SUMMARY OF PROPOSED COMMITTEE DRAFT:

BILL 40 (2021), CD1
RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

The PROPOSED CD2 makes the following amendments:

A. In SECTION 2 of the bill, amends proposed new ROH Chapter 8A as follows:

1. In proposed ROH Section 8A-1.1(2), removes the reference to ROH Chapter 6, Article 61;

2. In accordance with Act 1, Section 7, First Special Session 2021, clarifies in proposed ROH Section 8A-1.4 that:

   a. The tax imposed by the chapter does not apply to gross rental proceeds, and fair market rental value received as payments under written contracts if the written contract:

      aa. Was entered into prior to the effective date of the measure; and

      bb. Does not provide for the passing on of increased rates of taxes; and

   b. The tax imposed by this chapter will be imposed on the gross rental, gross rental proceeds, and fair market rental value from all contracts entered into on or after the adoption of the chapter, regardless of whether the contract allows for the passing on of any tax or any tax increases;

3. In proposed ROH Section 8A-1.5, clarifies that violations are appealable within 30 days of the notice of violation;

4. In proposed ROH Section 8A-1.7, specifies that taxpayers must also transmit with the return a remittance covering the residue of any taxes due;

5. In proposed ROH Section 8A-1.8:

   a. Specifies in a new subsection (b) that any return or amended return required by ROH Section 8A-1.8 must be filed with the Director of Budget and Fiscal Services within 90 days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service, and

must be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment or recomputation; and

b. Specifies in a new subsection (c) that the statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by proposed ROH Section 8A-1.8(a) will not expire before the expiration of one year from the date the Director of Budget and Fiscal Services is notified by the taxpayer or Internal Revenue Service, whichever is earlier, of the report required in proposed ROH Section 8A-1.8(a) and further specifies that the Director of Budget and Fiscal Services and the taxpayer may agree, in writing, to the extension of that period;

6. In proposed ROH Section 8A-1.11, specifies in a new subsection (c) that the taxpayer will have 30 days to respond to a proposed tax assessment by the Director of Budget and Fiscal Services and that after the 30-day period, if there is no response from the taxpayer, the Director of Budget and Fiscal Services shall mail a notice to the taxpayer specifying the amount assessed and that amount will be due 20 days after the date the notice was mailed;

7. Adds proposed new ROH Section 8A-1.12, which provides for a process for taxpayers to request a refund of the taxes assessed and imposes a deadline for taxpayers to make a refund claim;

8. Adds proposed new ROH Section 8A-1.13, which authorizes the Director of Budget and Fiscal Services to examine records, issue subpoenas/summonses, and accept testimony, and provides for certain penalties for giving false testimony and for neglecting or refusing to obey any subpoena/summons;

9. Renumbers proposed ROH Section 8A-1.12, relating to appeals, as Section 8A-1.14, and:

   a. Specifies a 30-day deadline for taxpayers to appeal to the Tax Appeal Court; and

   b. Deletes the requirement that all taxes must be paid pending appeal;

10. Renumbers proposed ROH Section 8A-1.13, relating to disclosure and destruction of returns, as Section 8A-1.15, and clarifies that any person who violates proposed new ROH Section 8A-1.15 shall be guilty of a misdemeanor, as opposed to being punished in accordance with HRS Section 237D-13;

11. Renumbers proposed ROH Section 8A-1.14, relating to collection by suit, as ROH Section 8A-1.16;

12. Adds proposed new ROH Section 8A-1.17, relating to certain amounts held in trust and to liability of key individuals, which specifies that officers, members, managers, and other persons having control or supervision over amounts collected pursuant to proposed new ROH Chapter 8A are subject to personal liability for wilfully failing to pay the taxes due;

13. Renumbers proposed ROH Section 8A-1.15, relating to penalty and interest, as ROH Section 8A-1.18, and amends subsection (a) by adding proposed new subdivisions (3) and (4), which specify certain penalties for a taxpayer's failure to file a tax return or failure to pay the tax;

14. Renumbers proposed ROH Sections 8A-1.16 (relating to application of tax) and 8A-1.17 (relating to the Director) as ROH Sections 8A-1.19 and 8A-1.20, respectively; and

15. Renumbers proposed ROH Section 8A-1.18, relating to administrative rules, as ROH Section 8A-1.21 and clarifies that the Director of Budget and Fiscal Services is further authorized to prescribe forms in conformity with proposed new ROH Chapter 8A and that such forms, and any rules adopted by the Director, will have the force and effect of law.

