



HAWAII VACATION RENTAL UPDATE: APRIL 2016

Hawaii Department Of Taxation Issues Temporary Administrative Rules Relating to Act 204 of 2015

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Background To Act 204 of 2015 & The Temporary Administrative Rules

In Hawaii's statutory tax scheme, temporary lodgings (less than 180 days) are described as "transient accommodations" and subject to a Transient Accommodations ("TA") Tax. The TA Tax applies to traditional transient accommodations, such as hotel rooms, timeshare units, and B & Bs, as well as the growing category of "vacation rentals."

On July 2, 2015, Governor David Y. Ige signed [Act 204 of 2015](#) into law. The law was effective January 1, 2016. Act 204 abandons some of the requirements [Act 326 of 2012](#) and represents a new direction for the Department of Taxation's regulation of vacation rental units, with a scheme for imposing civil penalties on advertisers and operators of vacation rental units that do not comply with licensing and license posting requirements.

For more information about Act 204, please see my article [here](#).

On April 4, 2016, the Department Of Taxation [announced](#) its adoption of Temporary Administrative Rules relating to Act 204.

For vacation rental owners, operators, and advertisers, there is no substitute for directly reviewing the [Temporary Administrative Rules](#) applicable to your activities.

Initial Comment On The Temporary Administrative Rules (“TAR”)

The Department of Taxation may now issue warnings and citations for violations of Act 204. From the TAR, for-profit advertising platforms and vacation rental operators that do not comply with the TA License Advertising requirements are primarily at risk for warnings, citations, and, ominously, referral for criminal investigation.

On-Line Advertisers. Transient Accommodations Brokers, especially on-line advertising platforms and websites, are the subject of numerous “examples” in the TAR with respect to warnings and citations. See, §18-237D-4-12 (TAR, p 26)

Transient Accommodations Operators. TA Operators are also the subject of numerous examples. See, §18-237D-4-12 (TAR, p 26)

The TAR specifically describes a hypothetical TA Operators’ efforts to avoid the disclosure of the TA License in on-line advertisements, and suggests such conduct may be considered criminal in nature by the Department of Taxation.

The offense HRS 231-35, HRS, is mentioned repeatedly in the examples. HRS 231-35 is “[Wilful failure to file return, supply information, or secure a license.](#)” The offense is a special misdemeanor subject to one year imprisonment and a fine up to \$25,000 for an individual, \$100,000 for a corporation.

Comment On the Impact Of The TAR

Act 204 may have been overlooked by many TA Brokers and Operators. Tax license numbers (April 2016) still do not appear to be routinely posted on on-line advertisements for TA rentals.

The TAR now presents the prospect of the issuance of warnings and citations, along with fines.

As of April 5, 2016, two bills are still active in Hawaii's Legislature that would substantially change the import of the TAR/ACT 204 for many TA Brokers and Operators. Whether those measures will become law, the form of the law, and the effective date, is no more than a guess.

In the meantime, TA Brokers and TA Operators must comply with Act 204's requirements.

April 5, 2016

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