) 587-1530 or by email at Tax.Rules.Office@hawaii.gov.

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HRS Sections Explained: 237D-1, 237D-2