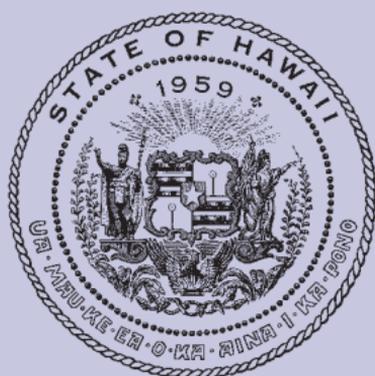


An Introduction to Renting Residential Real Property



**State of Hawaii
Department of Taxation**

**David Y. Ige
Governor**

**Maria E. Zielinski
Director of Taxation**

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Overview

This brochure provides basic information on the application of the general excise tax and transient accommodations tax to lessors of residential real property located in Hawaii.

This brochure complements our “An Introduction to the General Excise Tax” brochure and our “An Introduction to the Transient Accommodations Tax” brochure. Please refer to these brochures for more information on these taxes.

If you have any questions, please call or email us. Our contact information is provided to you at the end of this brochure.

Note: This brochure provides general information and is not a substitute for legal or other professional advice. The information provided in this brochure does not cover every situation and is not intended to replace the law or change its meaning. If there is a conflict between the text in this brochure and the law, then the application of tax will be based on the law and not on this brochure.

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General Information

1. If I rent out my house or a room in my house, does that mean I am in business?

Yes. If you receive rental income from renting out part or all of your house, condominium, apartment, second home, vacation home, or any other residential real property (“real property”) located in Hawaii, then you are engaging in a taxable business activity.

2. If I rent out my house, do I have to pay taxes?

Yes. If you rent out real property located in Hawaii for 180 days or more (long-term rental), then you are subject to Hawaii income tax and the general excise tax (GET).

If you rent out real property located in Hawaii to a transient person for less than 180 consecutive days (short-term rental), then you are subject to Hawaii income tax, GET, and the transient accommodations tax (TAT). For example, if you rent out your house for one weekend, the gross rental income is subject to the GET and TAT.

3. If I rent out my house to relatives such as my son and his family, do I have to pay taxes?

Yes. If you rent out real property located in Hawaii to your relatives, then you are subject to Hawaii income tax and the GET. If it is a short-term rental, then you are also subject to the TAT. However, if the accommodation is your relatives’ permanent place of residence, then it is not subject to the TAT.

4. What is the GET?

The GET is a privilege tax imposed on business activity in the State of Hawaii. The tax is imposed on the gross income received by the person engaging in the business activity. Your gross income is the total of all your business income **before** you deduct any business expenses. Gross income includes any cost passed on to the customer such as the GET.

5. What is the TAT?

The TAT is a tax imposed on short-term rental activity in the State of Hawaii. It is imposed on gross rental income from renting transient accommodations in Hawaii. Long-term rentals are not subject to the TAT.

6. What is a transient accommodation?

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

7. 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 the accommodation.

8. My intent was to rent out my house for less than 180 days. What do I do if my tenant stays longer than 180 days?

If your tenant stays longer than 180 days, you may or may not be subject to the TAT. It depends on the facts and circumstances of the situation.

You are still subject to the GET.

9. If the GET and TAT are imposed on gross rental income, does that mean that nothing is deductible?

Most business expenses allowed as deductions on your income tax return are not deductible on your GET and TAT returns. For example, the cost of repairs, interest expense, management fees, utilities, real property taxes, and insurance premiums are not deductible and are included as gross rental income.

A few GET and TAT exemptions are allowed. A list of exemptions is included in the instructions for the GET and TAT returns.

10. What are the GET and TAT rates on rental income?

The GET rate on your gross rental income is 4% (4.5% if the property is located on Oahu).

If you are subleasing real property, you may claim a deduction of 87.5% (0.875) of your gross rental income so that the GET rate on subleases would be the equivalent of 0.5%. See Forms G-71 and G-72 for more information.

The TAT rate on your gross rental income is 9.25%.

11. May I charge my tenant for the GET and TAT that I need to pay?

Yes. Because the GET and TAT are expenses that you incur by engaging in business, you can charge your tenant for the taxes that you pay.

You may visibly pass on the GET and TAT to your tenant by separately listing the GET and TAT on the bill or lease agreement. If you are visibly passing on the GET to your tenant, consumer protection laws do not allow you to visibly pass on an amount that is more than the actual GET due on the transaction.

You may choose not to visibly pass on the GET and TAT by charging your tenant a flat fee without separately listing the GET and TAT.

12. Will it make a difference if I visibly pass on the GET and TAT?

Yes. If you visibly pass on the GET and TAT, then you may claim certain exemptions and exclusions on your tax returns.

On your GET return, you may claim an exemption from gross income for the TAT that is visibly passed on to the tenant. You cannot claim an exemption for the GET that is visibly passed on.