B. Clarifies in SECTION 3 of the bill that for purposes of SECTION 3 of Ordinance 18-39, as amended by Ordinance 19-25, "city revenues" shall not include transient accommodations taxes collected by the City and deposited into the Transit Fund pursuant to Section 8A-1.1(2) of the Revised Ordinances of Honolulu 1990, as amended.

C. Specifies in SECTION 6 of the bill that the Revisor of Ordinances shall, pursuant to the Revisor of Ordinances' authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance," with the actual effective date.

D. Makes miscellaneous technical and nonsubstantive amendments.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAIʻI

ORDINANCE _____

BILL **40 (2021), CD2**
PROPOSED

A BILL FOR AN ORDINANCE

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to establish a transient accommodations tax for the City and County of Honolulu, provide for its imposition and disposition, and facilitate the receipt and deposit of the revenues derived from the transient accommodations tax.

SECTION 2. The Revised Ordinances of Honolulu 1990, is amended by adding a new Chapter 8A to read as follows:

"Chapter 8A

TAXATION OF TRANSIENT ACCOMMODATIONS

Article 1. Transient Accommodations Tax

Sec. 8A-1.1 Establishment of transient accommodations tax and disposition.

Pursuant to Sections 6 and 7 of Act 1, Session Laws of Hawaii 2021, First Special Session, there is hereby established a three percent transient accommodations tax on all gross rental, gross rental proceeds, and fair market rental value that is taxable under HRS Chapter 237D on property in the city, which will be levied and collected by the director of budget and fiscal services; provided that:

(1) ____ percent of all transient accommodations taxes collected pursuant to this chapter during the fiscal year will be deposited into the general fund;

(2) ____ percent of all transient accommodations taxes collected pursuant to this chapter during the fiscal year will be deposited into the transit fund; and

(3) ____ percent of all transient accommodations taxes collected pursuant to this chapter during the fiscal year will be deposited into a special account in the general fund, to be appropriately named by the department of budget and fiscal services. The funds in the special account must:

(A) Be used to mitigate the impacts of visitors on public facilities and natural resources, including the restoration and maintenance of beaches and parks; and

(B) Supplement, and not supplant, any funds regularly appropriated for the purposes specified in paragraph (A).

Sec. 8A-1.2 Definitions.

The terms used in this chapter, unless the context requires otherwise, shall have the meanings given to those terms in HRS Chapter 237D, as applicable to properties situated in the City; provided that references to "director" mean the director of budget and fiscal services of the city, or the director's duly authorized designee.

Sec. 8A-1.3 Imposition of tax.

(a) Each month, a tax on the gross rental or gross rental proceeds derived from furnishing transient accommodations is levied 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 and every operator must pay to the city the tax imposed.

(c) Every plan manager is liable for and must pay to the city the transient accommodations tax imposed under this chapter. Every resort time share vacation plan must be represented by a plan manager who is subject to this chapter.

Sec. 8A-1.4 Exemptions.

(a) The exemptions in HRS Section 237D-3 are also exemptions to this chapter.

(b) The tax imposed by this chapter does not apply to gross rental, gross rental proceeds, and fair market rental value received as payments under written contracts if the written contract:

(1) Was entered into prior to the effective date of this ordinance; and

(2) Does not provide for the passing on of increased rates of taxes.

The county transient accommodations tax is imposed on the gross rental, gross rental proceeds, and fair market rental value from all contracts entered into on or after the effective date of this ordinance, regardless of whether the contract allows for the passing on of any tax or any tax increases.

Sec. 8A-1.5 Registration.

All operators, plan managers, transient accommodations brokers, travel agencies, or tour packagers within the city must hold a State registration in accordance with HRS Sections 237D-4 and 237D-4.5. Failure to obtain a registration under this section is considered an additional city civil violation punishable by up to $1,000 per violation under authority of HRS Section 46-1.5(24)(a). Violations are appealable to the director consistent with HRS Chapter 91 within 30 days from the date of the notice of the violation.

Sec. 8A-1.6 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, 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 subdivision applies only if the director is satisfied that the quarterly payment of the tax 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; 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. 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 is satisfied that the semiannual payment of the tax 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.

The director, 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 is permitted by the director to make semiannual payments of the tax, exceeds $2,000 in transient accommodations taxes during the calendar year, or if the liability of a taxpayer, who is permitted by the director to make quarterly payments of the tax, exceeds $4,000 in transient accommodations taxes during the calendar year, or if the director 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, at any time, may require the monthly payment of the tax, in which case the taxpayer must then file the taxpayer's return and make payments as provided in subsection (a).

Sec. 8A-1.7 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 chapter during the preceding taxable year must file with the director a copy of the return filed with the State as required under HRS Section 237D-7 and must transmit with the return a remittance covering the residue of the tax due, if any.

