

State of Hawaii

Department of Taxation

January 12, 1987

TRANSIENT ACCOMMODATIONS TAX TECHNICAL MEMORANDUM NO. 1

This Tax Memorandum is issued for the purpose of setting forth in broad outline the policy and guidelines by which the Department of Taxation will administer the Transient Accommodations Tax (Act 340, Session Laws of Hawaii 1986), incorrectly referred to as the hotel room tax. This Memorandum will provide an immediate interpretation of the tax to assist taxpayers regarding questions as to who is liable for the tax, determination of room revenue, reporting and registration requirements.

General Policy. The tax is strictly a tax upon room revenues derived from transient accommodations. Its relationship to the general excise tax is expressed only by the incorporation of many administrative provisions and the definition of "gross income" or "gross proceeds" except, however, that general excise taxes collected and passed on to the consumer shall be excluded for purposes of computing the Transient Accommodations Tax.

Who is liable for the tax?

The Act imposes the tax upon every operator of transient accommodations. An operator is defined to mean and include every owner, proprietor, lessee, sublessee, mortgagee in possession, licensee, or any other person who is engaged in any service business which involves the furnishing of transient accommodations. In light of the pervasive nature of the definition which embraces any and all persons who are involved in any way with the furnishing of transient accommodations, the Department will simplify the effects of the definition by requiring every person who derives revenues from the actual furnishing of transient accommodations and who is licensed or should be licensed and required to pay general excise taxes thereon to be the person liable for the Transient Accommodations Tax. The Department reasons that every person who derives gross income or gross receipts from the actual furnishing of transient accommodations must be licensed for purposes of the Hawaii General Excise Tax Law, and accordingly, is required to pay taxes thereon. This simplified procedure will assist in determining who, under the Transient Accommodations Tax, is the proper entity to register and to comply with return requirements. For the purposes of this determination, a travel agent does not traditionally, actually furnish transient accommodations.

What about complimentary rooms?

The presumption will be that transient accommodations have been furnished to the recipient. Gross income or gross

Department reasons that the Act has incorporated the definition of gross income or gross proceeds as the terms have been defined for general excise tax purposes. Under the definition of gross income in the general excise tax, gross income is measured by the value of services rendered. In the case of a complimentary room, a service is rendered, i.e. in the case of a convention, the complimentary room is given as part of the services provided to the convention by a hotel. In the case of individual complimentary rooms, the value received for the service of providing a room, is good will, future business or referrals in return for furnishing the complimentary room to the individual.

What are the exemptions?

The law exempts several classes of persons from the tax:

Health care facilities such as hospitals, maternity homes, convalescent homes, children's boarding homes, old folks homes, home health agencies, rehabilitation facilities.

School dormitories of public or private educational institutions providing education from kindergarten through higher education. For example, dormitories operated by Mid Pacific Institute, Kamehameha Schools, Chaminade University.

Lodging provided by nonprofit corporations or associations for religious, charitable, educational purposes. For example, lodging provided by the Salvation Army, Half-Way House, Habilitat for the period of treatment. This exemption shall be administered in the same manner that nonprofit corporations or associations are exempt under the general excise tax. Unrelated business income which is gross income for the purposes of the Act shall be subject to the Transient Accommodations Tax.

Military living accommodations for persons on permanent duty in Hawaii. The exemption would include accommodations for military personnel who receive temporary living allowances while seeking living accommodations in Hawaii and while awaiting reassignment to new duty stations.

Low-income renters receiving rental subsidies from state or federal governments and whose rental periods are for durations shorter than sixty days.

What are transient accommodations?

Transient accommodations are defined to mean the furnishing of a room, apartment, suite, or similar facilities which is customarily occupied by transients for a period of less than 180 consecutive days by a hotel, apartment hotel, motel, horizontal property regime rooming house or other place where lodgings are regularly furnished to transients for a consideration. First, therefore, the facilities must be a room, apartment, suite, studio apartment, or the like. Second, the facilities must be customarily occupied by transients for periods

of less than 180 consecutive days. In other words, by virtue of common usage, the room, apartment, suite, studio apartment or the like is occupied for less than 180 consecutive days. Third, the facilities must be let, i.e., rented out, by a hotel, apartment hotel, motel, horizontal property regime, cooperative apartment, rooming house or other place in which lodgings are regularly furnished to transients for consideration. By regular is meant systematically, usually but not necessarily continuously or exclusively. A transient accommodation includes a house which is rented for less than 180 days to a transient. Inasmuch as our legislature has enumerated only that type of lodging involving real, as opposed to personal, property, accommodations furnished by cruise ships will not be deemed to be within the purview of the tax. Furthermore, the principal purpose of a cruise ship is to sail about the waters of the Hawaiian Islands with no set destination but making a series of port calls. The activity of a cruise ship significantly differs from? as an example, a hotel.

