

REQUEST FOR LEGAL SERVICES

Date: August 23, 2017
From: Yuki Lei Sugimura, Chair
Policy, Economic Development, and Agriculture Committee

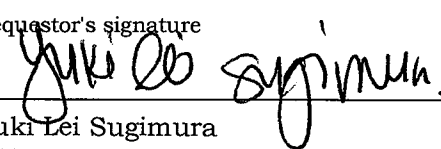
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Edward S. Kushi, Jr., Esq.

Subject: HAWAII STATE ASSOCIATION OF COUNTIES (HSAC) (2018 HSAC LEGISLATIVE PACKAGE) (PEA-3(1))

Background Data: Please approve, as to form and legality, the revised proposed resolutions for inclusion in the 2018 HSAC Legislative Package. Please also include the signed hard copies in your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

| | |
|---|---|
| Requestor's signature  Yuki Lei Sugimura | Contact Person <u>Shelly Espeleta</u> (Telephone Extension: <u>7134</u>) |
|---|---|

ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 30, 2017 at 10 a.m.
REASON: For September 8, 2017 Council meeting

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|--------------|----------------|-----|
| ASSIGNED TO: | ASSIGNMENT NO. | BY: |
|--------------|----------------|-----|

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pea:ltr:003(1)acc01:ske

Attachments

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2018
HAWAII STATE ASSOCIATION OF COUNTIES
LEGISLATIVE PACKAGE A STATE BILL TO
INCREASE REVENUE FOR EACH COUNTY'S
AFFORDABLE HOUSING FUND THROUGH A
ONE PERCENT CONVEYANCE TAX

WHEREAS, the lack of affordable housing in every county in the State is a crisis; and

WHEREAS, each county's affordable housing situation is unique, and solutions and funding are best managed locally; and

WHEREAS, a statewide mechanism to allow each county to increase revenue for its affordable housing fund is needed; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to increase revenue for each county's affordable housing fund through a one percent conveyance tax on the sale of residential properties over \$2,000,000, is approved for inclusion in the 2018 Hawaii State Association of Counties Legislative Package; and
2. That certified copies of this resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO THE CONVEYANCE TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 247-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§247-2 Basis and rate of tax. The tax imposed by section
4 247-1 shall be based on the actual and full consideration
5 (whether cash or otherwise, including any promise, act,
6 forbearance, property interest, value, gain, advantage, benefit,
7 or profit), paid or to be paid for all transfers or conveyance
8 of realty or any interest therein, that shall include any liens
9 or encumbrances thereon at the time of sale, lease, sublease,
10 assignment, transfer, or conveyance, and shall be at the
11 following rates:

12 (1) Except as provided in paragraph (2):

13 (A) Ten cents per \$100 for properties with a value of
14 less than \$600,000;

15 (B) Twenty cents per \$100 for properties with a value
16 of at least \$600,000, but less than \$1,000,000;

____.B. NO. _____

- 1 (C) Thirty cents per \$100 for properties with a value
- 2 of at least \$1,000,000, but less than \$2,000,000;
- 3 (D) Fifty cents per \$100 for properties with a value
- 4 of at least \$2,000,000, but less than \$4,000,000;
- 5 (E) Seventy cents per \$100 for properties with a
- 6 value of at least \$4,000,000, but less than
- 7 \$6,000,000;
- 8 (F) Ninety cents per \$100 for properties with a value
- 9 of at least \$6,000,000, but less than
- 10 \$10,000,000; and
- 11 (G) One dollar per \$100 for properties with a value
- 12 of \$10,000,000 or greater; and
- 13 (2) For the sale of a condominium or single family
- 14 residence for which the purchaser is ineligible for a
- 15 county homeowner's exemption on property tax:
- 16 (A) Fifteen cents per \$100 for properties with a
- 17 value of less than \$600,000;
- 18 (B) Twenty-five cents per \$100 for properties with a
- 19 value of at least \$600,000, but less than
- 20 \$1,000,000;
- 21 (C) Forty cents per \$100 for properties with a value
- 22 of at least \$1,000,000, but less than \$2,000,000;

