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## **TAX INFORMATION RELEASE NO. 2019-02**

RE: Resort fees; Proposed Administrative Rules Relating to the Transient Accommodations Tax as amended by Act 20, Session Laws of Hawaii 2019

The purpose of this Tax Information Release (TIR) is to provide guidance on the imposition of transient accommodations tax (TAT) on resort fees under Act 20, Session Laws of Hawaii 2019 (Act 20), and to provide advanced notice of proposed administrative rules relating to the imposition of TAT on resort fees and when taxes are considered visibly passed on for purposes of TAT.

### **Resort Fees**

Act 20 became law on April 23, 2019 and became effective on July 1, 2019. Act 20 states that resort fees are subject to the TAT and defines resort fees as "any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation's property, services, or amenities." This imposition and definition match the Department of Taxation's (Department's) current position regarding resort fees. The attached administrative rules further define resort fees and detail how resort fees will be subjected to the TAT.

Determining the timing of the application of Act 20 depends on the accounting method of the taxpayer and when the gross rental or gross rental proceeds are actually or constructively received. Any income from resort fees taken into account under the taxpayer's method of accounting after July 1, 2019 is subject to the TAT.

Under the cash basis accounting method, income from resort fees will be subject to TAT if payments are actually or constructively received on or after July 1, 2019. Under the accrual basis accounting method, income from resort fees will be subject to TAT if the right to receive such income is fixed under the all events test on or after July 1, 2019. All events that fix the right to receive income occur when: (1) the required performance takes place, (2) payment is due, or (3) payment is made, whichever happens first.

### **Amounts Passed on as Tax**

Section 237D-1, Hawaii Revised Statutes (HRS), provides that TAT is not imposed upon general excise tax (GET) or TAT that is passed on, collected, and received from the consumer. Section 18-237D-01-03(c), Hawaii Administrative Rules (HAR) provides that amounts of GET and TAT passed on are not subject to TAT if the taxes are *visibly* passed on and collected from the consumer. The attached administrative rules describe the circumstances in which GET and TAT are considered visibly passed on.

### **Public Comments on Proposed Administrative Rules**

The administrative rules attached to this TIR cover both the imposition of TAT on resort fees and the circumstances in which GET and TAT are considered visibly passed on. The Department will be accepting public testimony regarding the proposed administrative rules through the formal rulemaking process, however, testimony may be submitted to the Rules Office before the formal process begins.

For more information, please contact the Rules Office at (808) 587-1530 or by e-mail at [Tax.Rules.Office@hawaii.gov](mailto:Tax.Rules.Office@hawaii.gov).

LINDA CHU TAKAYAMA  
Director of Taxation

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,  
Hawaii Administrative Rules

1. Section 18-237D-1-03, Hawaii Administrative Rules, is amended to read as follows:

**"§18-237D-1-03 "Gross rental" or "gross rental proceeds", defined.** (a) In general. As used in this chapter, "gross rental" or "gross rental proceeds" means the gross receipts, cash or accrued, of the taxpayer received as compensation for the furnishing of transient accommodations or entering into arrangements to furnish transient accommodations and the value proceeding or accruing from the furnishing of transient accommodations or entering into arrangements to furnish transient accommodations, including resort fees, as defined in section 18-237D-1-08, without any deductions for the cost of property or services sold or of materials used, labor costs, taxes, royalties, interest, discounts, or any other expenses whatsoever.

(b) Included in gross rental or gross rental proceeds. Gross rental or gross rental proceeds include the following:

- ~~[(1) Transient accommodations taxes for transient accommodations furnished before July 1, 1990, that are visibly passed on and collected from the consumer; and~~  
~~(2)]~~ (1) Commissions paid to travel agents[-]; and  
(2) Resort fees as defined in section 18-237D-1-08.

