

TRANSIENT ACCOMMODATIONS TAX

237D-1
HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 237D

TRANSIENT ACCOMMODATIONS TAX

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This is an unofficial compilation of the Hawaii Administrative Rules as of December 31, 2024.

HRS §237D-1 §18-237D-1-01 Definitions. As used in this chapter:

“Department” means the department of taxation.

“Director” means the director of taxation. [Eff 11/25/88] (Auth: HRS §231-3(9), 237D-16(b)) (Imp: HRS §237D-1)

§18-237D-1-02 “Fair market rental value”, defined. As used in this chapter, “fair market rental value” means an amount equal to one-half the gross daily maintenance fees that are paid by the owner, are attributable to the time share unit, and include maintenance costs, operational costs, insurance, repair costs, administrative costs, taxes, other than transient accommodations taxes, and other costs including payments required for reserves or sinking funds. The taxpayer shall use gross daily maintenance fees, unless the taxpayer proves or the director determines that the gross daily maintenance fees do not fairly represent fair market rental value taking into account comparable transient accommodation rentals or other appraisal methods.

Example 1. A, a time share interval owner, pays \$700 annually in maintenance fees for a time interval period of seven days. The daily fair market rental value is calculated as follows:

- (1) Divide the annual maintenance fees for the time interval period by seven days to obtain the gross daily maintenance fee ($\$700 \div 7 \text{ days} = \100).
- (2) Divide the gross daily maintenance fee by two to obtain one-half the gross daily maintenance fee ($\$100 \div 2 = \50).

To determine the total fair market rental value for the interval period, the daily fair market rental value is multiplied by seven (the number of days that the resort time share vacation unit is occupied by the time share interval owner or by some other person but not rented).

Example 2. Assume the same facts as in Example 1, except that A only occupied the resort time share vacation unit for five days. To determine the total fair market rental value, the daily fair market rental value is multiplied by five days (the number of days that the unit was occupied).

Example 3. B, a time share interval owner, has a time interval period of fourteen days. B occupied the resort time share vacation unit for seven days and in violation of the rules of the time share vacation plan, rented the remaining seven-day period to someone else. The plan manager is liable for the transient accommodations tax on the daily fair market rental value of the unit for the fourteen days. B is not liable for the transient accommodations tax.

Example 4. C, a time share interval owner, has a time interval period of seven days. C was charged an additional amount by X for the rental of the unit for three additional days. Although C occupied the unit for ten days, the daily fair market rental value would be multiplied by seven days to obtain the total fair market rental value that is subject to the transient accommodations tax on time share occupancy. X is subject to the transient accommodations tax and the four per cent general excise tax on the gross rental income received from C for the three additional days. X may visibly pass on these taxes to C.

Example 5. D, a time share interval owner, has the right to use a two-bedroom, two-bath unit for seven days. D occupied the unit for the seven days; however, instead of using the whole unit, D decided to use only one bedroom and one bath. The rest of the unit (one bedroom and one bath) was “locked out” and D can bank this balance and use it another time. D will not be subject to the transient accommodations tax on the occupancy of the whole unit. The portion of the unit which was “locked-out” would not be included in the total fair market rental value subject to the transient accommodations tax on time share occupancy. This allocation may be based on the ratio of the square footage of the “locked out” portion to the total square footage of the whole unit. [Eff 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-1)

§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 and the value proceeding or accruing from the furnishing of transient accommodations without any deductions for the cost of property or services sold or of materials used, labor cost, 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) Commissions paid to travel agents.

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 \$23.63. Hawaii, Inc. shall report as the gross rental subject to the transient accommodations tax \$472.50.

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. 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. 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. 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.

(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;
- (2) Transient accommodations taxes for transient accommodations furnished after June 30, 1990, which are visibly passed on to and collected from the consumer;
- (3) Charges for guest amenities, including meals, beverages, telephone calls, and laundry;
- (4) Service charges;
- (5) Forfeited deposits; and
- (6) Insurance proceeds received for business interruption losses.

HRS §237D-1

Example 1. Ms. Landlord rents a condominium she owns to Mr. and Mrs. Tourist for \$500 for the month of July, 1999. 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 per cent of \$500, or \$20, and her transient accommodations tax liability is 7.25 per cent of \$500, or \$36.25.

Example 2. Paradise Hotel charges \$50 a day for rental of a hotel room as a transient accommodation. Mr. Tourist stays at the hotel for three nights beginning January 1, 1999. Hawaii, Inc. adds 7.25 per cent of the total room charge of \$150, or \$10.87, for transient accommodations tax, and four per cent of the \$150, or \$6, for general excise tax, as separate items on Mr. Tourist's bill. Mr. Tourist pays Hawaii, Inc. \$166.87 when he checks out. Because Paradise visibly passed on both taxes by separately stating them and charging \$166.87, both taxes are excluded from gross rental. The transient accommodations tax to be paid after January 1, 1999, is 7.25 per cent of \$150, or \$10.87.

Example 3. Paradise Hotel also rents a similar room to Ms. Mainland, a friend of Mr. Tourist, in January 1999. 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 per cent rate only upon the room charges of \$150. Paradise's transient accommodations tax, therefore, is \$10.87.

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

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 transient accommodations tax, adds four per cent of the total charges of \$350, or \$14, to Ms. Mainland's bill and charges a total of \$374.87, Paradise's gross income subject to the general excise tax is \$374.87 minus \$10.88, or \$364. The tax to be paid by Paradise to the Hawaii State Tax Collector is four per cent of \$364, or \$14.56 of general excise tax, plus \$10.87 of transient accommodations tax, for a total of \$25.43.

