

REQUEST FOR LEGAL SERVICES

RECEIVED

By Dept. of the Corporation Counsel at 7:33 am, Aug 24, 2021

Date: August 23, 2021

From: Keani N.W. Rawlins-Fernandez, Chair

Budget, Finance, and Economic Development Committee

TRANSMITTAL


Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Kristina Toshikiyo, Esq.

Subject: COUNTY TRANSIENT ACCOMMODATIONS TAX (BFED-52)

Background Data: Please see attached bill. Please send response to
bfed.committee@mauicounty.us.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY

☐ [] OTHER:

Requestor's signature  Keani N.W. Rawlins-Fernandez	Contact Person <u>Lesley Milner</u> (Telephone Extension: <u>7886</u>)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 25, 2021
REASON: For posting on the September 1, 2021 BFED Committee agenda

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>KCT</u>	ASSIGNMENT NO. <u>2021-0012</u>	BY: <u>maa</u>
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TO REQUESTOR: ☒ [X] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☒ [X] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

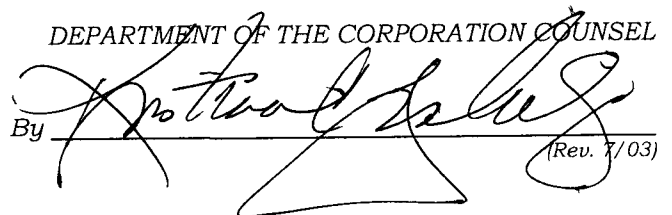
COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

Date

8/26/2021

DEPARTMENT OF THE CORPORATION COUNSEL

By


(Rev. 7/03)

bfed:ltr:052acc01:lcm

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 3.47,
MAUI COUNTY CODE, IMPLEMENTING A COUNTY
TRANSIENT ACCOMMODATIONS TAX

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. By Act 1 of the First Special Session of 2021, counties were stripped of their statutory allocation of State-collected Transient Accommodations Tax revenue and granted the authority to collect a County Transient Accommodations Tax of 3 percent. This Ordinance implements the authority under Act 1 and establishes a Transient Accommodations Tax for the County of Maui.

SECTION 2. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER 3.47

TRANSIENT ACCOMMODATIONS TAX

Sections:

- 3.47.010 Tax established.**
- 3.47.020 Definitions.**
- 3.47.030 Imposition of tax.**
- 3.47.040 Exemptions.**
- 3.47.050 Registration.**
- 3.47.060 Return and payments.**
- 3.47.070 Annual return.**
- 3.47.080 Federal assessments.**
- 3.47.090 Rent collection by third party.**
- 3.47.100 Reconciliation.**

- 3.47.110 Assessment of tax for failure to file a return.**
- 3.47.120 Appeals.**
- 3.47.130 Disclosure and destruction of returns.**
- 3.47.140 Collection by suit.**
- 3.47.150 Penalty and interest.**
- 3.47.160 Application of tax.**
- 3.47.170 Director of finance.**
- 3.47.180 Administrative rules.**

3.47.010 Tax established. A 3 percent transient accommodations tax is established on all gross rental, gross rental proceeds, and fair market rental value considered taxable under the definitions of section 237D-1, Hawai'i Revised Statutes. This tax is considered levied on October 1, 2021.

3.47.020 Definitions. For the purposes of this chapter, defined terms in section 237D-1, Hawai'i Revised Statutes, mean the same in this chapter.

"Director" means the director of finance for the County of Maui.

3.47.030 Imposition of tax. A. Each month, a tax on the gross rental or gross rental proceeds derived from furnishing transient accommodations is levied and imposed in accordance with section 3.47.010, and must be assessed and collected.

B. Every transient accommodations broker, travel agency, and tour packager who arranges transient accommodations at noncommissioned negotiated contract rates, every operator, and occupant of a resort time share vacation unit, must pay to the County the tax imposed.

C. Every plan manager is liable for and must pay to the County the transient accommodations tax imposed by section 3.47.010. Every resort time share vacation plan must be represented by a plan manager who is subject to this chapter.