**~~[Example 1.~~**

~~Hawaii, Inc. owns a condominium apartment in Waikiki which is used for the activity of furnishing transient accommodations. Hawaii, Inc. charges \$150 a day for the rental of the condominium apartment. Mr. Tourist stays at the condominium apartment for three nights beginning on June 1, 1990. Mr. Tourist does not incur any charges for food, beverage, laundry, telephone, or any other guest amenities. Hawaii, Inc. adds five per cent of the total room charge of \$450, or \$22.50, as a separate item on Mr. Tourist's bill. Mr. Tourist pays Hawaii, Inc. \$472.50 upon checking out. The \$450 represents gross rental to Hawaii, Inc.~~

~~Because this transaction occurred before July 1, 1990, gross rental also includes the \$22.50 visibly passed on to~~

~~Mr. Tourist as a separate charge on his bill. The transient accommodations tax to be paid to the Hawaii State Tax Collector is five per cent of \$472.50, or \$23.60. Hawaii, Inc. shall report as the gross rental subject to the transient accommodations tax \$472.50.]~~

~~[Example 2.]~~ **Example 1.**

Hawaii, Inc. offers travel agents that book guests into its condominium apartment a 10 per cent commission based upon the condominium apartment's daily rate of \$200. Hawaii, Inc. collects \$200 and remits the \$20 commission to the travel agent. Because commissions are a nondeductible cost, the gross rental is \$200.

~~[Example 3.]~~ **Example 2.**

Hawaii, Inc. offers travel agents that book guests into its condominium apartment a 10 per cent commission based upon the condominium apartment's daily rate of \$200. The travel agent collects \$200 from the guest, withholds the \$20 commission, and remits the remaining \$180 to Hawaii, Inc. Hawaii, Inc. is required to include in its gross rental the \$20 commission withheld by the travel agent. The gross rental is \$200.

~~[Example 4.]~~ **Example 3.**

Hawaii, Inc. expects a slow sales period and begins to offer condominium apartments at a special rate of \$180 a day during this slow period. The condominium apartments normally rent for \$200. As an added incentive to the travel agent, Hawaii, Inc. offers a special 15 per cent commission rate to travel agents based upon the special rate of \$180. Hawaii, Inc. is required to include the travel agents' commissions in its gross rental as a nondeductible cost and is required to pay the transient accommodations tax upon the \$180 special rate.

**Example 4.**

Hawaii, Inc. furnishes a transient accommodation to Mr. Tourist for three days. The bill provided to Mr. Tourist states the daily rate of \$200 for a total of \$600 for the stay. Additionally, as a separate line item, the bill states a daily resort fee surcharge of \$40 per day for a total of \$120. The daily resort fee surcharge is a

"resort fee" as defined in section 18-237D-1-08 and is therefore included in gross rental proceeds. Hawaii, Inc. is required to pay the transient accommodations tax upon the \$720 total.

(c) Excluded from gross rental or gross rental proceeds. Excluded from gross rental or gross rental proceeds are the following:

- (1) General excise taxes which are visibly passed on to and collected from the consumer; see also section 18-237D-1-03(d);
- (2) Transient accommodations taxes for transient accommodations furnished after June 30, 1990, which are visibly passed on to and collected from the consumer; see also section 18-237D-1-03(d);
- (3) Charges for non-mandatory guest amenities, including meals, beverages, telephone calls, and laundry;
- (4) Non-mandatory [~~Service~~] service charges;
- (5) Forfeited deposits; and
- (6) Insurance proceeds received for business interruption losses.

**Example 1.**

Ms. Landlord rents a condominium on Oahu she owns to Mr. and Mrs. Tourist for \$500 for the month of July, [~~1999~~] 2019. There is a flat charge of \$500, and there are no separately stated charges for the general excise tax or the transient accommodations tax, on Ms. Landlord's billing to the Tourists. Ms. Landlord's general excise tax liability is [~~four~~] 4.5 per cent of \$500, or [~~\$20~~] \$22.50, and her transient accommodations tax liability is [~~7.25~~] 10.25 per cent of \$500, or [~~\$36.25~~] \$51.25.

**Example 2.**

Paradise Hotel charges \$50 a day for rental of a hotel room on Oahu as a transient accommodation. Mr. Tourist stays at the hotel for three nights beginning January 1, [~~1999~~] 2019. Hawaii, Inc. adds [~~7.25~~] 10.25 per cent of the total room charge of \$150, or [~~\$10.87~~] \$15.38, for transient accommodations tax, and [~~four~~] 4.5 per cent of the \$150, or [~~\$6~~] \$6.75, for general excise tax, as separate items on Mr. Tourist's bill. Mr. Tourist pays Hawaii, Inc. [~~\$166.87~~] \$172.13 when he checks out. Because Paradise visibly passed on both taxes by separately stating them and charging [~~\$166.87~~] \$172.13, both taxes are

excluded from gross rental. The transient accommodations tax to be paid [~~after January 1, 1999, is 7.25~~] is 10.25 per cent of \$150, or [~~\$10.87~~] \$15.38.