____.B. NO. _____

1 (D) Sixty cents per \$100 for properties with a value
2 of at least \$2,000,000, but less than \$4,000,000;

3 (E) Eighty-five cents per \$100 for properties with a
4 value of at least \$4,000,000, but less than
5 \$6,000,000;

6 (F) One dollar and ten cents per \$100 for properties
7 with a value of at least \$6,000,000, but less
8 than \$10,000,000; and

9 (G) One dollar and twenty-five cents per \$100 for
10 properties with a value of \$10,000,000 or
11 greater[7]; and

12 (3) In addition to the rate established by paragraph (1)
13 or (2), for the sale of a condominium or single family
14 residence: One dollar per \$100 for properties with a
15 value of more than \$2,000,000,

16 of such actual and full consideration; provided that in the case
17 of a lease or sublease, this chapter shall apply only to a lease
18 or sublease whose full unexpired term is for a period of five
19 years or more, and in those cases, including (where appropriate)
20 those cases where the lease has been extended or amended, the
21 tax in this chapter shall be based on the cash value of the
22 lease rentals discounted to present day value and capitalized at

_____.B. NO. _____

1 the rate of six per cent, plus the actual and full consideration
2 paid or to be paid for any and all improvements, if any, that
3 shall include on-site as well as off-site improvements,
4 applicable to the leased premises; and provided further that the
5 tax imposed for each transaction shall be not less than \$1."

6 SECTION 2. Section 247-7, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§247-7 **Disposition of taxes.** All taxes collected under
9 this chapter shall be paid into the state treasury to the credit
10 of the general fund of the State, to be used and expended for
11 the purposes for which the general fund was created and exists
12 by law; provided that of the taxes collected each fiscal year:

13 (1) Ten per cent of the revenue from application of the
14 rates established in paragraph (1) and (2) of section
15 247-2, or \$6,800,000, whichever is less, shall be paid
16 into the land conservation fund established pursuant
17 to section 173A-5; [and]

18 (2) Fifty per cent of the revenue from application of the
19 rates established in paragraph (1) and (2) of section
20 247-2, or \$38,000,000, whichever is less, shall be
21 paid into the rental housing revolving fund
22 established by section 201H-202 [-]; and

1 (3) One hundred percent of the revenue generated in each
 2 county from application of the rate established in
 3 paragraph (3) of section 247-2 shall be paid into the
 4 respective county's affordable housing fund and shall
 5 only be used to increase the supply of affordable
 6 housing by the following means:

7 (A) the purchase of existing housing units and other
 8 interests in real property;

9 (B) the planning, design, or construction of housing
 10 units;

11 (C) making grants or loans to nonprofit
 12 organizations, including community land trusts;
 13 or

14 (D) investment in public infrastructure."

15 SECTION 3. Statutory material to be deleted is bracketed
 16 and in strikethrough. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval;
 18 provided that this Act shall be repealed on June 30, 2023.

INTRODUCED BY: _____

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2018 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL TO REQUIRE ONLINE TRAVEL COMPANIES AND OTHER TRANSIENT ACCOMMODATIONS REMARKETERS TO PAY TRANSIENT ACCOMMODATIONS TAX ON THEIR RESPECTIVE PORTIONS OF GROSS RENTAL PROCEEDS FROM THE PAYMENT OF ACCOMMODATIONS

WHEREAS, since the enactment of the Transient Accommodations Tax (TAT) in 1986, the method visitors use to book reservations to stay in Hawaii has changed significantly and now includes online booking and payment through third-party websites; and

WHEREAS, amending the Transient Accommodations Tax law to require online travel companies and other transient accommodations remarketers to pay TAT on their portion of proceeds from the booking of accommodations would increase TAT revenue, to the benefit of every county in the State of Hawaii; and