Example 4. Paradise Hotel rents a room to Ms. Mainland on January 1, 1999, 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 comprised of the \$200 charge, \$8 for general excise tax on the \$200, and \$10.87 for transient accommodations tax on the \$150. Paradise is to pay the Hawaii State Tax Collector four per cent of \$208 or \$8.32 of general excise

tax, and 7.25 per cent of \$150 or \$10.87 of transient accommodations tax. The total tax payable is \$19.19.

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) 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 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 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 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) 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) 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. 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. 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.

- (3) 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:

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

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:

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

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:

$$\frac{\text{FMV of TA}}{\text{FMV of components}} \times \text{Package Price} = \frac{\$250}{\$390} \times \$320 = \$205.13$$

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

§18-237D-1-04 “Occupant”, defined. As used in this chapter, “occupant” means an owner of a resort time share vacation plan, or other person occupying the resort time share vacation unit.

Example 1. E, a time share interval owner, has a time interval period of seven days. E, however, did not occupy the resort time share vacation unit but allowed a friend to occupy it for the entire seven days at no cost. E is an occupant, regardless of the fact that E’s friend occupied the unit at no cost.

Example 2. F, a time share interval owner, has a time interval period of seven days. F occupies the unit for two days, then allows a friend to occupy it for the other five days at no cost. Both F and F’s friend are occupants. [Eff 6/3/05] (Auth: HRS §§231-3(9), 237D- 16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

HRS §237D-1 §18-237D-1-05 “Operator”, defined. (a) In general. An operator is any owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person who is engaged in the business of actually furnishing transient accommodations. For the purposes of the tax imposed by this chapter, however, an operator shall be deemed synonymous with the person who is or should be licensed and required to pay the general excise tax imposed upon gross income or gross receipts derived from the actual furnishing of transient accommodations.

(b) Application to travel agents. Traditionally, a travel agent does not actually furnish transient accommodations. For the purposes of this chapter; therefore, a travel agent shall not be considered an operator unless the travel agent actually furnishes transient accommodations.

(c) Examples. Subsections (a) and (b) are illustrated as follows:

Example 1. Mr. Paul owns three apartment units and is engaged in the activity of furnishing transient accommodations. As owner and operator, Mr. Paul is liable for the tax imposed by this chapter.

Example 2. The facts are the same as in Example 1, except that Mr. Paul engages XYZ Corporation, a firm engaged in the property management business, to manage and rent out the apartment units. Although the apartments are managed and rented out by XYZ Corporation, as the owner and operator, Mr. Paul is liable for the tax imposed by this chapter.

Example 3. Hotel Corporation leases for a 55-year period a 300-unit apartment complex from Land Corporation. Hotel Corporation operates the apartment complex as a “hotel”. As the lessee and operator, Hotel Corporation is liable for the tax imposed under this chapter, and the general excise tax imposed under chapter 237, HRS, on the gross rental or gross rental proceeds derived from the transient accommodations and apartment rental activities, respectively. As lessor, Land Corporation is subject to the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment complex to Hotel Corporation. [Eff 11/25/88] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-1)

HRS §237D-1 §18-237D-1-06 “Transient”, defined. (a) A “transient” is any person who stays for only a short and temporary period, such as a person who comes and goes with only a brief stop. A transient includes both residents and nonresidents.

(b) Individuals on a month-to-month lease excluded. A transient does not include an individual renting a room, suite, or the like, on a month-to-month lease, if the individual:

- (1) Does not have another true, fixed, and permanent home and principal establishment;
- (2) Moves from place to place through the use of month-to-month rentals; and
- (3) Establishes a permanent home and principal establishment at each place which is rented on a month-to-month lease.

This provision applies even if the individual terminates a long term rental agreement before the one hundred-eighty days expire.

Example 1. G permanently resides in an apartment. A hurricane damaged G’s apartment to such an extent that G could not live there. G rents another apartment on a month-to-month basis until G’s apartment is repaired and G can move back in 4 months. The rent paid by G is subject to the transient accommodations tax because the apartment is G’s temporary home for that period.

Example 2. A family's home is made unlivable because of a natural disaster. The house lost its roof and the outer wall along one side. The family finds a condominium in a resort area that is available for rent until their home is repaired. The condominium is usually rented to visitors and is a transient accommodation. The rents received are subject to the transient accommodations tax because the condominium is being used by the family temporarily until they can return to their permanent home.

- (c) "Domicile", defined. For the purposes of this chapter, domicile means the same as residence.
- (d) "Resident", defined. Resident shall be as defined in section 235-1, HRS.
- (e) Resident status, determined. Resident status shall be as determined under section 235-1, HRS, and the relevant administrative rules. See also section 18-235-1. [Eff 11/25/88; am 7/18/94; §18-237D-1-04; am and ren 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-24.3(8), 237D-1)

HRS §237D-1 §18-237D-1-07 "Transient accommodations", defined. (a) In general. "Transient accommodations" means the furnishing of a room, apartment, suite, or the like which is customarily occupied for less than one-hundred-eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A, HRS, cooperative apartments, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for a consideration.