Sec. 8A-1.8 Federal assessments.

(a) Any person required to report under HRS Section 237D-7.5, must also respectively make reflective adjustments and report to the director.

(b) Any return or amended return required by this section must be filed with the director within 90 days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service. The return or amended return must be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment, or recomputation.

(c) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by this section shall not expire before the expiration of one year from the date the director is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of such a report as provided in subsection (a). Before the expiration of this one-year period, the director and the taxpayer may agree, in writing, to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Sec. 8A-1.9 Rent collection by third party.

(a) Every person authorized under an agreement by the owner of transient accommodations located within the city to collect rent on behalf of such owner is subject to this section.

(b) Every written rental collection agreement, in addition to the requirements of HRS Section 237D-8.5, must also include in bold print and ten-point type size:

"HONOLULU TRANSIENT ACCOMMODATIONS TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING TRANSIENT ACCOMMODATIONS IN THE CITY AND COUNTY OF HONOLULU"

Every person entering into an oral rental collection agreement must furnish the director a copy of the information furnished to the State as required under HRS Section 237D-8.5, 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 HRS Section 237D-8.5, by adding in bold print and in ten-point type size to the front of the statement in HRS Section 237-30.5 the following in parentheses:

"HAWAIʻI (INCLUDING HONOLULU 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 30 days after entering into the agreement, or must file a copy of United States Internal Revenue Service 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.

Sec. 8A-1.10 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 every person 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 HRS Section 237D-8.6.

(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 reconciliation filed with the State as prescribed by HRS Section 237D-8.6, 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 HRS Section 237D-2(a).

Sec. 8A-1.11 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 must estimate the tax liability of the operator or plan manager from any information the director obtains, and according to the estimate, assess the taxes, interest, and penalty due to the city 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 must cause the return to be examined and may conduct further audits or investigations as the director considers necessary. If the director determines that there is a deficiency in the payment of any tax due under this chapter, the director must assess the taxes and interest due the city, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) The director shall first give notice to the taxpayer of the proposed assessment, and the taxpayer shall thereupon have an opportunity within 30 days to confer with the director. After the expiration of 30 days from the notification, the director shall assess the gross rental, gross rental proceeds, or fair market rental value or any portion thereof which the director believes has not theretofore been assessed, and shall give notice to the taxpayer of the amount of the tax, and the amount thereof shall be paid within 20 days after the date the notice was mailed, properly addressed to the taxpayer at the taxpayer's last known address or place of business. No preliminary notice shall be necessary where the amount of the tax is calculated by the director from gross rental, gross rental proceeds, or fair market rental value reported by the taxpayer as subject to the tax; in such cases, the tax shall be due and payable on the tenth day after the date the statement was mailed.

(d) 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 HRS Chapter 231, if the levy is made or the proceeding was begun within 15 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 HRS Section 231-3(10), is pending; and

(4) During which the taxpayer is outside the city 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 city 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.

(e) 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 city.

(f) Where, before the expiration of the period prescribed in subsection (c), the director 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. 8A-1.12 Overpayment; refunds.

(a) Upon application by a taxpayer, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty will be credited by the director on any taxes then due under this chapter. The director shall refund the balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns in accordance with this section.

(b) No credit or refund will be allowed for any tax imposed by this chapter, unless a claim for such credit or refund is filed as follows:

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

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

(A) Three years after the payment of the tax; or

(B) Three years after the date prescribed for the filing of the annual return;

whichever is later.

Subdivisions (1) and (2) are mutually exclusive.

(c) All refunds shall be paid upon a voucher in the form prescribed by the director. If the taxpayer is delinquent in the payment of any tax due to the city, the department shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund.

Sec. 8A-1.13 Audits, procedure, penalties.

(a) For the purpose of verification or audit of a return made by the taxpayer, or where there are reasonable grounds to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, or for the purpose of making an assessment where no return has been made, the director may examine all account books, bank books, bank statements, records, vouchers, taxpayer's copies of federal and State tax returns, and any and all other documents and evidence having any relevancy to the determination of the gross rental, gross rental proceeds, or fair market rental value as required to be returned under this chapter and may summon or require the attendance of the person by or for whom the return, if any, has been made or whose tax is being assessed, and any employee of the person, and may summon or require the attendance of any person having knowledge in the premises, naming the time and place in the summons, and may require the production of any books, statements, or other evidence open to examination, and may take testimony in reference to any matter relevant to the gross rental, gross rental proceeds, or fair market rental value for the period under consideration, with power to require that the person so called and appearing shall be interrogated under oath and to administer the oath.