WHEREAS, the share of the TAT to the counties has been capped at \$93 million and the additional tax revenues generated by this proposed bill will be added to the counties' \$93 million allocation; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to require online travel companies and other transient accommodations remarketers to pay transient accommodations tax on their respective portions of gross rental proceeds from the payment of accommodations, is approved for inclusion in the 2018 Hawaii State Association of Counties Legislative Package; and
2. That a copy of this resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

1 hotel rooms, such as pre-paying their hotel stays through Online
2 Travel Companies ("OTCs"). Wholesale travel companies and OTCs
3 contract for rooms with hotels at wholesale rates, add their
4 mark-up, and then resell rooms to guests. Hotels may only know
5 the wholesale, or net, rental rate paid for the room by the OTCs
6 and not the full retail rate paid by the guest. OTCs are billed
7 for rooms at the wholesale rate and the TAT is collected by
8 hotels and paid to the State based on this discounted rate.
9 With each online transaction processed in this way, the State
10 loses the difference in tax between the wholesale or net rental
11 rate and the full retail or gross rental rate.

12 The purpose of this Act is to ensure the State receives the
13 full amount of TAT calculated based upon the full or gross
14 rental price paid by the visitor, whether that amount is
15 collected by the local Hawaii operator, travel agent, wholesale
16 travel company, or online by an OTC.

17 PART II

18 SECTION 2. Section 237D-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§237D-1 Definitions. Whenever used in this chapter,
21 unless the context otherwise requires:

22 "Department" means the department of taxation.

____.B. NO. _____

1 "Director" means the director of taxation.

2 "Fair market rental value" means an amount equal to
3 one-half of the gross daily maintenance fees that are paid by
4 the owner and are attributable to the time share unit located in
5 Hawaii. Gross daily maintenance fees include maintenance costs,
6 operational costs, insurance, repair costs, administrative
7 costs, taxes, other than transient accommodations taxes, resort
8 fees, and other costs including payments required for reserves
9 or sinking funds. Amounts paid for optional goods and services
10 such as food and beverage services or beach chair or umbrella
11 rentals shall be excluded from fair market rental value.

12 "Gross rental" or "gross rental proceeds" means the
13 gross receipts, cash or accrued, of the taxpayer received as
14 compensation for the furnishing of transient accommodations and
15 the value proceeding or accruing from the furnishing of such
16 accommodations without any deductions on account of the cost of
17 property or services sold, the cost of materials used, labor
18 cost, taxes, royalties, interest, discounts, or any other
19 expenses whatsoever. Every taxpayer shall be presumed to be
20 dealing on a cash basis unless the taxpayer proves to the
21 satisfaction of the department of taxation that the taxpayer is
22 dealing on an accrual basis and the taxpayer's books are so

____.B. NO. _____

1 kept, or unless the taxpayer employs or is required to employ
2 the accrual basis for the purposes of the tax imposed by chapter
3 237 for any taxable year in which event the taxpayer shall
4 report the taxpayer's gross income for the purposes of this
5 chapter on the accrual basis for the same period.

6 The words "gross rental" or "gross rental proceeds"
7 shall not be construed to include the amounts of taxes imposed
8 by chapter 237 or this chapter on operators of transient
9 accommodations and passed on, collected, and received from the
10 consumer as part of the receipts received as compensation for
11 the furnishing of transient accommodations. Where transient
12 accommodations are furnished through arrangements made by a
13 transient accommodations remarketer or travel agency [or tour
14 packager] as defined under section 468L-1 at noncommissioned
15 negotiated contract rates and the gross income is divided
16 between the operator of transient accommodations on the one hand
17 and the transient accommodations remarketer, or travel agency
18 [or tour packager] on the other hand, [~~gross rental or gross~~
19 ~~rental proceeds to the operator means only the respective~~
20 ~~portion allocated or distributed to the operator,~~] the tax
21 imposed by this chapter shall apply to each such person with
22 respect to such person's respective portion of the proceeds, and

1 no more. For purposes of this definition, where the operator
2 maintains a schedule of rates for identifiable groups of
3 individuals, such as kamaainas, upon which the accommodations
4 are leased, let, or rented, gross rental or gross rental
5 proceeds means the receipts collected and received based upon
6 the scheduled rates and recorded as receipts in its books and
7 records.

