

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, March 9, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihu'e, on the following:

Bill No. 2844

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO COUNTY TRANSIENT ACCOMMODATIONS TAX

This Bill proposes to amend Chapter 5, Article 4, Kaua'i County Code 1987, as amended, to align Kaua'i's Code language with state and other county jurisdictions by clarifying 1) that any taxpayer or person involved in transient accommodations activities are subject to the County Transient Accommodations Tax, 2) the appeals process, 3) penalties resulting from failure to file a tax return, 4) the County Director of Finance's authority over claims not exceeding five thousand dollars (\$5,000.00), and 5) the process for overpayments and refunds.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of this Bill is available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2844 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 9, 2022, by the following vote:

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

Lihu'e, Hawai'i
February 9, 2022

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

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication - The Garden Island - February 18, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO COUNTY TRANSIENT ACCOMMODATIONS TAX**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Chapter 5, Article 4, Section 5-4.3, Kauai County Code 1987, as amended, is hereby amended to read as follows:

“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 or other taxpayer who receives gross rental proceeds 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.”

SECTION 2. Chapter 5, Article 4, Section 5-4.6, Kauai County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 5-4.6 Return and Payments.

(a) On or before the twentieth day of each calendar month, every [operator taxable, or plan manager] person 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)."

SECTION 3. Chapter 5, Article 4, Section 5-4.11, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"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] person 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] person 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,] person, give notice of the assessment to the [operator or plan manager,] person, and make demand upon

the [operator or plan manager] person 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.”

SECTION 4. Chapter 5, Article 4, Section 5-4.12, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“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.] within thirty (30) days of the date of the assessment to tax appeal court in accordance with Section 232-16, Hawai‘i Revised Statutes.”

SECTION 5. Chapter 5, Article 4, Section 5-4.15, Kaua‘i County Code 1987, as amended, is hereby amended to read as follows:

“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 file tax return.

(A) In case of failure to file any tax return required to be filed on the date required (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 will be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return will be reduced by the amount of any part of the tax 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.

[(1)] (2) 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)] (3) 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 (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.

(c) With approval of the County Attorney, the County Finance Director shall have the power to compromise any claim arising under this Chapter not exceeding five thousand dollars (\$5,000.00)."

SECTION 6. Chapter 5, Article 4, Kaua'i County Code 1987, as amended, is amended by adding a new section to read as follows:

"Sec. 5-4.19 Overpayment; Refunds.

(a) Upon application by a taxpayer, if the County Finance 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 County Finance Director on any taxes then due under this Chapter. The County Finance 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 (3) years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:

(A) Three (3) years after the payment of the tax; or

(B) Three (3) years after the date prescribed for the filing of the annual return;

whichever is later

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

(c) All refunds shall be paid by voucher approved by the County Finance Director setting forth the details of each transaction. If the taxpayer entitled to the refund is delinquent in the payment of the County transient accommodations tax, the County Finance Director, after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and apply the same to the amount owed."

SECTION 7. 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 8. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 9. The County Clerk is authorized to revise this Ordinance to reflect appropriate references relating to dates of enactment and codification.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by:



ARRYL KANESHIRO
(By Request)

DATE OF INTRODUCTION:

February 9, 2022

Lihu'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. 2844, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 9, 2022, by the following vote:

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

Lihu'e, Hawai'i
February 9, 2022


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