(b) If the director determines that any gross rental, gross rental proceeds, or fair market rental value liable to the tax have not been assessed, the director may assess the same as provided in Section 8A-1.11.

(c) Any individual knowingly giving false testimony under oath at any hearing before the director shall be guilty of perjury and shall be punished as provided by law.

(d) Any person refusing or neglecting to obey any summons issued by the director, and any individual appearing and refusing to testify under oath, shall be fined $50 for the first offense and $100 for each succeeding offense.

Sec. 8A-1.14 Appeals.

Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment to the tax appeal court within 30 days from the date the notice of assessment was mailed.

Sec. 8A-1.15 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 city, including the city auditor or the city auditor's duly authorized designee, 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 wilfully 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 one 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 subdivisions (1) through (6) who is incompetent;

(8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in subdivisions (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 of the United States, or any county of this State;

(11) The multistate tax commission or its authorized representative; and

(12) Members of a limited liability company.

Any person who violates this subsection will be guilty of a misdemeanor. 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 Sections 8A-1.6 and 8A-1.7 upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.

Sec. 8A-1.16 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 first circuit court. After delinquency has continued for 60 days, or if any person required to register under this chapter fails to do so for a period of 60 days after the first date when the person was required to register, the director may proceed in the first 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.

Sec. 8A-1.17 Certain amounts held in trust; liability of key individuals.

(a) There shall be personal liability for the taxes imposed under this chapter as provided in this section for the following amounts of gross rental, gross rental proceeds, or fair market rental value:

(1) Any amount collected as a recovery of the taxpayer's liability under this chapter, where the amount is passed on as the tax owed by the taxpayer under this chapter for the transaction and is separately stated or accounted for in a receipt, contract, invoice, billing, or other evidence of the business activity; or

(2) An amount equal to the tax liability under this chapter on a transaction where a taxpayer does not separately state or account for the amount as a tax recovery as provided in subdivision (1). For purposes of this subdivision, the amount of the imputed tax liability is the result of multiplying the gross rental, gross rental proceeds, or fair market rental value received in the transaction by the tax rate.

The amounts under subdivisions (1) and (2) shall be held in trust for the benefit of the City and for payment to the City in the manner and at the time required by this chapter.

(b) The personal liability under this section applies to any officer, member, manager, or other person having control or supervision over amounts of gross rental, gross rental proceeds, or fair market rental value collected to pay the tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of tax on gross rental, gross rental proceeds, or fair market rental value collected and held in trust under subsection (a). The person shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the taxpayer pursuant to this chapter.

This subsection does not apply to any officer, manager, or other person having control or supervision over amounts of gross proceeds or gross income collected to pay the tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of tax on gross rental, gross rental proceeds, or fair market rental value collected and held in trust under subsection (a) for a nonprofit organization.

For purposes of this subsection:

"Nonprofit organization" means a corporate entity, association, or other duly chartered entity that is registered with the State and is exempt from the application of this chapter pursuant to HRS Section 237D-3.

"Wilfully fails to pay or to cause to be paid" shall be construed in accordance with judicial interpretations given to similar provisions of the Internal Revenue Code; consistent therewith, the term "wilfully" shall mean a voluntary, intentional violation of a known legal duty.

(c) An officer, member, manager, or other responsible person shall be liable only for taxes on gross rental, gross rental proceeds, or fair market rental value collected, plus interest and penalties on those taxes, that became due during the period the person had control, supervision, responsibility, or a duty to act for the taxpayer as described in subsection (b).

(d) Persons liable under subsection (b) are exempt from liability when nonpayment of the tax on gross rental, gross rental proceeds, or fair market rental value held in trust is for good cause as determined by the director.

(e) The voluntary or involuntary dissolution of the taxpayer or the withdrawal or surrender of its right to engage in business in this State will not discharge the liability hereby imposed.

Sec. 8A-1.18 Penalty and interest.

(a) The following penalties and interest must be added to and become a part of the tax:

(1) For underpayments.

(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; and

(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.

(2) For delinquent payments.

(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 one 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; and

(D) If any portion of a tax is satisfied by credit of any overpayment, then no interest may 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.

(3) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof that the failure continues, not exceeding 25 percent in the aggregate. For purposes of this subdivision, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(4) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within 60 days of the prescribed filing date, there shall be added to the unpaid tax an amount of up to 20 percent as determined by the director.

(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.

Sec. 8A-1.19 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 or city. 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 180 consecutive days, it must be presumed that the accommodation furnished is for a transient purpose; and

(2) If a person lets a transient accommodation for 180 days or more, there is no presumption as to the purpose for which the accommodation is furnished. The burden of proving to the director that 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.