(b) Applicable presumptions. If the room, apartment, or the like is customarily occupied by transients and the hotel or condominium regularly furnishes such accommodations to transients, the following apply:

- (1) It shall be presumed that accommodations are transient accommodations if the accommodations are let for a period of less than one-hundred-eighty consecutive days; and
- (2) No presumption applies if the accommodations are let for a period of one-hundred-eighty consecutive days or longer.
- (3) See section 18-237D-15-01 for further discussion of the one hundred-eighty day presumption set forth in section 237D-15(b), HRS.
- (c) "Customarily", defined. "Customarily" means:
 - (1) By virtue of common usage, the hotel room, apartment, suite, and the like is occupied for less than one-hundred-eighty consecutive days, such as the following:
 - (A) Hotel rooms which are customarily rented to guests who stay for short periods of time, such as periods of consecutive days and nights which are generally less than a week; or
 - (B) Condominium apartments which are customarily rented to guests who occupy the apartments for longer periods, such as thirty consecutive days or more.
 - (C) There may be situations where a hotel room or a condominium apartment is customarily rented to transients, but also is periodically rented for more than one-hundred-eighty consecutive days. For example, a hotel room or condominium which is customarily rented to tourists for periods averaging thirty days, but at times is rented to a construction company for temporary housing of its employees. This temporary housing may last for one year or more whenever the companies have jobs in the Neighbor Islands and housing is required to be provided. Whether the hotel, condominium, or apartment operator periodically rents the room, apartment, or suite for one-hundred-eighty consecutive days or more shall not change an accommodation from a transient to a non-transient accommodation. For the period in which the hotel or condominium is rented for one-hundred-eighty consecutive days or longer, however, the revenue from the rental is not subject to the transient accommodations tax.
 - (2) Example. Paragraph (1) is illustrated as follows:

During the past 5 years, Convenient Apartments has rented its apartments to Canadian tourist families who vacation in Hawaii. The rental period has averaged 30 consecutive days. For a 1 year period, however, Convenient Apartments agrees to rent all of its apartments to ABC Construction Company for construction workers who are in need of housing during construction of a neighboring resort hotel. Based on these facts, Convenient Apartments is not liable for the transient accommodations tax for the gross rental income received for the 1 year period the accommodations are rented to ABC Construction Company. Following this 1 year period, Convenient Apartments again returns to its practice of renting the apartments for periods ranging

from 2 to 179 consecutive days. In this situation, Convenient Apartments is engaged in the business of furnishing transient accommodations because the apartments are customarily occupied by transients for less than 180 consecutive days, and the apartments are regularly furnished for a consideration. The apartments are transient accommodations even though for the period of time apartments are rented to ABC Construction Company, the revenue from such rental is not subject to the transient accommodations tax.

(d) “Regularly”, defined. “Regularly” means that the accommodation is systematically, usually but not necessarily continuously or exclusively, rented to transients, such as the following:

- (1) Hotels which usually, but not exclusively, furnish rooms to people who only stay for short periods of time; or
- (2) A house or apartment rented for a portion of the year to transients and which is rented for the remainder of each year for more than one hundred-eighty days to residents.
- (3) Example. Paragraphs (1) and (2) are illustrated as follows:

Each year the owner of a house on the North Shore of Oahu rents the house to a tourist family for four months. The rest of the year, the owner rents the house for more than 180 days to Hawaii residents. The fact that the owner rents the house to transients for a portion of the year makes the house a transient accommodation which is regularly furnished to transients. The transient accommodations tax; therefore, is to be paid for each period the house is rented to transients. There is no transient accommodations tax for the time period the house is rented to Hawaii residents.

(e) Application of the one-hundred-eighty consecutive day rule.

- (1) The one-hundred-eighty day rule shall be applied in determining the following:
 - (A) Whether the room, apartment, suite, or similar facility falls within the definition of a transient accommodation; and
 - (B) Whether the revenue derived from the room, apartment, suite, or similar facility is subject to the tax.
- (2) If it is determined that the facility falls within the definition of a transient accommodation, then the next determination is whether or not the gross rental proceeds results from the rental of the facility for less than one-hundred-eighty consecutive days. The law creates a presumption that if a facility is let for less than one-hundred-eighty consecutive days, the accommodation is furnished for a transient purpose. If the taxpayer is able to prove to the director’s satisfaction that the facility is not let for a transient purpose, there shall be no tax imposed. If the facility is let for one-hundred-eighty consecutive days or more, there is no presumption and the burden of proof remains with the taxpayer to prove that the facility is not let for a transient purpose. See section 18-237D-15-01 for further discussion.

(f) Lease of six months or longer broken before one hundred-eighty days have expired.

- (1) In general. Where a tenant breaches a lease of one hundred-eighty days or longer by moving out before one hundred-eighty days have expired, the owner may not be deemed to be the operator of a transient accommodation insofar as this particular facility is concerned.
- (2) Example. Paragraph (1) is illustrated as follows:

Landlord enters into a lease of 6 months or longer with Tenant. Tenant breaches the lease by moving out after living in the apartment for 60 days. Landlord is not deemed to be an operator of transient accommodations regarding this particular apartment because the lease is for a period in excess of 180 consecutive days.

- (3) Tax avoidance scheme. If the department finds that a landlord is continuously entering into leases of six months or longer and the tenants are continuously breaking these leases after one or two months, the burden is upon the landlord to show that the operation is not a tax avoidance scheme and subject to the transient accommodations tax.

(g) Application to time sharing plans. For the period beginning on January 1, 1999, and thereafter, the occupant of a resort time share vacation unit shall be subject to the transient accommodations tax under section 237D-2(c), HRS. Every plan manager shall be liable for and pay the transient accommodations tax as provided under section 237D- 2(d), HRS; provided that if the unit is rented the transient accommodations tax under section

237D- 2(c), HRS, is not applicable and the operator of the transient accommodations shall be liable for the transient accommodations tax as provided in section 237D-2(b), HRS.

Example. A, a time share interval owner, has use of a time share unit in Waikiki for two weeks at the beginning of August. In 1999, A occupies the unit for the two weeks in August. The plan manager is liable for the transient accommodations tax. In 2000, A exchanges the occupancy of the unit for the two weeks in August for occupancy of a time share unit in California. For 2000, A is not subject to the transient accommodations tax. The plan manager, however, shall be liable for the transient accommodations tax under section 237D- 2(d), HRS, if the unit is occupied. The plan manager shall be liable for the transient accommodations tax under section 237D-2(b) if the unit is rented out by the plan manager.

