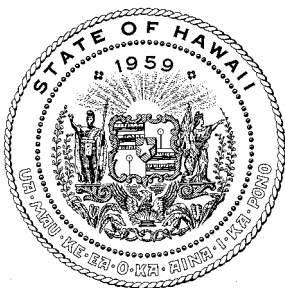


INFORMATION ON THE RENTAL OF RESIDENTIAL REAL PROPERTY



STATE OF HAWAII
DEPARTMENT OF TAXATION

Benjamin J. Cayetano
Governor

Ray K. Kamikawa
Director of Taxation

Revised June, 1998

A MESSAGE FROM THE DIRECTOR

This brochure is intended to provide you with general tax information regarding your responsibilities as an owner of residential rental real property located in Hawaii in an easy to follow question and answer format.

Most taxpayers recognize that they must pay (and do pay) the income tax on their rental income. Therefore, this brochure, except for a few references to the income tax, concentrates on the general excise and transient accommodations taxes. The tax information is expanded in two brochures entitled, "An Introduction to the General Excise Tax" and "An Introduction to the Transient Accommodations Tax". Please refer to these brochures for more detailed information on these specific taxes.

Should you have any further questions on any of the above mentioned taxes, please telephone or write to one of our district tax offices. The telephone numbers and mailing addresses are provided to you on the last two pages of this brochure.

1. In addition to the income tax, are there any other taxes I must pay if I rent out my house?

You will be subject to the general excise tax. You also may be subject to the transient accommodations tax if you rent your house to a transient person for less than 180 consecutive days.

2. Although I'm familiar with the income tax because I file an income tax return each year, I've never heard of the general excise and transient accommodations taxes. What are they?

The general excise tax is a tax imposed on business activity in the State of Hawaii. This tax is often called a "gross income tax" because the tax is computed based on the business' total gross income derived from doing business in Hawaii and not on the business' net profit. Gross income includes any cost passed on to the customer and represented to be the general excise tax, but does not include any cost visibly passed on to a guest or tenant and represented to be the transient accommodations tax.

The transient accommodations tax, commonly called the "TAT", is a tax on certain rental activity in the state of Hawaii. It is imposed on gross rental income derived from the furnishing (i.e. the providing or renting) of transient accommodations in Hawaii. Gross rental income does not include any cost visibly passed on to the guest or tenant and represented to be the general excise tax and the transient accommodations tax.

A transient accommodation is an apartment, house, condominium, beach house, hotel room or suite, or similar living accommodation furnished to a transient person for less than 180 consecutive days.

3. Who is a "transient" person?

If a person, including a Hawaii resident, has a permanent home elsewhere or does not intend to make the accommodation being rented a permanent place of residence, then the person is a "transient" with respect to that lodging.

4. Do I have to pay both the general excise and the transient accommodations taxes?

Yes, you are required to be registered for and to pay BOTH the general excise tax and the transient accommodations tax if you rent a transient accommodation to a transient

person for less than 180 consecutive days.

If your rental unit is rented for 180 days or more, you are only subject to the general excise tax.

5. Does renting out my house mean that I am in business?

Yes. A person receiving gross income from the rental of a condominium, a house, an apartment, or any other real property located in Hawaii is deemed to be engaged in a business activity.

6. Is there any minimum amount of tax I have to pay? If I only rent out one room in my house, will I still have to pay the general excise and transient accommodations taxes?

There is no minimum amount of tax you have to pay. If you do not have any gross income to report for the filing period, just file the periodic tax return with a zero (0) in the appropriate columns.

Even if you rent out only one room in your house, you still must pay the applicable taxes on your gross rental income.

7. What is included in gross rental income?

Your gross rental income is any amount you receive for the use or occupation of your property. It includes amounts paid to you in the form of cash, goods, or services as compensation for furnishing an accommodation without any deductions for costs.

8. Do I have to include as income penalties I charge my tenant when the rent payment is late or when my tenant breaks the lease?

The penalty payments are reported as “other income” under the general excise tax but are not included in gross rental income under the transient accommodations tax.

9. Under our rental agreement, my tenant pays the maintenance fee directly to the homeowner’s association and pays the property tax directly to the City. Since I don’t actually receive the money, may I exclude these amounts from my gross income?

If your tenant pays any of your expenses (e.g. maintenance

fees, real property taxes, repairs, etc.) for which you are legally responsible, these payments are considered to be rental income and must be reported.