8 "Lease", "let", or "rental" means the leasing or
9 renting of living quarters or sleeping or housekeeping
10 accommodations in hotels, apartment hotels, motels, condominium
11 property regimes or apartments defined in chapter 514A or units
12 defined in chapter 514B, cooperative apartments, rooming houses,
13 or other places in which lodgings are regularly furnished to
14 transients for a consideration, without transfer of the title of
15 such property.

16 "Local contact" means an individual residing on the
17 same island as the transient accommodation or resort time share
18 vacation unit or an entity with a place of business and at least
19 one employee, officer, partner, member, or other person working
20 on behalf of the company who is residing on the same island as
21 the transient accommodation or resort time share vacation unit.

____.B. NO. _____

1 "Occupant" means an owner of a resort time share
2 vacation plan or other person occupying the resort time share
3 vacation unit.

4 "Operator" means any person operating a transient
5 accommodation, whether as owner or proprietor or as lessee,
6 sublessee, mortgagee in possession, licensee, or otherwise, or
7 engaging or continuing in any service business which involves
8 the actual furnishing of transient accommodation.

9 "Owner" means any person who owns a resort time share
10 vacation interest; provided that to the extent and for those
11 purposes provided in an agreement of sale, the vendee under the
12 agreement of sale shall be considered the owner of the resort
13 time share vacation interest.

14 "Plan manager" means a person who undertakes the
15 duties, responsibilities, and obligations of managing a resort
16 time share vacation plan or is required to act for a resort time
17 share vacation plan under this chapter.

18 "Resort time share vacation interest" means any
19 interest in a resort time share vacation unit or plan which
20 entitles the owner thereof to the use, occupancy, or possession
21 of a resort time share vacation unit on a periodically recurring
22 basis.

1 "Resort time share vacation plan" means any plan or
2 program subject to chapter 514E in which the use, occupancy, or
3 possession of one or more resort time share vacation units
4 circulates among various persons for less than a sixty-day
5 period in any year, for any occupant. The term resort time
6 share vacation plan includes both resort time share vacation
7 ownership plans and resort time share vacation use plans, as
8 follows:

9 (1) "Resort time share vacation ownership plan" means
10 any arrangement whether by tenancy in common,
11 sale, deed, or by other means, whereby the
12 purchaser receives an ownership interest and the
13 right to use the property for a specific or
14 discernible period by temporal division.

15 (2) "Resort time share vacation use plan" means any
16 arrangement, excluding normal hotel operations,
17 whether by membership agreement, lease, rental
18 agreement, license, use agreement, security, or
19 other means, whereby the purchaser receives a
20 right to use accommodations or facilities, or
21 both, in a resort time share vacation unit for a
22 specific or discernible period by temporal

1 division, but does not receive an ownership
2 interest.

3 "Resort time share vacation unit" means the actual and
4 promised accommodations, and related facilities, which are the
5 subject of a resort time share vacation plan.

6 "Transient accommodations" means the furnishing of a
7 room, apartment, suite, single family dwelling, or the like to a
8 transient for less than one hundred eighty consecutive days for
9 each letting in a hotel, apartment hotel, motel, condominium
10 property regime or apartment as defined in chapter 514A or unit
11 as defined in chapter 514B, cooperative apartment, dwelling
12 unit, or rooming house that provides living quarters, sleeping,
13 or housekeeping accommodations, or other place in which lodgings
14 are regularly furnished to transients.