**Example 3.**

Paradise Hotel also rents a similar room on Oahu to Ms. Mainland, a friend of Mr. Tourist, in January [~~1999~~] 2019. In addition to her room charges of \$150, Ms. Mainland incurs charges of \$100 for food, \$75 for beverages, \$10 for telephone calls, and \$15 for laundry. All charges total \$350. Paradise computes its transient accommodations tax by applying the [~~7.25~~] 10.25 per cent rate only upon the room charges of \$150. Paradise's transient accommodations tax, therefore, is [~~\$10.87~~] \$15.38.

If Paradise visibly passes on and collects the [~~\$10.87~~] \$15.38 from Ms. Mainland and charges [~~\$160.87~~] \$165.38 for the room, the transient accommodations tax to be paid to the Hawaii State Tax Collector is [~~7.25~~] 10.25 per cent of \$150, or [~~\$10.87~~] \$15.38.

Assume that all of the charges constitute gross income for purposes of chapter 237, HRS, the general excise tax law. The amount of transient accommodations tax visibly passed on and collected is not included in gross income under section 237-24.3(8), HRS, but the amount of general excise tax visibly passed on is included in gross income. Thus, if Paradise, in addition to the [~~\$10.87~~] \$15.38 transient accommodations tax, adds [~~four~~] 4.5 per cent of the total charges of \$350, or [~~\$14~~] \$15.75, to Ms. Mainland's bill and charges a total of [~~\$374.87~~] \$381.13, Paradise's gross income subject to the general excise tax is [~~\$374.87~~] \$381.13 minus [~~\$10.88, or \$364~~] 15.38, or \$365.75. The tax to be paid by Paradise to the Hawaii State Tax Collector is [~~four~~] 4.5 per cent of [~~\$364, or \$14.56~~] \$365.75, or \$16.46 of general excise tax, plus [~~\$10.87~~] \$15.38 of transient accommodations tax, for a total of [~~\$25.43~~] \$31.84.

**Example 4.**

Paradise Hotel rents a room to Ms. Mainland on January 1, [~~1999~~] 2019, under the American Plan and charges Ms. Mainland \$200. To compute the transient accommodations tax, Paradise shall deduct the cost of meals from the total

price charged Ms. Mainland. If the cost reasonably attributed to meals is \$50, then the cost of the room is \$150. Paradise visibly passes the general excise tax and the transient accommodations tax on to Ms. Mainland, so that the total charge to Ms. Mainland is [~~\$218.87~~] \$224.38 comprised of the \$200 charge, [~~\$8~~] \$9 for general excise tax on the \$200, and [~~\$10.87~~] \$15.38 for transient accommodations tax on the \$150. Paradise is to pay the Hawaii State Tax Collector [~~four~~] 4.5 per cent of [~~\$208~~] \$209 or [~~\$8.32~~] \$9.41 of general excise tax, and [~~7.25~~] 10.25 per cent of \$150 or [~~\$10.87~~] \$15.38 of transient accommodations tax. The total tax payable is [~~\$19.19~~] \$24.79.

**Example 5.**

Paradise Hotel accepts an advance deposit of \$100 from Ms. Mainland to confirm her room reservation. Ms. Mainland does not show up and forfeits the \$100 deposit. The \$100 is treated as a forfeited deposit and is not subject to the transient accommodations tax because it is excluded from gross rental. The \$100, however, is subject to the general excise tax.

(d) For purposes of this section, general excise and transient accommodations taxes are considered to be visibly passed on if:

- (1) The general excise tax and the transient accommodations tax passed on as part of the transaction are accounted for on separate line items;
- (2) The general excise tax and the transient accommodations tax passed on as part of the transaction are accounted for on a single line item and the rates of each tax passed on are provided separately; or
- (3) The only charge or charges appearing on the receipt are subject to both general excise and transient accommodations taxes and the taxes are accounted for on a single line item, but only if the taxpayer uses the statutory maximum transient accommodations rate and the maximum allowed pass-on rate of the general excise tax.