3.47.040 Exemptions. The exemptions in section 237D-3, Hawai'i Revised Statutes, are also exemptions to this chapter.

3.47.050 Registration. All operators, plan managers, transient accommodations brokers, travel agencies, or tour packagers within the County must hold State registration in accordance with sections 237D-4 and 4.5, Hawai'i Revised Statutes. Notwithstanding any penalties imposed under State law, failure to obtain registration under this section is a County civil violation punishable by up to \$1,000 per infraction under authority of section 46-1.5(24)(a), Hawai'i Revised Statutes. Infractions are

appealable to the director consistent with chapter 91, Hawai'i Revised Statutes within thirty days from the issuance of the citation in accordance with section 237D-4(b), Hawaii Revised Statutes.

3.47.060 Return and payments. A. On or before the twentieth day of each calendar month, every operator taxable or plan manager liable under this chapter during the preceding calendar month must file a sworn return with the director in the form the director prescribes together with a remittance for the amount of the tax.

B. Notwithstanding subsection A, the director or designee, for good cause, may permit a taxpayer to file and make payments on the taxpayer's return required under this section:

1. On a quarterly basis during the calendar or fiscal year, on or before the twentieth day of the calendar month after the close of each quarter. For calendar year taxpayers, the return and payment must be made on or before April 20, July 20, October 20, and January 20, or for fiscal year taxpayers, on or before the twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year, and on or before the twentieth day of the month following the close of the fiscal year. This subsection applies only if the director or designee is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000.

2. On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the twentieth day of the calendar month after the close of each six-month period. For calendar year taxpayers, on July 20 and January 20, or for fiscal year taxpayers, on or before the twentieth day of the seventh month following the beginning of the fiscal year, and on or before the twentieth day of the month following the close of the fiscal year. This subsection applies only if the director or designee is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

3. The director or designee, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability. However, the taxpayer must file a reconciliation return at the

end of each quarter or at the end of each six-month period during the calendar or fiscal year, as required in this section.

C. If a taxpayer filing the taxpayer's return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer's return or the payment of the taxes due, or if the liability of a taxpayer who possesses a permit to file the taxpayer's return and to make payments on a semiannual basis exceeds \$2,000 in transient accommodations taxes during the calendar year, or exceeds \$4,000 in transient accommodations taxes during the calendar year if making payments on a quarterly basis, or if the finance director or designee determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the transient accommodations tax, the director or designee, at any time, may revoke a taxpayer's permit, in which case the taxpayer must then file the taxpayer's return and make payments as provided in subsection A.

3.47.070 Annual return. On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes under this chapter during the preceding tax year must file with the director a copy of the return filed with the State as required under section 237D-7, Hawai'i Revised Statutes.

3.47.080 Federal assessments. Any person required to report under section 237D-7.5, Hawai'i Revised Statutes, must also respectively make reflective adjustments and report to the director.

3.47.090 Rent collection by third party. A. Every person authorized under an agreement by the owner of transient accommodations located within this County to collect rent on behalf of such owner is subject to this section.

B. Every written rental collection, in addition to the requirements of section 237D-8.5, Hawai'i Revised Statutes, must also include in bold print and ten-point type size:

“MAUI COUNTY TRANSIENT ACCOMMODATIONS TAXES
MUST BE PAID ON THE GROSS RENTS COLLECTED BY
ANY PERSON RENTING TRANSIENT ACCOMMODATIONS
IN THE COUNTY OF MAUI”

Every person entering an oral rental collection agreement must furnish the director a copy of the information furnished to the State as required under section 237D-8.5, Hawai'i Revised Statutes, and

must give the owner of the property a copy of the notice required by this subsection. The statement required by this subsection may be combined with the statement-required language under section 237D-8.5, Hawai'i Revised Statutes, by adding in bold print and in ten-point type size to the front of the statement in section 237-30.5 the following in parentheses:

“HAWAII (INCLUDING MAUI COUNTY ADDED) TRANSIENT
ACCOMMODATIONS TAXES AND”

Every person authorized to collect rent for another person must file a copy of the first page of the rental collection agreement with the director within thirty days after entering into the agreement, or must file a copy of federal Internal Revenue form 1099, the property owner's social security or federal identification number, and, if available, the general excise tax license and transient accommodations tax registration numbers of the owner of such property being rented with the director at the same time as such forms must be filed with the Internal Revenue Service for the applicable tax year. The person also must notify the owner that such information is being furnished and give the owner a copy of the notice.