However, amounts the tenant pays towards expenses for which the tenant is liable (e.g. electricity bills, telephone bills, and other bills incurred by the tenant rather than by you) are not considered rental income and therefore are not included in your income subject to the general excise and transient accommodations taxes.

10. My wife and I will be leaving on an extended vacation for 3 months. The house will be rented to a friend who also will do some yard work and take care of the dog. Must we pay the general excise and transient accommodations taxes on the value of the yard work and dog sitting services, plus the rent we received, or do we only pay the taxes on the actual rent we receive?

The general excise and transient accommodations taxes must be paid on the value of the yard work and dog sitting services plus the actual rent. The value of the services is part of your compensation for furnishing the accommodation.

11. My tenant is going to be on a trip when the rent is due so he gave me the January rent in December. Do I report the rent payment based on when I received the payment (December) or based on the month the rent was paid for (January)?

If you use the cash method of accounting, report the rent payment based on when you received the payment (December).

If you use the accrual method of accounting, report the rent payment based on the month the rent was paid for (January).

12. Is the security deposit received from a tenant considered income?

The security deposit you receive from your tenant is reported as income at the time you decide to keep all or part of the deposit because your tenant did not live up to the terms of the lease. For example, if you used part of the deposit as a cleaning fee or to replace a broken fixture, that amount is considered to be income to you. If all or part of the security deposit is eventually used as payment for the

final month's rent, it is included as income when the payment is applied towards the rent. If the security deposit is returned to the tenant, do not include it as income.

13. If the general excise and transient accommodations taxes are levied on gross rental income, does that mean that nothing is deductible?

Very few exemptions or deductions are allowed. Most business expenses allowed as deductions on your income tax return (e.g. cost of repairs, interest expense, management fees, utilities, real property taxes, insurance premiums, etc.) are NOT deductible on your general excise and transient accommodations tax returns. A few general excise and transient accommodations tax exemptions and deductions are specifically provided for in the laws.

A list of what is exempt or deductible is provided in your general excise and transient accommodations forms booklets.

14. If I rent an accommodation to relatives such as my son and his family, is the rental income I receive subject to the general excise and transient accommodations taxes?

Yes. The rental income received from relatives is subject to the general excise tax. If the accommodation being rented to your son and his family is their permanent place of residence, then it is not subject to the transient accommodations tax.

15. May I charge my tenant for the general excise and transient accommodations taxes I need to pay?

The general excise and transient accommodations taxes you pay are two of your expenses of doing business. As such, you may include them in the rent you charge your customers.

Although you are not required to disclose the amount of rent which will be used to pay these taxes, you may choose to VISIBLY pass on the general excise and transient accommodations taxes to your guest or tenant by separately itemizing these amounts on the bill or invoice.

16. Will it make a difference if I visibly pass on the general excise and transient accommodation taxes?

Yes it will. First, an amount visibly passed on to the tenant

or guest and represented to be the transient accommodations tax is excluded from gross income subject to the general excise tax.

Second, amounts visibly passed on to the tenant or guest and represented to be the general excise tax and the transient accommodations tax are excluded from gross rental income subject to the transient accommodations tax.

If, however, you do not visibly pass on the taxes, but instead charge your tenant or guest a flat fee without separately itemizing the amounts represented as these taxes, you must pay the general excise and transient accommodations taxes on the entire flat fee charged.

17. What percent of my gross rental income will I have to pay as general excise and transient accommodations taxes?

The general excise tax rate is 4% of your gross rental income from a lease. Beginning October 1998, if you are subleasing real property, you will be allowed a deduction of a percentage of your gross rental income over a seven year phase-in period so that the general excise tax rate on subleases would be the equivalent of 1/2%. For more information on subleasing, call (808) 587-4242 or toll-free at 1-800-222-3229.

The transient accommodations tax rate is 7.25% of your gross rental income. Prior to July 1, 1994, the transient accommodations tax rate was 5% of your gross rental income. Prior to January 1, 1999, the transient accommodations tax rate was 6% of your gross rental income.

18. My managing agent collects the rent for me, deducts his/her management fee, and sends me the rest. Do I pay the general excise and/or transient accommodations taxes on only the net amount I receive or on the total rent paid by the tenant?

Ex:	Total Rent Paid by Tenant	390.00
	Less: Management Fee	<u>- 39.00</u>
	Net Amount Received	\$351.00

The general excise and/or transient accommodations taxes are imposed on the total rent paid by tenant (\$390.00). The management fee (\$39.00) is merely an expense of doing business and therefore is not allowed as a deduction for these taxes.