**Example 1.**

Paradise Hotel rents a room to Ms. Mainland for three nights for \$200 per night. Paradise Hotel provides Ms.

Mainland with a bill for the stay that states the tax charges as two separate line items, one for general excise tax and one for transient accommodations tax. The taxes are considered visibly passed on.

**Example 2.**

Paradise Hotel rents a room to Ms. Mainland for three nights for \$200 per night. Ms. Mainland also incurs room service charges. Paradise Hotel provides Ms. Mainland with a single bill for the stay and for the room service that shows the charge for taxes on a single line item. The bill provides the rate charged for the general excise tax and for the transient accommodations tax separately. The taxes are considered visibly passed on.

**Example 3.**

Paradise Hotel rents a room to Ms. Mainland for three nights for \$200 per night. Ms. Mainland incurs no charges other than the charge for the room. Paradise Hotel provides Ms. Mainland with a bill for the stay that shows the charge for taxes as a single line item. The line item for taxes does not show the rates of tax passed on. However, the Hotel passes on the statutory rate of transient accommodations tax and the maximum allowed pass-on rate of general excise tax. The taxes are considered visibly passed on.

**Example 4.**

Paradise Hotel rents a room to Ms. Mainland for three nights for \$200 per night. Ms. Mainland also incurs room service charges. Paradise Hotel provides Ms. Mainland with a single bill for the stay and for the room service that shows the charge for taxes as a single line item. The line item for taxes does not show the rates of tax passed on. However, the Hotel passes on the statutory rate of transient accommodations tax and the maximum allowed pass-on rate of general excise tax. Because the receipt on which the taxes are passed on contains items that are not subject to both the transient accommodations tax and the general excise tax and the rates of taxes are not provided, the taxes are not considered visibly passed on.

[~~(d)~~] (e) Special daily rate. Gross rental or gross rental proceeds is the amount charged and collected, which may be



determined under a kama'aina, governmental, military, corporate, hotel employee, senior citizen, or a seasonal rate, or under a written contract on a noncommissionable negotiated rate.

**Example 1.**

Paradise Hotel enters into a negotiated, written contractual agreement with Aloha Tours, a tour packager, in which the hotel agrees to provide the tour packager with rooms at a contracted rate of \$90 [a] per room per day. The rooms contracted for normally sell for \$100. The contract specifically states that no commission is to be paid by Paradise to Aloha Tours and in fact no commission is paid by Paradise or collected by Aloha Tours from the tourists. The arrangement is treated as a contract rate. Paradise is to pay the transient accommodations tax and the general excise tax on the \$90 special rate established in the written contract with Aloha Tours.

**Example 2.**

Paradise Hotel enters into a negotiated, written contractual agreement with XYZ Association for a special daily room rate of \$90 for the Association's members who attend its annual convention. These rooms normally sell for \$100. The contract specifically states that no commission is to be paid by Paradise to XYZ Association, and in fact no commission is paid by Paradise. The arrangement is to be treated as a special rate, and Paradise is to pay the transient accommodations tax and the general excise tax on the \$90 special rate.

**Example 3.**

XYZ Hotel on Oahu offers kama'aina rates for local residents. In the typical situation, a local resident registers with the hotel with proof of Hawaii residency and is allowed a kama'aina rate of 10 per cent off the stated daily room rate. If a room usually rents for \$100 per day, the local resident is charged \$90. XYZ's gross rental is \$90, and XYZ must pay the transient accommodations tax on this amount because the kama'aina rate represents the gross rental charged and collected which is subject to the transient accommodations tax. XYZ is also subject to [~~four~~] 4.5 per cent general excise tax on the gross income of \$90.

**Example 4.**

XYZ Hotel offers travel agents that book guests into its hotel a \$10 commission. In this example, the local resident in Example 3 books hotel accommodations with XYZ Hotel through Aloha Travel Agency rather than directly with the hotel. The local resident would be allowed a 10 per cent discounted kama'aina rate and charged \$90 for a room which would customarily be let for \$100. Aloha Travel collects the \$90 from the local resident, deducts a \$10 commission, and remits the remaining \$80 to XYZ Hotel. XYZ Hotel is required to record on its books the full \$90 kama'aina rate, and pay the transient accommodations and general excise taxes upon this amount. The commission paid to Aloha Travel is not an amount excludable from gross rental. See also subsection (b)(2) above.