Sec. 8A-1.20 Director.

The director has all the rights and powers of the director of taxation under HRS Chapter 237D. The director is authorized to enter into an agreement with the director of taxation, or other State agency, 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, that section is void. The director must appropriately notify taxpayers of any void section.

Sec. 8A-1.21 Administrative rules.

The director is authorized to adopt administrative rules pursuant to HRS Chapter 91 for the purposes of implementing, administering, and enforcing this chapter. The director is further authorized to prescribe forms in conformity with this chapter. Such forms and rules will have the force and effect of law."

A BILL FOR AN ORDINANCE

SECTION 3. Ordinance 18-39, as amended by Ordinance 19-25, is amended by amending SECTION 3 to read as follows:

"SECTION 3. No more than an aggregate total of $214,000,000 of city revenues and no more than $26,000,000 of city revenues in any fiscal year from and after fiscal year 2020, shall be appropriated and expended for the costs of the Honolulu Rail Transit Project identified as "City Subsidy" in the Recovery Plan, as may be revised and updated, and which may be adopted by the Council; provided, however, that the foregoing shall not apply to the payment of any interest on debt service and any other costs relating to the issuance or refunding of commercial paper and other forms of general obligation indebtedness arising from the financing of principal required to be paid from city revenues and not payable from other sources of revenue. [~~City revenues~~] For purposes of this SECTION, "city revenues" shall include, but not be limited to, revenues from real property taxes, public service company taxes, and [~~the City's share of the transient accommodations tax.~~] transient accommodations taxes levied by the city and deposited into the General Fund pursuant to Section 8A-1.1(1) and (3) of the Revised Ordinances of Honolulu 1990, as amended, and "city revenues" shall not include transient accommodations taxes collected by the city and deposited into the Transit Fund pursuant to Section 8A-1.1(2) of the Revised Ordinances of Honolulu 1990, as amended. $44,000,000 of city general obligation bonds may be issued to pay for such expenditures in fiscal year 2019."

SECTION 4. Section 6-61.2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"**Sec. 6-61.2 Purpose.**

The purpose of the transit fund is to [~~receive~~]:

(1) Receive transfers of all [~~monies~~] moneys collected from the county surcharge on [~~state~~] State general excise and use tax by the general fund [~~and to provide~~];

(2) Receive transient accommodation taxes collected by the State, deposited into the State mass transit special fund, and distributed to the city in accordance with HRS Sections 237D-2 and 248-2.7;

(3) Receive transient accommodation taxes collected by the city pursuant to Chapter 8A and deposited in the fund pursuant to Section 8A-1.1(2); and

(4) Provide budgetary control and accountability of moneys [~~collected~~] received pursuant to Section 6-60.1[~~.~~], Section 8A-1.1(2), and HRS Sections 237D-2 and 248-2.7."

A BILL FOR AN ORDINANCE

SECTION 5. Section 6-61.3, Revised Ordinances of Honolulu 1990, as amended by Ordinance 20-19, is amended to read as follows:

"**Sec. 6-61.3 Deposits.**

(a) There shall be deposited into the transit fund:

(1) All county surcharge on [~~state~~] State general excise and use tax moneys collected pursuant to Section 6-60.1 and deposited into the general fund; [~~and~~]

(2) Any interest earned on the deposits of this fund and all other receipts dedicated for the mass transit project[~~.~~];

(3) All transient accommodation taxes collected by the State and distributed to the city in accordance with HRS Sections 237D-2 and 248-2.7; and

(4) ___ percent of the revenues generated from the city's collection of the transient accommodations tax in accordance with Section 8A-1.1(2).

(b) No revenues required to be deposited into the transportation fund under Article 18 shall be deposited [~~in the transit~~] into this fund."

SECTION 6. In SECTIONS 3, 4, and 5, ordinance material to be repealed is bracketed and stricken, and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. In SECTION 2 of this ordinance, the Revisor of Ordinances shall, pursuant to the Revisor of Ordinances' authority under Section 1-16.3(b)(1), Revised Ordinances of Honolulu 1990, as amended, replace the phrase "effective date of this ordinance," with the actual effective date.

A BILL FOR AN ORDINANCE

SECTION 7. This ordinance takes effect upon its approval. The transient accommodations tax established by this ordinance is considered levied on the effective date of this ordinance.

INTRODUCED BY:

Tommy Waters

DATE OF INTRODUCTION:

September 30, 2021
Honolulu, Hawaiʻi

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

RICK BLANGIARDI, Mayor
City and County of Honolulu