15 "Transient accommodations [~~broker~~] remarketer" means
16 any person or entity, including but not limited to persons who
17 operate online websites, online travel agencies, or online
18 booking agencies, that offers, lists, advertises, or accepts
19 reservations or collects whole or partial payment for transient
20 accommodations or resort time share vacation interests, units,
21 or plans."

1 SECTION 3. Section 237D-2, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Every operator, transient accommodations remarketer
4 or travel agency, who collect whole or partial payment for
5 transient accommodations shall pay to the State the tax imposed
6 by subsection (a), as provided in this chapter."

7 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

9 "(d) Failure to meet the requirements of subsection (c)
10 shall be unlawful. The department may issue citations to any
11 person, including operators, plan managers, travel agencies and
12 transient accommodations [~~brokers~~] remarketers, who violates
13 subsection (c). A citation issued pursuant to this subsection
14 for each transient accommodation or resort time share vacation
15 interest, plan, or unit in violation of subsection (c) shall
16 include a monetary fine of not less than:

- 17 (1) \$500 per day, for a first violation for which a
18 citation is issued;
- 19 (2) \$1,000 per day, for a second violation for which
20 a citation is issued; and
- 21 (3) \$5,000 per day, for a third and any subsequent
22 violation for which a citation is issued."

1 SECTION 5. Section 237D-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) On or before the twentieth day of each calendar
4 month, every [~~operator taxable, or plan manager~~] taxpayer liable
5 under this chapter during the preceding calendar month shall
6 file a sworn return with the director in such form as the
7 director shall prescribe together with a remittance for the
8 amount of the tax in the form required by section 237D-6.5.
9 Sections 237-30 and 237-32 shall apply to returns and penalties
10 made under this chapter to the same extent as if the sections
11 were set forth specifically in this section."

12 SECTION 6. Section 237D-6.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§237D-6.5 Remittances; distribution to counties.** (a)
15 All remittances of taxes imposed under this chapter shall be
16 made by cash, bank drafts, cashier's check, money order, or
17 certificate of deposit to the office of the taxation district to
18 which the return was transmitted.

19 (b) Revenues collected under this chapter shall be
20 distributed in the following priority, with the excess revenues
21 to be deposited into the general fund:

____.B. NO. _____

- 1 (1) \$1,500,000 shall be allocated to the Turtle Bay
2 conservation easement special fund beginning July
3 1, 2015, for the reimbursement to the state
4 general fund of debt service on reimbursable
5 general obligation bonds, including ongoing
6 expenses related to the issuance of the bonds,
7 the proceeds of which were used to acquire the
8 conservation easement and other real property
9 interests in Turtle Bay, Oahu, for the
10 protection, preservation, and enhancement of
11 natural resources important to the State, until
12 the bonds are fully amortized;
- 13 (2) \$26,500,000 shall be allocated to the convention
14 center enterprise special fund established under
15 section 201B-8;
- 16 (3) \$82,000,000 shall be allocated to the tourism
17 special fund established under section 201B-11;
18 provided that:
 - 19 (A) Beginning on July 1, 2012, and ending on
20 June 30, 2015, \$2,000,000 shall be expended
21 from the tourism special fund for
22 development and implementation of

____.B. NO. _____

1 initiatives to take advantage of expanded
2 visa programs and increased travel
3 opportunities for international visitors to
4 Hawaii;

5 (B) Of the \$82,000,000 allocated:

6 (i) \$1,000,000 shall be allocated for the
7 operation of a Hawaiian center and the
8 museum of Hawaiian music and dance at
9 the Hawaii convention center; and

10 (ii) 0.5 per cent of the \$82,000,000 shall
11 be transferred to a sub-account in the
12 tourism special fund to provide funding
13 for a safety and security budget, in
14 accordance with the Hawaii tourism
15 strategic plan 2005-2015; and

16 (C) Of the revenues remaining in the tourism
17 special fund after revenues have been
18 deposited as provided in this paragraph and
19 except for any sum authorized by the
20 legislature for expenditure from revenues
21 subject to this paragraph, beginning July 1,
22 2007, funds shall be deposited into the