3.47.100 Reconciliation. A. On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes under this chapter during the preceding taxable year and who has furnished transient accommodations that were exempt, for any portion of the taxable year, from the tax imposed under this chapter, must file a copy with the director of the reconciliation for transient accommodations as prescribed by section 237D-8.6, Hawai'i Revised Statutes.

B. On or before the twentieth day of the fourth month following the close of the taxable year, every plan manager who has become liable for the payment of taxes under this chapter during the preceding taxable year must file with the director a copy of the filed reconciliation with the State as prescribed by section 237D-8.6, Hawai'i Revised Statutes, indicating the period of time that the owner of a resort time share vacation unit was subject to the general excise tax or the tax under section 237D-2(a), Hawai'i Revised Statutes.

3.47.110 Assessment of tax for failure to file a return.

A. If any operator or plan manager fails to make a return as required by this chapter, the director or designee must estimate the tax liability of the operator or plan manager from any

information the director or designee obtains, and according to the estimate, assess the taxes, interest, and penalty due to the County from the operator or plan manager, give notice of the assessment to the operator or plan manager, and make demand upon the operator or plan manager for payment. The assessment is presumed correct unless, upon an appeal duly taken, the contrary is proved by the person assessed. The burden of proof on appeal to disprove the correctness of assessment is on the person assessed.

B. After a return is filed under this chapter, the director or designee must cause the return to be examined and may conduct further audits or investigations as the director or designee considers necessary. If the director or designee determines that there is a deficiency in the payment of any tax due under this chapter, the director or designee must assess the taxes and interest due the County, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

C. Except as provided by this section, the amount of taxes imposed by this chapter must be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later. Without an assessment, no proceeding in court for the collection of any of the taxes may be commenced after the expiration of the period. Where the assessment of the tax imposed by this chapter has occurred within the applicable period of limitation, the tax may be collected by levy or by a proceeding in court under chapter 231, Hawai'i Revised Statutes, if the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section must be suspended for the period:

1. The taxpayer agrees to suspend the period.
2. The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months after the court is no longer in control or custody.
3. An offer in compromise under section 231-3(10), Hawai'i Revised Statutes, is pending.
4. During which the taxpayer is outside the County if the period of absence is for a continuous period of at least six months. However, if at the time of the taxpayer's return to the County the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period does not expire before the expiration of the six months.

D. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time. The burden of proof with respect to the issues of falsity or fraud and intent to evade tax rests with the County.

E. Where, before the expiration of the period prescribed in subsection C, the director or designee and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection C, the tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

3.47.120 Appeals. Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment within thirty days of the issuance of the assessment to the tax appeal court in accordance with section 232-16, Hawaii Revised Statutes. All taxes must be paid pending appeal.

3.47.130 Disclosure and destruction of returns. A. All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, is confidential. It is unlawful for any person or any officer or employee of the County, including the auditor or the auditor's agent to intentionally make known information imparted by any tax return or return information filed in accordance with this chapter, or any report of any investigation of the return or of the subject matter of the return, or to willfully permit any return, return information, or report so made, or any copy, to be seen or examined by any person. For tax purposes, only the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report include:

1. Trustees.
2. Partners.
3. Persons named in a board resolution or a 1 percent shareholder in the case of a corporate return.
4. The person authorized to act for a corporation in dissolution.
5. The shareholder of an S corporation.

6. The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return.

7. The committee, trustee, or guardian of any person in paragraphs 1 through 6 who is incompetent.

8. The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs 1 through 7.

9. Persons duly authorized by the State in connection with their official duties.

10. Any duly accredited tax official of the United States, any state or territory, or any county of this State.

11. The multistate tax commission or its authorized representative.

12. Members of a limited liability company.

Violation of this subsection is punishable in accordance with section 237D-13, Hawai'i Revised Statutes. Nothing in this subsection prohibits the publication of statistics that are classified to prevent the identification of particular reports or returns and the items of the reports or returns.