In 2001, A rents the time share unit during the two weeks in August to Mr. Tourist for a consideration. In 2001, the time share unit is being furnished as a transient accommodation and the plan manager is liable for the transient accommodations tax for the two weeks under section 237D-2(d), HRS. A is not liable for the transient accommodations tax.

(h) Application of the transient accommodations tax to gross income received pursuant to a long-term rental agreement. 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” under section 18-237D-1-06(a), 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. In addition, transient accommodations that are occupied by a party pursuant to a long-term rental agreement and used by its employees as an integral part of conducting its business operations are not being furnished for a transient purpose.

Example 1. 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.

Example 2. A construction company enters into a nine-month contract with the owner of an apartment complex to rent several units to house its employees at a job site. The transient accommodations tax does not apply to the gross income received by the owner of the apartment complex because the apartments are occupied by the construction company for an extended period of time and used by the construction company’s employees as an integral part of conducting the company’s construction operations at a particular job site.

Example 3. A corporation enters into a one-year contract with a hotel operator to rent several rooms for use by its employees as part of its bonus/incentive plan. The transient accommodations tax does not apply to the gross income received by the hotel operator because the hotel rooms are occupied by the corporation for an extended period of time and used by the corporation’s employees as an integral part of the corporation’s bonus/incentive plan.

Example 4. A tour wholesaler enters into a one-year contract with a hotel operator to rent a block of rooms to resell to its customers. The transient accommodations tax applies to the gross income received by the hotel operator despite the fact that the hotel rooms are occupied by the tour wholesaler for an extended period. The accommodations are being furnished for a transient purpose because the rooms are being resold by the tour wholesaler to its customers who will occupy the hotel rooms for a short and temporary period, rather than occupied by the tour wholesaler’s employees for some purpose integral to its business operations. [Eff 11/25/88; am 7/18/94; §18-237D-1-05; am and ren 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237D-1, 237D-15)

HRS §237D-2 §18-237D-2-01 Imposition and rates. For the purposes of this chapter, there shall be levied and assessed and collected each month a tax of:

- (1) 7.25 per cent on the gross rental or gross rental proceeds derived from furnishing transient accommodations during the period January 1, 1999, and thereafter; or
- (2) 7.25 per cent on the unit's "fair market rental value" for the period beginning on January 1, 1999, and thereafter. The tax shall be assessed and collected each month on the occupant of a resort time share vacation unit. Every time share plan manager shall be liable for and pay to the department the transient accommodations tax. If a time share unit is rented, the plan manager shall be liable for the transient accommodations tax on the unit's "fair market rental value" under section 237D- 2(c) and (d), HRS.

Example. ABC Hotel, engaged in the activity of furnishing transient accommodations, charges and collects \$500 from a transient (\$100 per night). The transient checked in on December 30, 1998, and checked out on January 4, 1999. The transient accommodations tax is imposed at 6 per cent for accommodations on the nights of December 30 and 31, and it is imposed at 7.25 per cent for accommodations on the nights of January 1, 2, and 3. The total tax due is 6 per cent of \$200 (\$12) plus 7.25 per cent of \$300 (\$21.75) for a total of \$33.75 in transient accommodations tax. [Eff 11/25/88; am 7/18/94; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-2)

HRS §237D-3 §18-237D-3-01 Exemptions. (a) Exempted from this chapter are the following:

- (1) Health care facilities including hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster care homes, special treatment facilities and programs, home health agencies, freestanding birthing facilities, adult day health centers, and independent group residences.
- (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; provided that this exemption shall apply only to the activities of the religious, charitable, or educational corporation or association as such and not to any rental or gross rental the primary purpose of which is to produce income even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association.
- (4) Living accommodations for persons in the military on permanent duty assignment to Hawaii, including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State. This exemption does not apply to transient accommodations provided to persons in the military on permanent duty assignment in the State and who have temporarily departed from their permanent homes and principal establishments elsewhere in this State.

Example. A captain in the United States Army rents a condominium unit in Waikiki for one month while looking for permanent housing in Hawaii. The gross income received by the hotel operator is not subject to the transient accommodations tax because the captain is seeking living accommodations in 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.
- (6) Operators of transient accommodations who furnish accommodations to full-time students enrolled in an institution offering post-secondary education. This exemption shall also apply to operators who furnish transient accommodations to students during summer employment.

Example. A pineapple company provides lodging to employees who travel to Lanai to work in the pineapple fields. During the summer, the pineapple company employs high school and college students to work in the fields on Lanai and provides lodging to the students during their period of summer employment. Although the lodging provided by the pineapple company is for a period of less than 180 days, the pineapple company is not subject to the transient

accommodations tax for such lodging because operators who furnish transient accommodations to students during summer employment are exempt under the law.

- (7) Accommodations furnished without charge such as, but not limited to, complimentary accommodations, accommodations furnished to contract personnel such as physicians, golf or tennis professionals, swimming and dancing instructors, and other personnel to whom no salary is paid or to employees who receive room and board as part of their salary or compensation.
- (8) Accommodations furnished to foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

Example. The Consul General of Australia is in Hawaii for official business and rents a hotel room in Waikiki for one week. The Consul General holds a card issued by the United States Department of State granting an exemption from state hotel taxes. The gross income received by the hotel operator will not be subject to the transient accommodations tax.