____.B. NO. _____

1 tourism emergency special fund, established
2 in section 201B-10, in a manner sufficient
3 to maintain a fund balance of \$5,000,000 in
4 the tourism emergency special fund;
5 (4) \$103,000,000 for fiscal year 2014-2015,
6 \$103,000,000 for fiscal year 2015-2016,
7 \$103,000,000 for fiscal year 2016-2017, and
8 \$93,000,000 for each fiscal year thereafter shall
9 be allocated as follows: Kauai county shall
10 receive 14.5 per cent, Hawaii county shall
11 receive 18.6 per cent, city and county of
12 Honolulu shall receive 44.1 per cent, and Maui
13 county shall receive 22.8 per cent; provided that
14 commencing with fiscal year 2018-2019, a sum that
15 represents the difference between a county public
16 employer's annual required contribution for the
17 separate trust fund established under section
18 87A-42 and the amount of the county public
19 employer's contributions into that trust fund
20 shall be retained by the state director of
21 finance and deposited to the credit of the county
22 public employer's annual required contribution

____.B. NO. _____

1 into that trust fund in each fiscal year, as
2 provided in section 87A-42, if the respective
3 county fails to remit the total amount of the
4 county's required annual contributions, as
5 required under section 87A-43; and

6 (5) \$3,000,000 shall be allocated to the special land
7 and development fund established under section
8 171-19; provided that the allocation shall be
9 expended in accordance with the Hawaii tourism
10 authority strategic plan for:

11 (A) The protection, preservation, maintenance,
12 and enhancement of natural resources,
13 including beaches, important to the visitor
14 industry;

15 (B) Planning, construction, and repair of
16 facilities; and

17 (C) Operation and maintenance costs of public
18 lands, including beaches, connected with
19 enhancing the visitor experience.

20 All transient accommodations taxes shall be paid into
21 the state treasury each month within ten days after collection

____.B. NO. _____

1 and shall be kept by the state director of finance in special
2 accounts for distribution as provided in this subsection.

3 As used in this subsection, "fiscal year" means the
4 twelve-month period beginning on July 1 of a calendar year and
5 ending on June 30 of the following calendar year.

6 (c) In addition to the taxes apportioned to the
7 counties in subsection (b) (4), any TAT collected from transient
8 accommodations remarketers or travel agencies shall be paid to
9 the counties in the same percentage as set forth in subsection
10 (b) (4).

11 [~~e~~] (d) On or before January or July 1 of each year
12 or after the disposition of any tax appeal with respect to an
13 assessment for periods after June 30, 1990, the state director
14 of finance shall compute and pay the amount due as provided in
15 subsection (b) to the director of finance of each county to
16 become a general realization of the county expendable as such,
17 except as otherwise provided by law."

18 SECTION 7. Section 237D-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§237D-7 **Annual return.** On or before the twentieth day of
21 the fourth month following the close of the taxable year, every
22 person who has become liable for the payment of the taxes under

____.B. NO. _____

1 this chapter during the preceding tax year shall file a return
2 summarizing that person's liability under this chapter for the
3 year, in such form as the director prescribes. The [~~operator or~~
4 ~~plan manager~~] taxpayer shall transmit with the return a
5 remittance covering the residue of the tax chargeable to the
6 [~~operator or plan manager~~] taxpayer, if any, to the office of
7 the appropriate state district tax assessor designated in
8 section 237D-8. The return shall be signed by the taxpayer, if
9 made by an individual, or by the president, vice-president,
10 secretary, or treasurer of a corporation, if made on behalf of a
11 corporation. If made on behalf of a partnership, firm, society,
12 unincorporated association, group, hui, joint adventure, joint
13 stock company, corporation, trust estate, decedent's estate,
14 trust, or other entity, any individual delegated by the entity
15 shall sign the same on behalf of the taxpayer. If for any
16 reason it is not practicable for the individual taxpayer to sign
17 the return, it may be done by any duly authorized agent. The
18 department, for good cause shown, may extend the time for making
19 the return on the application of any taxpayer and grant such
20 reasonable additional time within which to make the return as
21 the department may deem advisable.