19. What do I need to do to register for the general

excise and transient accommodations taxes?

To register for both the general excise and transient accommodations taxes, you must fill out the Basic Business Application (Form BB-1). This application should be filed in the district in which you live or where the rental property is situated. Submit your application to the Department of Taxation and keep a copy of the application for your records. Applications may be obtained from any district tax office.

20. Will I be issued one identification number for the general excise tax and a separate identification number for the transient accommodations tax?

No. Form BB-1, is used to register for one, or any combination of the five taxes listed — general excise, employer's withholding, use, transient accommodations, and rental motor vehicle & tour vehicle surcharge. One number is assigned to you and is used for all taxes for which you are registered.

21. Are there any registration fees?

There is a one-time fee that must be paid for each tax at the time the application is submitted. The fees are \$20.00 for the general excise tax; either \$5.00 for taxpayers having 1 to 5 transient accommodation units or \$15 for taxpayers having 6 or more transient accommodation units.

22. If I have more than one rental property, must I apply for a separate general excise and transient accommodations tax identification number for each property?

No. Only one identification number is needed for all of your rental properties, even if the properties are located in different districts, as long as the ownership of each property is identical. (Also see the special rule for husbands and wives in question 23 below.)

23. My wife and I jointly own a rental property. Do we have to apply for separate general excise and transient accommodations identification numbers?

No. You are not required to separately register. Co-owners who rent and maintain property (including a husband and wife) but who do not operate as a partnership, corporation or trust, may report the gross income under a single

general excise and transient accommodations identification number.

In addition, a husband and wife may report rental income both from properties which are separately owned and from properties which are jointly owned (other than as a partnership) under a single identification number.

24. If I am currently registered for the general excise tax because of various other business activities, can I add my rental activity to my current license?

Yes, you may add your rental activity to your list of business activities provided that all businesses are owned by the same taxpayer, or taxpayers in the case of husband and wife who operate as sole proprietors. Use Form GEW-TA-RV-5, "General Excise, Use, Employer's Withholding, Transient Accommodations, and Rental Motor Vehicle & Tour Vehicle Surcharge Application Changes Form," to add another business activity. This form is in your general excise tax forms booklet.

Be sure that the form includes your name as registered, your identification number, and all of the information the Department will need to make the change.

25. My parents had a rental property which they gave to me. Do I need to apply for my own general excise and transient accommodations tax identification number, or can their number be transferred to me?

You must apply for your own general excise and transient accommodations identification number. Identification numbers are not transferable. Whenever there is a change of ownership, a new identification number is required.

26. My management agreement states that the managing agent will pay the general excise and transient accommodations taxes for me. If the managing agent doesn't do all the paperwork and pay these taxes for me, will I be penalized?

Yes. Because the general excise and transient accommodations taxes are imposed on you, you are responsible for making sure that accurate returns are timely filed, and that any taxes due are paid in full and on time.

27. Must managing agents comply with any special

Department of Taxation requirements?

Yes. Every managing agent collecting rent on behalf of an owner must provide the Department of Taxation with certain information required on the first page of the rental collection agreement including the owner's name, address, social security number, and, if available, general excise tax identification number, and the address of the property being rented.

The first page of the agreement or federal form 1099-MISC must be filed with the Department. Also, the rental agent must notify the owner that this information is being furnished to the Department and give the owner a copy of that notice.

28. Is there a deadline for filing this information with the Department of Taxation?

Every person authorized to collect rent for another person must file a copy of the first page of the rental collection agreement with the Department of Taxation within 30 days after entering into the agreement. If Form 1099-MISC is filed instead of first page of the agreement, the Form 1099-MISC must be filed with the Department on or before February 28 when all 1099s are due.

29. Instead of a written agreement, an oral rental collection agreement was made. What must the rental agent do in order to comply with this law?

The rental agent must furnish the Department the required information which normally would have been written on the 1st page of a written agreement. (See question 27).

30. Who is responsible for applying for a license and paying the general excise and transient accommodations taxes for property held in a trust?

The trustee is responsible for registering the trust for the payment of general excise and transient accommodations taxes on gross income received from rental property held by the trust.

31. If I place my rental property in a revocable living trust, do I register for the general excise and transient accommodations number under my name as an individual or under the trust's name?