How will the 180 consecutive days rule be applied?

The 180-day rule will be applied in two situations: First, to determine whether or not the facility is a transient accommodation, i.e., whether or not the room, apartment, suite, or similar facilities falls within the definition of a transient accommodation. Second, the test will be applied to determine whether or not revenues derived from the rental of the room, apartment, suite, or similar facility is subject to the tax. If it is determined that the facility falls within the definition of a transient accommodation, then, the next question is whether or not the rentals resulted from the rental of the facility for less than 180 consecutive days. This is so because, in the application of the tax the law creates a presumption that if the facility is let for less than 180 consecutive days, there is a presumption that the accommodation was furnished for a transient purpose. Should, however, the taxpayer prove to the satisfaction of the Director of Taxation that the facility was not let for a transient purpose, there shall be no tax imposed. The law also provides that, if the facility is let for 180 consecutive days or more, there is no presumption but the burden remains with the taxpayer that the accommodation was not let for a transient purpose. The Department of Taxation, therefore, will apply the 180 consecutive day rule as a matter of rebuttable presumption and leave the burden of proof with the taxpayer.

What is a transient purpose?

The law defines the term "transient" to mean that the accommodations are being furnished to a person who does not have the intention of making the accommodation a permanent place of domicile. Because of the ambiguity in the use of the term "domicile," the Department will use the term to mean and be synonymous with "residence." In other words, if a room, apartment, suite, or the like is rented to anyone, whether the person be a resident or non-resident, unless exempted, for a

period of less than 180 consecutive days, the room rentals derived therefrom are subject to the tax. The term "transient" shall have the connotation of staying for only a short time, not permanent, short-lived, a coming and going with only a brief stop.

Transient purpose does not apply to an individual 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 is true even though the person terminates the rental before the expiration of 180 days.

Who will be required to register?

Every operator of transient accommodations will be required to register with the Department of Taxation no later than seven days before January 1, 1987. Registration may be made in any taxation district in which the transient accommodation is located. The law requires that, upon registration, the operator shall register the name and address of each place where the transient accommodations are being furnished, but only one registration will be required. A certificate of registration will be issued with each registration, which must be displayed at the place for which it is issued. Where an operator operates more than one transient accommodation, the Director of Taxation shall issue one certificate of registration noting thereon all of the accommodations included in the registration or shall attach to the certificate a copy of the registration. While the law requires the certificate of registration to be displayed at the place for which it is issued, a posted notice referring the tenant to a designated place where the certificate may be examined, or to the Department of Taxation, will be deemed sufficient compliance with the requirement. Taxpayers shall immediately notify the Department of Taxation should there be any change in status whether the change is the result of a change in ownership or the accommodations are no longer used for transient purposes. The notification of change may be made at any district tax office where any transient accommodation is located.

What returns are required to be filed?

The filing requirements will be the same as those required for general excise tax purposes. Thus, if an operator files returns on a monthly basis for general excise tax purposes, the operator will be required to file on a monthly basis. The same holds true if the operator files general excise tax returns on a quarterly or semi-annual basis.


Annual returns. Annual returns shall be due on or before April 20 for the taxes due during the immediately preceding year.

What is the tax year for purposes of the tax?

The law is silent as to what constitutes a tax year for purposes of the tax and the filing requirements would imply that the tax year should be the calendar year. Because of the hardship this strict requirement may entail, and to be consistent with the filing requirements for purposes of the general excise tax, the Department will allow those on other than a calendar year basis to file their annual returns based upon their method of keeping books in the same manner as the general excise tax returns are filed.

What records will be required to be kept?

Every operator shall keep an accurate record of gross proceeds and gross income derived from the furnishing of transient accommodations. These records would include, but not be limited to, journal entries, ledger entries, profit and loss statements, contracts and agreements, invoices, and all records involving the furnishing of transient accommodations.


RICHARD F. KAHLE, JR.
Director of Taxation