~~[(e)]~~ (f) Deductions from gross rental or gross rental proceeds.

- (1) Deductions allowed. A deduction from gross rental may be taken for accounts found to be worthless and actually charged off. Accounts subsequently collected shall be included in gross rental upon collection. The treatment of worthless accounts under this paragraph shall be the same as the treatment of worthless accounts under chapter 237, HRS.
- (2) Deductions disallowed. Any deduction not expressly provided in paragraph (1) shall be disallowed. Deductions disallowed include the following expenses paid in connection with the furnishing of transient accommodations:
  - (A) Labor cost;
  - (B) Commissions;
  - (C) Taxes, other than general excise taxes or transient accommodations taxes as provided in subsection (c)(1) and (2);
  - (D) Royalties;
  - (E) Interest; and
  - (F) Any other expenses whatsoever, such as costs of furnishing the service, or overhead.

~~[(f)]~~ (g) Determination of gross rental or gross rental proceeds where transient accommodations are provided as part of tour packages.

- (1) If transient accommodations are furnished through arrangements made by a travel agency or tour packager for a commission, the gross rental or gross rental proceeds to the operator includes the commission paid

to the travel agency or the tour packager. See also subsection (b) (2).

**[Example-**

~~Renter Corporation leases an entire building situated on Maui from the owners of the Kaanapali Beach Condominium and operates the condominium apartments as transient accommodations. Renter Corporation offers Aloha Travel, a tour agency which books guests into the condominium apartment, a 15 per cent commission based upon the daily rate of \$175. Aloha Travel collects the \$175, deducts the \$26.25 commission, and remits the remaining \$148.75 to Renter Corporation. Although Renter Corporation actually receives only \$148.75, Renter Corporation is required to record as gross rental upon its books the full \$175, which includes the commission withheld by Aloha Travel, and to pay transient accommodations taxes upon that amount.]~~

- (2) If transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissionable, negotiated contract rates, and the gross receipts are divided between the operator of the transient accommodations and the travel agency or tour packager, the gross rental or gross rental proceeds to the operator shall be the noncommissioned negotiated contract rate.

**Example 1.**

Renter Corporation leases an entire building situated on Maui from the owners of the Kaanapali Beach Condominium and operates the condominium apartments as transient accommodations. Renter Corporation offers Aloha Travel, a tour agency which books guests into the condominium apartment, a 15 per cent commission based upon the daily rate of \$175. Aloha Travel collects the \$175, deducts the \$26.25 commission, and remits the remaining \$148.75 to Renter Corporation. Although Renter Corporation actually receives only \$148.75, Renter Corporation is required to record as gross rental upon its books the full \$175, which includes the commission withheld by Aloha Travel, and to pay transient accommodations taxes upon that amount.

~~[Example 1.]~~ Example 2.

Hawaii Travel Agency puts together a fly-drive package for travel to Molokai which consists of air fare, hotel accommodations, and car. The hotel accommodations are provided through a negotiated, written agreement between Hawaii Travel and the Molokai Surf Hotel. Based on this agreement, the Molokai Surf provides hotel rooms which usually are rented at a rate of \$60 at a contracted, reduced rate of \$50. The agreement specifically states that no commission is to be paid by Molokai Surf to Hawaii Travel, and in fact no commission is paid by Molokai Surf. The total fly-drive package sells for \$100. For each package, Hawaii Travel remits \$50 of the \$100 total collected for the package to the Molokai Surf. The Molokai Surf receives and books the \$50 payment for each room. The gross rental allocated to Molokai Surf in this situation for each room provided under this travel package is \$50, and Molokai Surf is required to pay transient accommodations tax upon that amount.

~~[Example 2.]~~ Example 3.