1 Section 232-2 applies to the annual return, but not to a
2 monthly return."

3 SECTION 8. Section 237D-9, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) If any [~~operator or plan manager~~] taxpayer fails to
6 make a return as required by this chapter, the director shall
7 make an estimate of the tax liability of the [~~operator or plan~~
8 ~~manager~~] taxpayer from any information the director obtains, and
9 according to the estimate so made, assess the taxes, interest,
10 and penalty due the State from the [~~operator or plan manager~~]
11 taxpayer, give notice of the assessment to the [~~operator or plan~~
12 ~~manager~~] taxpayer, and make demand upon the [~~operator or plan~~
13 ~~manager~~] taxpayer for payment. The assessment shall be presumed
14 to be correct until and unless, upon an appeal duly taken as
15 provided in section 237D-11, the contrary shall be clearly
16 proved by the person assessed, and the burden of proof upon such
17 appeal shall be upon the person assessed to disprove the
18 correctness of assessment."

19 SECTION 9. Section 237D-10, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§237D-10 Overpayment; refunds.** Upon application by [~~an~~
22 ~~operator or plan manager~~] a taxpayer, if the director determines

____.B. NO. _____

1 that any tax, interest, or penalty has been paid more than once,
2 or has been erroneously or illegally collected or computed, the
3 tax, interest, or penalty shall be credited by the director on
4 any taxes then due from the [~~operator or plan manager~~] taxpayer
5 under this chapter. The director shall refund the balance to
6 the [~~operator or plan manager~~] taxpayer or the [~~operator's or~~
7 ~~plan manager's~~] taxpayer's successors, administrators,
8 executors, or assigns in accordance with section 231-23. No
9 credit or refund shall be allowed for any tax imposed by this
10 chapter, unless a claim for such credit or refund is filed as
11 follows:

12 (1) If an annual return is timely filed, or is filed
13 within three years after the date prescribed for
14 filing the annual return, then the credit or
15 refund shall be claimed within three years after
16 the date the annual return was filed or the date
17 prescribed for filing the annual return,
18 whichever is later.

19 (2) If an annual return is not filed, or is filed
20 more than three years after the date prescribed
21 for filing the annual return, a claim for credit
22 or refund shall be filed within:

____.B. NO. _____

- 1 (A) Three years after the payment of the tax; or
2 (B) Three years after the date prescribed for
3 the filing of the annual return, whichever
4 is later.

5 Paragraphs (1) and (2) are mutually exclusive. The
6 preceding limitation shall not apply to a credit or refund
7 pursuant to an appeal, provided for in section 237D-11.

8 As to all tax payments for which a refund or credit is
9 not authorized by this section (including, without prejudice to
10 the generality of the foregoing, cases of unconstitutionality),
11 the remedies provided by appeal or by section 40-35 are
12 exclusive."

13 SECTION 10. Section 237D-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§237D-12 Records to be kept; examination.** Every
16 [~~operator and plan manager~~] taxpayer shall keep in the English
17 language within the State, and preserve for a period of three
18 years, suitable records of gross rental, gross rental proceeds,
19 or fair market rental value relating to the business taxed under
20 this chapter, and such other books, records of account, and
21 invoices as may be required by the department, and all such
22 books, records, and invoices shall be open for examination at

____.B. NO. _____

1 any time by the department or the Multistate Tax Commission
2 pursuant to chapter 255, or the authorized representative
3 thereof."

4 SECTION 11. Statutory material to be deleted is bracketed
5 and in strike through. New statutory material is underscored.

6 SECTION 12. This Act shall take effect on July 1, 2018.

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INTRODUCED BY: _____

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