(b) Accommodations furnished to transients who present cards or certificates stating that the holder is exempted from state hotel room taxes are nevertheless transient accommodations and their operators are subject to the tax except as provided in chapter 237D, HRS, and these rules.

(c) There is no transient accommodations tax exemption for gross income received by an operator for the rental of transient accommodations to a nonmilitary employee of the federal government or an employee of a state government.

Example. An employee of the United States Department of the Interior is in Hawaii for official business and rents a hotel room in Waikiki for one week. The gross income received by the hotel operator is subject to the transient accommodations tax because there is no transient accommodations tax exemption for renting transient accommodations to a non-military employee of the federal government.

(d) The director shall determine the sufficiency of the proof necessary for the application of the exemptions set forth in subsection (a). The necessary proof includes the following:

- (1) To qualify for an exemption under subsection (a)(4) the operator shall require that the person in the military on permanent duty assignment present the following at the time of check-in:
 - (A) An identification card with a serial number which verifies the person's military status; and
 - (B) A copy of the orders prepared by the military organization verifying the period for which the temporary lodging allowance is received.

The operator shall maintain copies of documents supporting any claim for an exemption under this paragraph for three years.
- (2) To qualify for the full-time student enrollment exemption of subsection (a)(6) the operator shall require the student to submit proof signed by the registrar or other authorized agent of the post-secondary institution certifying the full-time enrollment of the student for each school semester. For the purpose of this paragraph, full-time enrollment is defined as follows:
 - (A) For an undergraduate student:
 - (i) Twelve credits or more per semester; or
 - (ii) Six credits or more per summer term.
 - (B) For a graduate student:
 - (i) Eight credits or more per semester when the student is enrolled in two or more graduate level courses;
 - (ii) Nine credits or more per semester when the graduate student is enrolled in one graduate level course;
 - (iii) Twelve credits or more, when the student is enrolled in no graduate level courses; or
 - (iv) Six credits or more per summer term. [Eff 11/25/88; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237D-3, 321-11(10))

HRS §237D-4 §18-237D-4-01 Certificate of registration. (a) Each operator or plan manager shall indicate, on its application for registration, the type of entity it is. If the transient accommodation is operated by a married couple or civil union partners, the married couple or civil union partners, may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

(b) There shall be no additional registration fees due if the operator or plan manager subsequent to its initial registration adds more units to its registration, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

(c) Any cancellation of a registration shall be without any refund of the registration fee paid.

Example 1. Hotel Corporation, engaged in furnishing transient accommodations in Hawaii, owns and operates a hotel. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the department and shall pay a one-time fee of \$15 for the registration.

Example 2. Mr. Peters owns a single apartment unit he furnishes as a transient accommodation. Mr. Peters shall register with the department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

Example 3. Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the fifty condominium apartments. Although Property Corporation must file fifty annual tax returns, payment of taxes on the fifty units may be made with a single check enclosed in the same envelope with the fifty returns.

Example 4. The individual owners of Tropical Condominium Apartments (consisting of one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation.

Example 5. ABC, Inc. operates several facilities. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a fifty-unit apartment facility in

Punaluu, of which some of the units are rented for less than one hundred eighty consecutive days and other units for periods of over one hundred eighty consecutive days. ABC also operates a hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are transient accommodations. Regarding the fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

Example 6. Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later. [Eff 11/25/88; am 7/18/94; am 6/3/05; am 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-02 Display of the registration certificate. (a) Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

(b) For purposes of this section, “front desk” means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

Example 1. Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium building’s front desk. Mr. Peters is in compliance with section 18-237D-4-02.

Example 2. ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

Example 3. Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters’ address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

Example 4. Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration for each of the fifty different apartments may be inspected at Property Corporation’s Kahului office, including the office’s address. All fifty of the building’s apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building’s front desk. [Eff 11/25/88; am 7/18/94; am 6/3/05; am 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-03 REPEALED. [R 2/3/19]

HRS §237D-4 §18-237D-4-04 REPEALED. [R 2/3/19]

HRS §237D-4 §18-237D-4-05 REPEALED. [R 2/3/19]

HRS §237D-4 §18-237D-4-06 REPEALED. [R 2/3/19]

HRS §237D-4 §18-237D-4-07 REPEALED. [R 2/3/19]

HRS §237D-4 §18-237D-4-08 **Display of local contact information.** Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

Example 1. Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms. Flora is not in compliance with section 18-237D-4-08 because the local contact information is not displayed at the same property as the transient accommodation unit.

Example 2. Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because information for the local contacts are not conspicuously displayed. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-09 **Procedures; scope and purpose.** (a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-10 **Definitions.** As used in sections 18-237D-4-09 through 18-237D-4-35:

“Agency appeal” means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

“Citation for failure to display” means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

“Department” means the department of taxation.

“Director” means the director of taxation.

“Hearing” means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

“Person” means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity,

who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

“Presiding officer” means the director or presiding officer who will be conducting the hearing.

“Respondent” means the person to whom the citation for failure to display is addressed.

“Special enforcement section” means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-11 Fine for failure to display. (a) A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

Example 1. ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building’s front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person’s failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for

subsequent violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 **§18-237D-4-12** **Written warning for first violation under section 237D-4(d), HRS.** (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and
- (5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

Example 1. Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TABroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator

LLC under section 18-237D-4-12. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 **§18-237D-4-13** **Citation for failure to display; requirements.** (a) A citation for failure to display must be issued on the forms prescribed by the department.