Mainland Travel has a tour package which provides air fare, a condominium apartment for seven nights, ground transportation, and luau for \$1,500. Mainland Travel negotiates a written agreement with Waikiki Beach Apartments to provide the seven nights accommodations in a condominium apartment at a rate of \$700 instead of the regular rate of \$840. The agreement specifically states no commission is to be paid to Mainland Travel by Waikiki Beach, and in fact no commission is paid by Waikiki Beach. Waikiki Beach must record the \$700 it receives for each package as gross rental, and pay the transient accommodations tax upon the \$700.

(h) Determination of gross rental or gross rental proceeds where the operator acts as a travel agent or tour packager and the gross income is divided between the transient accommodations and other components of the travel package.

~~[(3)]~~ (1) If the operator acts as a travel agent or tour packager and the gross income is divided between the transient accommodations and other components of the travel package, then:

(A) Gross rental or gross rental proceeds for the furnishing of the transient accommodations shall be determined by an allocation based upon the

- fair market value of the accommodations or other reasonable allocation approved by the director.
- (B) The method of calculating the amount subject to the transient accommodations tax shall be as follows where FMV = Fair Market Value: FMV of the transient accommodations divided by the FMV of all of the components in the travel package (including the FMV of the accommodations) multiplied by the total sales price of the package equals the amount allocated to the transient accommodations which is subject to the transient accommodations tax. This is represented by the following formula:

$$\frac{\text{FMV of TA}}{\text{FMV of components}} \times \text{Package Price} = \text{Gross Rental}$$

- (C) In determining the fair market value of the transient accommodations and of the components in a travel package, the following principles shall apply:
- (i) Where the gross income is divided between the operator and an independent vendor and where both the operator and the independent vendor in addition to selling the components in the travel package also sell these components individually, the fair market value of each component shall be the fair market price of the component when sold individually.
  - (ii) Where the gross income is divided between the operator and an independent vendor and where the independent vendor does not sell the components individually, the fair market value of each component shall be determined by the comparable sales price of similar components sold by other vendors as determined by the department.
  - (iii) Where the operator puts together a package and provides all the components of the package and the gross income is divided between the transient accommodations and other components (such as where an operator provides a package of hotel accommodations and meals and the operator owns both the hotel and the restaurant), the fair market

value of each component shall be determined either by: the fair market price of the component if the component is also sold individually; or the comparable sales prices of similar components sold by other vendors as determined by the department if the components are not sold individually.

**Example 1.**

ABC Hotel puts together a neighbor island package consisting of air fare, hotel room, and car for a day. The components of the package are provided by independent vendors who sell the components individually. Purchased individually, the round trip air fare to the selected island costs \$75, the hotel room at the ABC Hotel costs \$50, and the car rental costs \$20. The total components purchased individually would cost \$145. ABC Hotel sells the package to customers for \$130. The amount allocated to the transient accommodations and subject to the transient accommodations tax is determined as follows:

$$\frac{\text{FMV of TA}}{\text{components}} \times \text{Package Price} = \frac{\$50}{\$145} \times \$130 = \$44.83 \quad \text{FMV of}$$

**Example 2.**

ABC Hotel puts together a package consisting of hotel accommodations, helicopter ride, and luau. The hotel accommodations if sold individually cost \$50. The helicopter ride and the luau are provided by independent vendors who do not sell their components individually. The department finds that a comparable helicopter ride from other helicopter companies costs \$100, and a comparable luau from other luau companies costs \$15. Thus, the fair market value of the components is \$50 + \$100 + \$15 = \$165. The package is being sold to customers for \$150. The amount allocated to the transient accommodations and subject to the transient accommodations tax is determined as follows:

$$\frac{\text{FMV of TA}}{\text{components}} \times \text{Package Price} = \frac{\$50}{\$165} \times \$150 = \$44.45 \quad \text{FMV of}$$

**Example 3.**

ABC Hotel also has an American plan package which consists of hotel accommodations and a meal allowance at a restaurant owned by the hotel. If purchased individually, the hotel accommodations cost \$250 and the meals cost \$140. The department determines that these prices are fair market prices. Thus, the fair market value of the components purchased individually is \$390. ABC Hotel sells the total package to customers for \$320. The amount allocated to the hotel accommodations and subject to the transient accommodations tax is determined as follows:

<u>FMV of TA</u>	<u>\$250</u>	FMV of
components x Package Price=	\$390 x \$320=	\$205.13

[Eff 11/25/88; am 7/18/94; §18-237D1-1-02; am and ren 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

2. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"18-237D-1-08 "Resort fee", defined.** (a) As used in this chapter, "resort fee" means any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation's property, services, or amenities. Resort fee includes charges for items that are customarily offered only as part of the furnishing of transient accommodations, such as cleaning fees, towel fees, fees for access to pools or lounges, and extra occupant charges. Resort fee does not include charges that are customarily offered separately from the furnishing of transient accommodations, such as charges for golf, spa services, rental cars, and meals, unless the transient accommodation is not available separately from that charge.