You generally may register for general excise and transient

accommodations taxes under your name. For more information, refer to Tax Information Release No. 94-5 which may be obtained from any district tax office.

32. What kind of general excise tax return forms must I file?

Form G-45, the periodic tax return, is used to report your gross income and to pay your general excise tax. Periodic returns must either be filed monthly, quarterly, or semiannually.

Form G-49, the annual general excise tax return, is a summary of your activity for the entire year. There will be no additional tax due if the gross income, exemptions and deductions, taxable income, and taxes due were accurately reported and paid with the periodic tax returns.

The annual tax return also may be used to make corrections to the amounts previously reported. For example, if you forgot to claim an allowable deduction such as a refund of rent previously reported, you may include the deduction on the annual return. Doing so will lower your tax due for the year and result in a refund.

33. What kind of transient accommodations tax return forms must I file?

Form TA-1, the periodic tax return, is used to report your gross rental income and to pay your transient accommodations tax. Periodic returns must either be filed monthly, quarterly, or semiannually.

Form TA-2 is the annual transient accommodations tax return. It is used in the same way Form G-49 is used for general excise tax purposes (see Question 32). You also must reconcile the gross rental income reported for transient accommodations tax purposes with the gross income from transient accommodations reported for general excise tax purposes.

34. When are general excise and transient accommodations tax returns due?

Periodic tax returns (Forms G-45 and TA-1) are due one month following the close of the filing period; that is, you have one month to file them. For example, the tax return for the semiannual period January through June must be filed on or before the last day of July.

The annual tax returns (Forms G-49 and TA-2) are due on the 20th day of the fourth month following the close of

the taxable year. For example, the annual return for a calendar year taxpayer must be filed on or before April 20.

A return is filed on time if it is dropped off at the Department of Taxation or postmarked on or before the due date of the return. If the due date falls on a weekend or State holiday, the tax return is considered timely filed if filed on the first work day immediately following that weekend or holiday.

35. My managing agent takes 2 months to send me a statement of the rent he collected and a check for the amount due to me. May I report the income based on when I get the money rather than when my managing agent receives the rent from the tenant?

You must report the income based on when the managing agent receives the rent from the tenant. Because you have authorized your managing agent to collect the rent on your behalf, having your tenants pay the rent to your agent is the same as having them pay the rent to you. Therefore, it is important that you receive the information from your agent early enough to file your tax returns on time. If the tax returns are not filed on time, penalty and interest amounts will be assessed.

36. Where do I file my general excise and transient accommodations tax returns?

The general excise and transient accommodations tax returns should be filed with the district tax office from which the license was obtained. Out-of-state residents and persons having gross income from more than one taxation district should file their general excise and transient accommodations tax returns with the Oahu (First) District Tax Office. The mailing addresses are listed on the front cover of the tax forms booklet.

37. What income tax forms do I file to report my rental income and expenses?

Resident individuals filing Form N-11 will report their net rental income or loss as part of their federal adjusted gross income directly on the Form N-11.

Resident individuals filing Form N-12 and part-year resident or nonresident individuals filing Form N-15 must report their rental income and expenses on federal form Schedule E, Supplemental Income Schedule. Federal form Schedule E is then attached to either Form N-12 or

Form N-15, as appropriate.

38. Because of all of my expenses, depreciation, etc., I always show a loss on my income tax return. Do I still have to file a Hawaii income tax return?

Yes. A Hawaii income tax return must be filed whether you have a profit or a loss from your rental business.

39. How does paying the general excise and transient accommodations taxes affect my state income tax?

General excise and transient accommodations taxes paid may NOT be taken as a credit against your income tax liability. However, the general excise and transient accommodations taxes may be claimed as business expense deductions.

NOTE: You may be required to pay estimated income taxes. Use Form N-1 if you are an individual taxpayer, Form N-3 if a corporation, or Form N-5 if an estate or trust. For additional information, read the instructions on these forms which may be obtained from any district tax office.

40. What must I do if I sell my rental property?

If the rental was your only business activity, you should cancel your general excise and transient accommodations tax identification number by completing Form GEW-TA-RV-1 "Notification of Cancellation." However, if you think you may acquire another rental property or start another business in the future, you may instead choose to send a written request asking that your general excise and transient accommodations tax accounts be placed on an inactive status for a period of 2 years if you do not plan to continue your rentals in the following year, but do not want to cancel your registration at this time.