- (b) A citation for failure to display shall include the following in its contents:
- (1) The name and address of the respondent;
 - (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
 - (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
 - (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;
 - (5) If applicable, the amount of the monetary fine imposed against the respondent;
 - (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign", "unavailable", "no signature for safety reasons", "service by certified mail", "service by publication", or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
 - (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

Example 1. Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TABroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

Example 2. Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

Example 3. Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in “AinaBNB”, a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display Operator LLC’s registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

Example 4. Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC’s unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

Example 5. On July 1, while inspecting a transient accommodation unit operated by Surfswax Rentals LLC, the department discovers Surfswax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surfswax Rentals LLC’s agent admits that the unit has been rented out for thirty days and during that time Surfswax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surfswax Rentals LLC a citation. The department shall issue Surfswax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously display the information required by section 237D-4(b), HRS.

Example 6. Assume the same facts as Example 5, except that on July 15, the department goes to TAbroker.com and sees Surfswax Rentals LLC’s unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

Example 7. FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is offering to rent out the cottage on her property for \$200 per night. The department may issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

- HRS §237D-4 §18-237D-4-14 Issuance of a citation for failure to display.** (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.
- (b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.
- (c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or confidential information shall be disclosed in the publication.

(d) If the citation is served by publication under subsection (c)(3), the date of service of the citation is the last date of publication in the second successive week. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-15 Response to citation for failure to display. (a) A respondent must respond to a citation for failure to display within thirty days from the date of service by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-18. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation was served:

- (1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and
- (2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-237D-4-35(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-16 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing. [Eff 2/3/19] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

HRS §237D-4 §18-237D-4-17 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony, exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-18 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be

used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

HRS §237D-4 §18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers.

(a) The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

- (1) The fees and costs for the transcript;
- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost.

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

HRS §237D-4 §18-237D-4-20 Disqualification of presiding officers. (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-21 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

HRS §237D-4 §18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked. Any reference in sections 18-237D-4-01 through 18-237D-4-35 to the United States mail shall be treated as including a reference to a designated delivery service and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service. As used in this section, “designated delivery service” means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-23 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party’s knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document’s first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party’s officer or director, or party’s registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party’s last known business or residence address or the address of respondent’s registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-24 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-25 Appearances in agency appeal. (a) An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a power of attorney. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-26 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-27 Consolidation; separate hearings. (a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-28 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-30 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 §18-237D-4-31 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

HRS §237D-4 §18-237D-4-32 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-2, 237D-4)

HRS §237D-4 **§18-237D-4-33** **Service of decisions.** All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

HRS §237D-4 **§18-237D-4-34** **Correction of transcript.** Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

HRS §237D-4 **§18-237D-4-35** **Enforcement and stay.** (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed. [Eff 2/3/19] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

HRS §237D-5 **§18-237D-5-01** REPEALED. [R 7/18/94]

HRS §237D-6 **§18-237D-6-01** **Return and payments.** (a) In general. On or before the last day of each calendar month, every operator or plan manager taxable under this chapter during the preceding calendar month shall file a sworn return with the director in a form prescribed by the director unless the operator or plan manager has obtained permission to make tax returns and payments on a quarterly or semiannual basis.

(b) How to report gross income or gross proceeds. The operator or plan manager shall be required to file monthly, quarterly, or semiannual returns, and annual returns with the department in the same manner and at the same time as the returns are filed in accordance with chapter 237, HRS, except as otherwise provided in this chapter.

(c) Where to file tax returns and make payments. All required tax returns and payments shall be filed or made with the taxation district office where the transient accommodation is located and registered or in the first taxation district office, 830 Punchbowl Street, Honolulu, Hawaii 96813. All required tax returns shall indicate the taxation district within which the transient accommodation upon which the tax is imposed is situated. A tax return which fails to indicate such taxation district shall be deemed an incomplete return and shall be returned to the taxpayer for proper filing.

(d) Revocation of permission to file quarterly or semiannual returns. At any time, the director may revoke the permission given to file a return and make payments thereon on a quarterly or semiannual basis during the calendar year if:

- (1) An operator or plan manager becomes delinquent in the filing of the tax return or the payment of taxes due thereon;
- (2) The director determines that the operator or plan manager plans to depart quickly from the State or is disposing of or concealing assets or doing any other act tending to prejudice or jeopardize the proper administration of this chapter, including assessment or collection of a deficiency. In addition to revoking the permission granted, the director may immediately assess, insofar as not previously assessed, the taxes imposed by this chapter; or
- (3) The operator's or plan manager's total tax liability for the calendar year exceeds \$2,000 for quarterly returns or \$1,000 for semiannual returns.

Upon revocation, the operator or plan manager shall file a tax return of the installment of the tax due on or before the last day of the calendar month following the month, quarter, or semiannual period, as the case may be, in which the liability arose and each month thereafter. The operator or plan manager shall transmit the return with a remittance for the amount of the tax, to the appropriate taxation district office in accordance with subsection (c). [Eff 11/25/88; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-6)

HRS §237D-6 **§18-237D-6-02** **Remittances.** The provisions of section 237-31, HRS, shall apply. All remittance of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or

certificate of deposit payable to the Hawaii State Tax Collector. The remittance, together with the tax return, shall be sent to the appropriate taxation district officer where the transient accommodations or resort time share vacation plan upon which the tax is imposed is located. If the operator operates transient accommodations or is in business as a resort time share vacation plan in more than one taxation district, the remittance and the tax return may be sent to the taxation district in which such accommodations or resort time share vacation plans are registered or to the first taxation district office. The operator or plan manager may pay the tax upon transient accommodations in more than one district with one check; provided that the operator or plan manager must provide a breakdown of the tax payments by the taxation district in which the transient accommodations or resort time share vacation plans are situated upon which the tax is imposed. [Eff 11/25/88; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-6)