(b) If what a fee or charge is for is unstated, the fee is presumed to be a fee for an item that is customarily offered only as part of the furnishing of transient accommodations.

(c) For purposes of this chapter, a fee is mandatory if any effort in excess of declining the fee is necessary to avoid paying the fee.

**Example 1.**

Hawaii, Inc. furnishes a transient accommodation to Mr. Tourist for three days. Mr. Tourist's bill states the daily rate of \$150 for a total of \$450 for the stay. Additionally, as a separate line item, the bill states a daily surcharge of \$25 per day for a total of \$75. The daily surcharge is a mandatory fee that could not be avoided by Mr. Tourist by declining the fee. The daily surcharge is a resort fee and is included in gross rental proceeds received as compensation for furnishing a transient accommodation. Hawaii, Inc. is required to pay the transient accommodations tax upon the \$525 total.

**Example 2.**

Hawaii, Inc. furnishes a transient accommodation to Mr. Tourist for three days. During the second day of his stay, Mr. Tourist elects to use a spa facility operated by Hawaii, Inc. and attached to the transient accommodation's building. He is informed that in order to use the exercise facility he must pay a gym surcharge of \$50 per day. He elects to pay the gym surcharge. Mr. Tourist's bill states the daily rate of \$150 for a total of \$450 for the stay. Additionally, as a separate line item, the bill states a surcharge for use of the exercise facility for one day at a rate of \$50. Hawaii, Inc. is required to pay the transient accommodations tax upon the \$450, but not on the \$50. The \$50 gym surcharge is not a resort fee because it is not mandatory for the furnishing of the transient accommodations.

**Example 3.**

Hawaii, Inc. sells Ms. Mainland a package consisting of its transient accommodations (a standard double room) and five rounds of golf for a discounted single combined price of \$1,000. Separately, the fair market prices of the standard double room and five rounds of golf are \$750 and \$375, respectively. Because the golf would customarily be offered separately from the furnishing of transient accommodations and the room Ms. Mainland purchases is available separately from the golf, the charges for the golf are not included in gross rental or gross rental proceeds. Furthermore, the amount of the \$1,000 charge that is gross rental or gross rental proceeds and subject



to transient accommodations tax is \$666.67, as determined under section 18-237D-1-03(h).

**Example 4.**

Hawaii, Inc. sells Mr. Tourist a five-night stay in its two-bedroom bungalow for a total of \$3,000. The bungalow includes unlimited golf at Hawaii, Inc.'s golf course; there is no option to rent the bungalow without unlimited golf. Because unlimited golf would not customarily be offered separately from the transient accommodation and because the bungalow is not available separately from the unlimited golf, the charge for the bungalow and the charge for the golf cannot be considered separate. Therefore, the entire \$3,000 charge is subject to transient accommodations tax.

**Example 5.**

Hawaii, Inc. furnishes a transient accommodation to Mr. Tourist for three days. On Mr. Tourist's bill it states a daily rate of \$150 for a total of \$450 for the stay. At check-in, Mr. Tourist is informed of an amenities fee of \$25 per day that he may decline and still stay at the transient accommodation. The additional charge of \$25 per day is not a resort fee because Mr. Tourist can decline the fee with no additional effort other than declining the fee.

**Example 6.**

Assume the same facts as in Example 5, except that in order for Mr. Tourist to decline the fee he must first pay the fee and call the Hawaii, Inc. customer complaint line or go online and complete the Hawaii, Inc. customer satisfaction survey. The amenities fee of \$25 per day is a resort fee included in gross rental proceeds.

3. Material to be repealed is bracketed and stricken. New material is underscored.