If you are still operating other businesses, you should delete the rental business activity from our tax records by completing Form GEW-TA-RV-5, "General Excise, Use, Employer's Withholding, Transient Accommodations, and Rental Motor Vehicle & Tour Vehicle Surcharge Application Changes Form." This form is in your tax forms booklet.

A capital gain realized on the sale of residential rental property is subject to the Hawaii income tax. Generally, any capital gain or loss from the sale of your rental property is reported on Schedule D-1, Supplemental Schedule of Gains and Losses, and the Capital Gains and Losses Worksheet found in the instructions for Forms N-11, N-12,

and N-15. For more information on the income tax, you may call any district tax office.

41. I am a nonresident. Are there any special requirements if I sell my Hawaii rental property?

Because you are a nonresident, the purchaser may be required to withhold 5 percent of the total sales price from the amount due to you at the time of sale. The amount withheld will be credited to your income tax account for the year of sale and may be claimed when you file your income tax return. For more information, you may request a copy of Tax Information Release Nos. 90-14 and 91-7 on "Withholding of Tax on the Disposition of Real Property by Nonresident Persons . . ." from any district tax office.

42. Where can I get information on the rights and responsibilities of landlords and tenants?

The Hawaii State Department of Commerce and Consumer Affairs, Office of Consumer Protection, has a handbook available to the public entitled "Handbook for the Hawaii Residential Landlord-Tenant Code".

43. Where can I get additional information regarding the general excise and transient accommodations taxes?

For general information, you may request a copy of Department of Taxation's publications entitled, "An Introduction to the General Excise Tax" and "An Introduction to the Transient Accommodations Tax."

Additional information and instructions for completing the general excise and transient accommodations tax returns may be found in your tax forms booklets.

Finally, you may contact any district tax office for information and forms. The mailing addresses and telephone numbers are listed on the last page of this publication.

NEED TO CONTACT A DISTRICT TAX OFFICE?

The mailing addresses, locations, and telephone numbers are listed below:

OAHU DISTRICT OFFICE

First Taxation District
P. O. Box 259
Honolulu, HI 96809-0259

Princess Ruth Keelikolani Bldg.
830 Punchbowl St.
Honolulu, HI 96813-5094

Telephone Numbers:

Information: (808) 587-4242
Toll Free: 1-800-222-3229

Forms by fax:
On Oahu: (808) 587-7572
Outside Oahu: (808) 678-0522
from your fax machine

CD-ROM (nominal fee) and
Forms by mail:
(808) 587-7572
Toll Free: 1-800-222-7572

Telephone Devices for the Deaf (TDD)

Tax Service & Processing
(808) 587-1418
Toll-Free: 1-800-887-8974

Compliance Division
(808) 587-1419
Toll-Free: 1-800-961-5369

Administrative Services/Personnel
(808) 587-1417
Toll-Free: 1-800-801-5913

MAUI DISTRICT OFFICE

Second Taxation District
P. O. Box 1169
Wailuku, HI 96793-6169

State Office Building
54 S. High St., #208
Wailuku, HI 96793-2198

Telephone No.: (808) 984-8500

HAWAII DISTRICT OFFICE

Third Taxation District
P. O. Box 833
Hilo, HI 96721-0833

State Office Building
75 Aupuni St., #101
Hilo, HI 96720-4245

Telephone No.: (808) 974-6321

KAUAI DISTRICT OFFICE

Fourth Taxation District
3060 Eiwa St. Rm 105
Lihue, HI 96766-1889

State Office Building
3060 Eiwa St., Rm 105
Lihue, HI 96766-1889

Telephone No.: (808) 274-3456

NEED MORE INFO? IT'S A FREE CALL!

The Department of Taxation wants to cut some of the red tape and reduce the bureaucracy faced by Hawaii taxpayers. That's why we have a toll-free tax information hotline for your convenience.

If you have a state tax problem, have a question, or need assistance, dial toll-free:

1-800-222-3229

JUST NEED A TAX FORM?

Ask for your form and CD-ROM by mail by dialing toll-free:

1-800-222-7572

Ask for your form by fax by dialing:

On Oahu
(808) 587-7572

Outside Oahu
(808) 678-0522
from your fax machine

INTERNET ADDRESS?

Tax information and tax forms also are available on the Internet at:

<http://www.state.hi.us/tax/tax.html>

We want to help, and one phone call saves time, money, and trouble for everyone.

Revised June, 1998
By Taxpayer Services Branch