HRS §237D-6 §18-237D-6-03 Penalties. Penalties shall be in accordance with section 237-32, HRS. Penalties for noncompliance, such as failure to file a return or to pay tax, and interest shall be added to and become a part of the tax, when and as provided by section 231-39, HRS. [Eff 11/25/88] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§231-3(9), 237-32, 237D-6)

HRS §237D-7 §18-237D-7-01 Annual return. (a) Requirement of filing annual return. In addition to the monthly, quarterly, or semiannual return, every operator of transient accommodations or plan manager shall file an annual return on or before the twentieth day of the fourth month following the close of the taxable year with the taxation district officer where the transient accommodation or resort time share vacation plan is located and registered or with the office of the first taxation district. If the operator or plan manager operates transient accommodations or resort time share vacation plans located in more than one taxation district, the operator or plan manager may file an annual return with the taxation district in which such accommodations are registered or with the first taxation district. The annual return shall summarize the operator's or plan manager's liability under this chapter for the year.

(b) Tax year for purposes of the tax. With the approval of the department, operators or plan managers who keep their books on other than a calendar year basis may file their annual tax returns and pay taxes for the year covering the operator's or plan manager's accounting period based upon their method of keeping books in the same manner as returns are filed pursuant to chapter 237, HRS.

(c) Signatories of the return. The return shall be signed as follows:

- (1) The return of an individual shall be signed by the individual;
- (2) The return of a corporation shall be signed by any officer;
- (3) The return of a partnership shall be signed by any partner;
- (4) The return of a trust, estate, or other entity having a fiduciary shall be signed by the personal representative, trustee, guardian, or other fiduciary, and if the entity has more than one fiduciary the return may be signed by any fiduciary;
- (5) The return of a husband and wife who jointly engage in business may be signed by either the husband or wife; or
- (6) Any return may be signed by a person having written authority to act on behalf of the taxpayer for this purpose; provided that the signer attach to the return a copy of the writing giving the signer that authority.

(d) Extension of time to file. The department may extend the time for making the annual tax return on the application of any taxpayer. The department shall grant reasonable additional time within which to make the return as the department may deem advisable for good cause shown.

- (1) The extension shall be granted only if all required monthly, quarterly, or semiannual tax returns have been filed.
- (2) In making an application for extension, the operator or plan manager shall file an application for extension on a form prescribed by the department with the appropriate taxation district office where the transient accommodation or resort time share vacation plan is located or with the office of the first taxation district on or before the due date of the annual tax return specifying the reason for the delay. If the operator or plan manager operates transient accommodations or resort time share vacation plans located in more than one taxation district, the operator or plan manager may file an application for extension with the taxation district in which such accommodations or resort time share vacation plans are registered or with the first taxation district. On or before the due date prescribed by statute, there shall be paid through monthly, quarterly, or semiannual tax payments or a payment accompanying the application for an extension an amount equal to the estimated tax due for the taxable year but in any case not less than ninety per cent of the tax for the taxable year. If payment accompanies the application, the amount shall be shown on the application.

- (3) The annual tax return with payment of any tax to the extent not already paid and a duplicate of the application shall be filed during the time period specified for the extension.
- (4) The department will consider three-month extensions of time for filing the annual tax return. The operator or plan manager must request and receive approval for the first three-month extension of time to file the annual return on forms prescribed by the department. If a second extension is needed, the operator or plan manager must apply for and receive approval of the subsequent extension. In no event will the total extension period granted exceed six months from the original date of the return.
- (5) An application for extension shall be signed by any person who may sign the annual return, or by a duly licensed attorney or certified public accountant on behalf of the attorney's or accountant's client. [Eff 11/25/88; am 7/18/94; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-7)

HRS §237D-7 §18-237D-7-02 Short year return; change of ownership or cessation of business. (a) The event of change of ownership, complete transfer of transient accommodation activity, going out of business, or otherwise ceasing to engage in the conduct of a transient accommodations activity shall close the taxable year.

(b) If there is a change of ownership or complete transfer of transient accommodation activity, or if an operator or plan manager goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity, the operator or plan manager shall notify the director of the change, transfer, or cessation of business not more than ten days after the change, transfer, or cessation occurs in accordance with section 18-237D-4-04.

(c) The operator or plan manager shall file a monthly return on or before the last day of the calendar month following the month in which the change of ownership, transfer of transient accommodation activity, or cessation of business took place.

(d) If the operator or plan manager has been granted permission to make quarterly or semiannual tax returns instead of monthly returns, the operator or plan manager shall file a return of the installment of the tax due for the applicable quarterly or semiannual period on or before the last day of the calendar month following the month in which the change of ownership, transfer of transient accommodation activity, or cessation of business took place.

(e) The operator or plan manager shall prepare and submit an annual tax return summarizing the months of the year engaged in the transient accommodations activity on or before the twentieth day of the fourth month following the month in which the change of ownership, transfer of transient accommodations activity, or cessation of business took place.

(f) An operator or plan manager filing any return required by this section may apply for an extension as set forth in section 18-237D-7-01(d). [Eff 11/25/88; am 7/18/94; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§237-30, 237D-7)

HRS §237D-8 §18-237D-8-01 Filing of returns. (a) Time for filing returns. Except as otherwise provided in section 18-237D-7-02, the times for the filing of monthly, quarterly, or semiannual returns are as follows:

- (1) For monthly returns, on or before the last day of the calendar month following the month in which taxes accrued. The return shall report the gross rental or gross rental proceeds derived from the immediately previous month.
- (2) For quarterly returns, on or before the last day of the month after the close of each quarter. For calendar year operators or plan managers, the returns shall be due on or before April 30, July 31, October 31 and January 31.
- (3) For semiannual returns, on or before the last day of the month after the close of each six-month period. For calendar year operators or plan managers, the returns shall be due on or before July 31 and January 31.

