

**A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 5, ARTICLE 4,  
KAUA'I COUNTY CODE 1987, AS AMENDED,  
IMPLEMENTING A COUNTY TRANSIENT ACCOMMODATIONS TAX**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

**SECTION 1.** Purpose. Pursuant to Act 1, Special Session Laws of Hawai'i 2021, Counties were stripped of the statutory allocation of State-collected Transient Accommodations Tax revenues set forth under Section 237D-6.5(b), Hawai'i Revised Statutes. This annual allocation most recently provided close to \$15,000,000.00 in County general fund revenues to support the impacts of tourism activities, and mitigative cost of County services on island. Without this revenue, the County faces the prospect of future financial shortfalls.

However, Act 1 did provide authority for the Counties, via their respective Directors of Finance, to collect a County transient accommodations tax in addition to the State transient accommodations tax.

While maintaining a Charter-mandated balanced budget picture could be achieved via an increase in real property taxes, it is clear that the policy of burdening residents and commercial enterprises with funding the impacts of tourism activities on island is inequitable. Average daily census rates of visitors on island account for close to 30% of the County-serviceable population, and our tax policy should reflect recouping this impact proportionally to the burden on County government.

This Ordinance implements the authority under Act 1, Special Session Laws of Hawai'i 2021, and establishes a transient accommodations tax program for the County of Kaua'i.

**SECTION 2.** Chapter 5, Kaua'i County Code 1987, as amended, is hereby amended by establishing a new Article 4, as follows:

**"ARTICLE 4. COUNTY TRANSIENT ACCOMMODATIONS TAX**

**Sec. 5-4.1 Tax Established.** Pursuant to Part III, Act 1, Session Laws of Hawai'i 2021, a three-percent (3.0%) 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 shall be considered levied upon the enactment of this Ordinance.

**Sec. 5-4.2 Definitions.** The definitions in Section 237D-1, Hawai'i Revised Statutes, are incorporated by reference for the purposes of this Article.

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“County Finance Director” means the Director of Finance for the County of Kauaʻi.

**Sec. 5-4.3 Imposition of Tax.**

(a) There is levied and shall be assessed and collected each month a tax on the gross rental or gross rental proceeds derived from furnishing transient accommodations.

(b) Every transient accommodations broker, travel agency, and tour packager who arranges transient accommodations at noncommissioned negotiated contract rates and every operator shall pay to the County the tax imposed.

(c) Every plan manager shall be liable for and pay to the County the transient accommodations tax imposed by Section 5-4.1. Every resort time share vacation plan shall be represented by a plan manager who shall be subject to this Article.

**Sec. 5-4.4 Exemptions.** The exemptions set forth in Section 237D-3, Hawaiʻi Revised Statutes, are hereby incorporated by reference as exemptions to this Article.

**Sec. 5-4.5 Registration, Required Statements.** All operators, plan managers, transient accommodations brokers, travel agencies, or tour packagers within the County must hold a State certificate of registration pursuant to Sections 237D-4 and 237D-4.5, Hawaiʻi Revised Statutes. Failure to obtain a certificate of registration pursuant to this section is considered an additional County civil violation punishable of up to one thousand dollars (\$1,000.00) per infraction under authority of Section 46-1.5(24)(a), Hawaiʻi Revised Statutes. Infractions are appealable to the County Finance Director consistent with Chapter 91, Hawaiʻi Revised Statutes.

**Sec. 5-4.6 Return and Payments.**

(a) On or before the twentieth day of each calendar month, every operator taxable, or plan manager liable under this Article during the preceding calendar month shall file a sworn return with the State Director of Taxation together with a remittance for the amount of the tax as prescribed by the County Finance Director.

(b) Notwithstanding subsection (a), the County Finance Director or designee, for good cause, may permit a taxpayer to file the taxpayer’s return required under this section and make payments thereon:

(1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, 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; provided that the County Finance Director or designee is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this Article will not exceed four thousand dollars (\$4,000.00); or

(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, to wit: 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; provided that the County Finance Director or designee is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this Article will not exceed two thousand dollars (\$2,000.00).