B. The director may destroy any of the monthly, quarterly, or semiannual returns filed under section 3.47.070 upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.

3.47.140 Collection by suit. The director may collect taxes due and unpaid under this chapter, together with all accrued penalties, by filing suit or other appropriate proceeding in the second circuit court. After delinquency has continued for sixty days, or if any person required to register under this chapter fails to do so for a period of sixty days after the first date when the person was required to register, the director may proceed in the second circuit court to obtain an injunction restraining the further furnishing of transient accommodations or the operation of the resort time share vacation plan until full payment has been made of all taxes and penalties and interest due under this chapter, or until such registration is secured, or both, as the circumstances of the case may require.

3.47.150 Penalty and interest. A. Penalties and interest must be added to and become a part of the tax, when:

1. Failure to pay tax.

a. If any part of any underpayment is due to negligence or intentional disregard but without intent to defraud, there must be added to the tax an amount up to 25 percent of the underpayment as determined by the director, or the maximum amount allowed

under the revised charter of the County of Maui (1983), as amended, whichever is the lesser.

b. If any part of any underpayment of tax required to be shown on a return is due to fraud, there must be added to the tax an amount up to 50 percent of the underpayment as determined by the director, or the maximum amount allowed under the revised charter of the County of Maui (1983), as amended, whichever is the lesser.

2. Interest on underpayment or nonpayment of tax.

a. If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of 1 percent a month or fraction of a month must be paid for the period beginning with the first calendar day after the date prescribed for payment.

b. Interest prescribed under this paragraph on any tax must be paid upon notice and demand, and must be assessed, collected, and paid in the same manner as taxes.

c. No interest under this paragraph can be imposed on interest provided by this paragraph.

d. If any portion of a tax is satisfied by credit of any overpayment, then no interest must be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.

B. No taxpayer is exempt from any penalty or interest by reason of having contested the tax, except to the extent the tax is adjudged to be excessive or contrary to law.

3.47.160 Application of tax. A. The tax imposed by this chapter is in addition to any other taxes imposed by any other laws of the State. To determine if the tax under this chapter is to be levied, assessed, and collected upon transient accommodations the following presumptions control:

1. If a person lets a transient accommodation for less than one hundred eighty consecutive days, it must be presumed that the accommodation furnished is for a transient purpose.

2. If a person lets a transient accommodation for one hundred eighty days or more, there is no presumption as to the purpose for which the accommodation is furnished.

The burden of proving to the director whether an accommodation is not being furnished for a transient purpose rests

with the operator of the accommodation. If the director is satisfied that an accommodation is not furnished for a transient purpose, then the director must not levy any tax under this chapter.

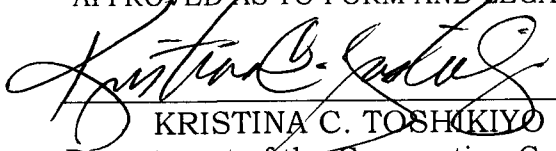
B. Except as otherwise provided, this chapter applies to a transient accommodations broker, travel agency, or tour packager who enters into an agreement to furnish transient accommodations at noncommissioned negotiated contract rates in the same manner as it applies to an operator.

3.47.170 Director of finance. The director has all the rights and powers of the State director of taxation under section 237D, Hawai'i Revised Statutes. The director is authorized to enter into an agreement with the director of taxation, other State agency, or other entity approved or designated by the county council for the collection of the taxes authorized by this chapter. The director is further authorized to delegate any authority provided in this chapter. If any section in this chapter conflicts with this authority to enter into an agreement for the collection of taxes, it is void. The director must appropriately notify taxpayers of any void section.

3.47.180 Administrative rules. The director is authorized to adopt administrative rules to implement the purposes of this chapter."

SECTION 3. This Ordinance takes effect upon approval.

APPROVED AS TO FORM AND LEGALITY:


KRISTINA C. TOSHIKIYO

Department of the Corporation Counsel

County of Maui

bfed:misc.052abil01 ljm

LF2021-0012

BFED-52 2021-08-26 Ord Ch 3.47 TAT