(b) Payment of taxes. Payment of taxes shall accompany the return whether the returns are filed monthly, quarterly, or semiannually.

(c) Where to obtain the filing forms. The operator or plan manager shall obtain all forms for filing returns from the department upon registration of the transient accommodations or resort time share vacation plan. [Eff 11/25/88; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b), 237D-8) (Imp: HRS §§237-30, 237D-8)

HRS §237D-8 §18-237D-8-02 (Reserved)

HRS §237D-8.5 §18-237D-8.5-01 (Reserved)

HRS §237D-8.6 §18-237D-8.6-01 Reconciliation; form requirement. (a) Every person required to file an annual return because of liability for the payment of taxes under this chapter during the preceding taxable year shall provide on the annual return:

- (1) The person's general excise tax license number;
- (2) The gross proceeds (hotel or other rentals) subject to the general excise tax; and
- (3) The amount of general excise tax paid on the paragraph (2) gross proceeds.

(b) Every person required to file an annual return because of liability for the payment of taxes under this chapter during the preceding taxable year shall provide on the annual general excise tax return filed under chapter 237, HRS, for liability for the payment of taxes for the same taxable year the person's certificate of registration number issued under this chapter.

(c) The reconciliation of transient accommodations taxes and general excise taxes required by this section shall be made as prescribed by the director on the annual tax return required by this chapter after January 1, 1989. [Eff 11/25/88] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-8.6)

HRS §237D-9 §18-237D-9-01 Assessment upon failure to make return; limitation period; extension by agreement. (a) In general. If any operator or plan manager fails to make a return as required by this chapter, the director shall proceed to assess the tax due based upon the best information available and impose any applicable penalty and interest upon the operator or plan manager.

(b) Presumption. The assessment shall be presumed to be correct unless the contrary shall be clearly proven by the person assessed upon an appeal duly taken as provided in section 237D-11, HRS. The burden of proof is upon the person assessed to disprove the correctness of the assessment.

(c) Application of the three-year statute of limitations. Except as otherwise provided by this section or section 237D-7.5, HRS, the amount of tax imposed under this chapter shall be assessed or levied within three years after the annual tax return was filed or within three years of the due date prescribed for the filing of the tax return, whichever is later. No proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period.

- (1) Tax returns filed before the due date. For tax returns filed before the due date, the limitations period on assessment begins to run as of the last day prescribed for filing. The filing of an amended tax return shall not extend the statute.
- (2) The statute of limitations shall begin to run only upon the filing of a tax return which is complete and meets all legal requirements.
- (3) No annual tax return or filing of a fraudulent tax return. The assessment of tax or proceeding for collection without assessment shall not be barred by the statute of limitations and the tax may be assessed or levied at anytime if no annual tax return is filed or if a false or fraudulent tax return is filed with intent to evade tax liability, and the tax may be assessed or levied at anytime. In the case of a return claimed to be false or fraudulent with intent to evade tax, the claim shall first be determined by the circuit court as provided in section 235-111(c), HRS.

(d) Extension by agreement. At anytime prior to the expiration of the limitations period, the period may be extended by a written agreement in a form prescribed by the department and signed by both (1) the operator or plan manager and (2) a representative of the department. The period agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon. [Eff 11/25/88; am 7/18/94; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§235-111, 237D-9)

HRS §237D-10 §18-237D-10-01 (Reserved)

HRS §237D-11 §18-237D-11-01 (Reserved)

HRS §237D-12 §18-237D-12-01 Records to be kept; examination; penalties. (a) In general. Every operator and plan manager shall keep suitable records of gross rental and gross rental proceeds, or fair market rental value, in the English language for a three-year period and such other books, records of account, invoices, and copies of military orders, school registration statements, or other verifying documents, as may be required by the department. The operator or plan manager shall also make such books, records of account, and invoices as may be required by the department available or inspection by the department or the Multistate Tax Commission pursuant to chapter 255, HRS, or any authorized representative of either.

(b) Penalties for noncompliance. Any person or any director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall be guilty of a misdemeanor and shall

be fined not more than \$1,000 or imprisoned not more than one year, or both. [Eff 11/25/88; am 6/3/05] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §§231-34, 237D-12)

HRS §237D-13 §18-237D-13-01 (Reserved)

HRS §237D-14 §18-237D-14-01 (Reserved)

HRS §237D-15 §18-237D-15-01 **Application of tax.** (a) Presumption if the accommodations let less than one hundred-eighty days. If the accommodations are let for a period of less than one-hundred-eighty consecutive days, it shall be presumed that the accommodations are transient accommodations.
(b) No presumption if transient accommodation let for one hundred-eighty days or more. If transient accommodations are let for a period of one hundred-eighty days or more, there is no presumption regarding whether the accommodations furnished are transient accommodations.

Example. Ms. Smith rents a condominium apartment on a month-to-month basis from Mr. Jones while Ms. Smith's home is being constructed. Although Ms. Smith has executed a 280-day construction contract with a building contractor, Ms. Smith requests a month-to-month occupancy in case the new home is not completed on schedule. Since the apartment is to be occupied in excess of the presumption period of 180 calendar days, there is no presumption regarding whether Ms. Smith's occupancy is a transient accommodation. Because Ms. Smith intends to make the accommodations a permanent place of domicile for the duration of the construction period, the department could find that Mr. Jones is not subject to the transient accommodations tax. [Eff 11/25/88; am 7/18/94] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-15)

HRS §237D-16 §18-237D-16-01 (Reserved)

HRS §237D-17 §18-237D-17-01 (Reserved)