The County Finance Director or designee, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability; provided that the taxpayer files 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 provided 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 thereon, 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 two thousand dollars (\$2,000.00) in transient accommodations taxes during the calendar year or exceeds four thousand dollars (\$4,000.00) in transient accommodations taxes during the calendar year if making payments on a quarterly basis, or if the County Finance Director or designee determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this Article, including the assessment or collection of the transient accommodations tax, the County Finance Director or designee, at any time, may revoke a taxpayer's permit, in which case the taxpayer shall then be required to file the taxpayer's return and make payments thereon as provided in subsection (a).

**Sec. 5-4.7 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 the taxes under this Article during the preceding tax year shall file with the State Director of Taxation a return as set forth under Section 237D-7, Hawai'i Revised Statutes, and a remittance covering the residue of the tax due, if any, as prescribed by the County Finance Director.

**Sec. 5-4.8 Federal assessments; adjustments of gross rental, gross rental proceeds, or fair market rental value; report to the County Finance**

**Director.** Any person required to report under Section 237D-7.5, Hawai'i Revised Statutes, must also respectively make reflective adjustments and report to the County Finance Director.

**Sec. 5-4.9 Collection of rental by third party; filing with the County Finance Director; statement required.**

(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 shall be subject to this section.

(b) Every written rental collection agreement, in addition to the requirements of Section 237D-8.5, Hawai'i Revised Statutes, shall also include in bold print and in ten-point type size:

**"KAUAI COUNTY TRANSIENT ACCOMMODATIONS TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING TRANSIENT ACCOMMODATIONS IN THE COUNTY OF KAUAI."**

Every person entering an oral rental collection agreement shall furnish the County Finance Director a copy of the information furnished to the State as required under Section 237D-8.5, Hawai'i Revised Statutes, and shall 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 KAUAI COUNTY ADDED) TRANSIENT ACCOMMODATIONS TAXES AND".**

(c) Every person authorized to collect rent for another person shall file a copy of the first page of the rental collection agreement with the County Finance Director within thirty (30) days after entering into the agreement, or shall 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 County Finance Director at the same time as such forms must be filed with the Internal Revenue Service for the applicable tax year. The person also shall notify the owner that such information is being furnished and give the owner a copy of the notice.

**Sec. 5-4.10 Reconciliation; form requirement.**

(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 Article during the preceding taxable year and who has furnished transient

accommodations which were exempt, for any portion of the taxable year, from the tax imposed under this Article, shall file a copy with the County Finance 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 Article during the preceding taxable year shall file with the County Finance 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.

**Sec. 5-4.11 Assessment of tax upon failure to make return; limitation period; exceptions; extension by agreement.**

(a) If any operator or plan manager fails to make a return as required by this Article, the County Finance Director or designee shall make an estimate of the tax liability of the operator or plan manager from any information the County Finance Director or designee obtains, and according to the estimate so made, assess the taxes, interest, and penalty due 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 shall be presumed to be correct until and unless, upon an appeal duly taken, the contrary shall be clearly proved by the person assessed, and the burden of proof upon such appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this Article the County Finance Director or designee shall cause the return to be examined, and may make such further audits or investigation as the County Finance Director or designee considers necessary. If the County Finance Director or designee determines that there is a deficiency with respect to the payment of any tax due under this Article, the County Finance Director or designee shall 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 otherwise provided by this section, the amount of taxes imposed by this Article shall 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, and no proceeding in court without assessment for the collection of any of the taxes shall begin after the expiration of the period. Where the assessment of the tax imposed by this Article has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under Chapter 231, Hawai'i Revised Statutes; provided that the levy is made or the proceeding began 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 shall 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 (6) months thereafter;
- (3) An offer in compromise under Section 231-3(10), Hawai'i Revised Statutes, is pending; and
- (4) During which the taxpayer is outside the County if the period of absence is for a continuous period of at least six (6) months; provided that 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 (6) months from the date of the taxpayer's return, the period shall not expire before the expiration of the six (6) 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; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the County.

(e) Where, before the expiration of the period prescribed in subsection (c), the County Finance 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.

**Sec. 5-4.12 Appeals.** Any person aggrieved by any assessment of the tax or liability imposed by this Article may appeal from the assessment to tax appeal court.

**Sec. 5-4.13 Disclosure of returns unlawful; destruction of returns.**

(a) All tax returns and return information required to be filed under this Article, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be 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 pursuant to this Article, 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 thereof, to be seen or examined by any person; provided that 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 shall include:

- (1) Trustees;
- (2) Partners;

- (3) Persons named in a board resolution or a one per cent 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, or of any state or territory, or of any county of this State;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Violation of this subsection is punishable in accordance Section 237D-13, Hawai'i Revised Statutes. Nothing in this subsection shall prohibit 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 County Finance Director may destroy the monthly, quarterly, or semiannual returns filed pursuant to Section 5-4.7, or any of them, upon the expiration of three (3) years after the end of the calendar or fiscal year in which the taxes so returned accrued.

**Sec. 5-4.14 Collection by suit; injunction.** The County Finance Director may collect taxes due and unpaid under this Article, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the fifth circuit court. After delinquency shall have continued for sixty (60) days, or if any person lawfully required so to do under this Article shall fail to register as provided by this Article for a period of sixty (60) days after the first date when the person was required under this Article to register, the County Finance Director may proceed in the fifth 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 shall have been made of all taxes and penalties and interest due under this Article, or until such registration is secured, or both, as the circumstances of the case may require.

**Sec. 5-4.15 Penalty and interest.**

(a) Penalties and interest shall 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 shall be added to the tax an amount up to twenty-five percent (25%) of the underpayment as determined by the County Finance Director.

(B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty percent (50%) of the underpayment as determined by the County Finance Director.

(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 ( $\frac{2}{3}$ ) of one percent (1%) a month or fraction of a month shall 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 shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.

(C) No interest under this paragraph shall 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 shall 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 shall be exempt from any penalty or interest by reason of having contested the tax, but only to the extent that the tax is adjudged to be excessive or contrary to law.

#### **Sec. 5-4.16 Application of tax.**

(a) The tax imposed by this Article shall be in addition to any other taxes imposed by any other laws of the State. In order to determine if the tax under this Article is to be levied, assessed, and collected upon transient accommodations the following presumptions shall control.

(1) If a person lets a transient accommodation for less than one hundred eighty (180) consecutive days, it shall be presumed that the accommodation furnished is for a transient purpose.



(2) If a person lets a transient accommodation for one hundred eighty (180) days or more, there is no presumption one way or another as to the purpose for which the accommodation is furnished.

The operator shall have the burden of proving to the County Finance Director whether an accommodation is not being furnished for a transient purpose. If the County Finance Director is satisfied that an accommodation is not furnished for a transient purpose, then the County Finance Director shall not levy any tax under this Article.

(b) Except as otherwise provided, this Article shall apply 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.

**Sec. 5-4.17 County Finance Director.** The County Finance Director has all the rights and powers of the director of taxation under Section 237D, Hawai'i Revised Statutes. The County Finance Director is authorized to enter into an agreement with the Director of Taxation, other state agency, other county of the State of Hawai'i, or multiple counties of the State of Hawai'i, for the collection of the taxes authorized by this Article. The County Finance Director is further authorized to delegate any authority provided in this Article to accomplish this. In the event that any section in this Article conflicts with this authority to enter into an agreement, for the collection of taxes, it shall be void. The County Finance Director shall appropriately notify taxpayers of any void section.

**Sec. 5-4.18 Promulgation of Rules.** The County Finance Director shall be authorized to promulgate rules to implement the purposes of this Article."

**SECTION 3.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

**SECTION 4.** The County Clerk is authorized to revise this Ordinance to reflect appropriate references relating to dates of enactment and codification.

**SECTION 5.** This Ordinance shall be effective October 1, 2021.

Introduced by: /s/ ARRYL KANESHIRO  
(By Request)

**DATE OF INTRODUCTION:**

**July 21, 2021**

Līhu'e, Kaua'i, Hawai'i


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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2829, Draft 1, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on September 15, 2021, by the following vote:

FOR ADOPTION:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i  
September 16, 2021

  
Jade K. Fountain-Tanigawa  
County Clerk, County of Kaua'i


ATTEST:

  
Arryl Kaneshiro  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

September 16, 2021

Approved this 16<sup>th</sup> day of  
September, 2021.

  
Derek S.K. Kawakami,  
Mayor  
County of Kaua'i