On your TAT return, you may exclude from gross rental income the GET (including the 0.5% county surcharge if the property is located on Oahu) and TAT that is visibly passed on to the tenant.

If you charge your tenant a flat fee without separately listing the GET and TAT, you are required to pay the GET (including the 0.5% county surcharge if the property is located on Oahu) and TAT on the entire amount.

13. Is there a minimum amount of tax I have to pay?

No. 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.

14. If I am a disabled person and I rent out my house, am I subject to the GET and TAT?

Yes. However, the first \$2,000 of rental income per year is exempt from the GET. The remaining amount is taxed at the 0.5% GET rate. If you are visibly passing on the GET to your tenant, consumer protection laws do not allow you to

visibly pass on an amount that is more than the actual GET due on the transaction.

There is no exemption for the TAT.

What is Subject to Tax

15. What is included in gross rental income subject to the GET and TAT?

Your gross rental income is any amount you receive in cash, goods, or services for renting your property without any deductions for costs. If your tenant makes payments such as mortgage, utilities, insurance, maintenance fees, or real property taxes on your behalf, those payments are classified as rental income to you and subject to the GET and TAT.

16. Do I have to pay the GET and TAT on the security deposit I received from my tenant?

If you keep all or part of the security deposit, then you must pay the GET on the amount you keep. For example, if you keep all or part of your tenant's security deposit as payment for the final month of rent, cleaning fees, or repairs, then you must pay the GET on the amount you keep.

If you keep all or part of your tenant's security deposit as payment for the rental of a transient accommodation, then you must pay the TAT on the amount you keep.

17. Do I have to pay the GET and TAT on the penalties that I charge my tenant for late rent payments, late cancellations, or breaking the lease?

These penalty payments are subject to the GET and should be reported as "Interest and All Others" on your GET return.

These penalty payments are not subject to the TAT.

18. 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. Because I don't actually receive the money, do I have to pay the GET and TAT on these amounts?

Yes. If you are legally responsible for paying the maintenance fee and the real property tax (the bills are in your name), then the amounts that your tenant pays for these expenses are rental income to you and must be included in your gross rental income subject to the GET and TAT.

However, if your tenant is legally responsible for paying certain expenses such as electricity or telephone (the bill is in your tenant's name), then the amounts that your tenant pays for these expenses are not included in your gross rental income that is subject to the GET and TAT.

19. I will be going on vacation for 3 months. While I'm gone, I am renting my house to a friend who will also be doing some yard work and taking care of my dog. What do I have to pay the GET and TAT on?

You must pay the GET and TAT 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 renting the house.

20. 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).

Managing Agents

21. My managing agent collects the rent for me, deducts the agent's management fee, and sends me the rest. Do I pay the GET and TAT on the net amount I receive or on the total rent paid by the tenant?

Ex:	Total Rent Paid by Tenant	1000.00
	Less: Management Fee	<u>- 100.00</u>
	Net Amount Received	\$900.00

You must pay the GET and TAT on the total rent paid by the tenant (\$1000.00). The management fee (\$100.00) is an expense of doing business and is not allowed as an exemption for these taxes.

22. My management agreement states that my managing agent will file my GET and TAT returns and pay my taxes for me. If my managing agent

does not file my tax returns and pay my taxes on time, will I be penalized?

Yes. You are responsible for filing your tax returns and paying your taxes on time even if you hire someone else to do it for you.

23. Does my managing agent have to comply with any special filing requirements?

Yes. If your managing agent collects the rent for you, your managing agent must file the first page of your rental collection agreement or federal Form 1099-MISC with us. Your agent is also required to notify you that this information is being furnished to us and give you a copy of that notice.

The first page of the rental collection agreement must include your name, address, social security number, Hawaii Tax Identification Number, and the address of your rental property.

24. Does my managing agent have a deadline to file this information with the Department?

Yes. Your agent must file the first page of your rental collection agreement within 30 days after entering into the rental collection agreement. If federal Form 1099-MISC is filed instead of the first page of the agreement, federal Form 1099-MISC must be filed with us by February 28 when all 1099s are due.

25. Instead of a written agreement, an oral rental collection agreement was made. What does my managing agent have to do in order to comply with this law?

The managing agent must furnish us with the required information which normally would have been written on the first page of the rental collection agreement. (See question 23.)

26. 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. Do I report the rent payment based on when I receive the payment from my managing agent or based on 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.

Registration & Licensing

27. How do I register for the GET and TAT?

You may register by completing Form BB-1, State of Hawaii Basic Business Application. The form is available online at tax.hawaii.gov or may be picked up at any district tax office.

Your application may be submitted by mail, in person at any district tax office, or online through the Hawaii Business Express website at: hbe.ehawaii.gov.

You may also file your application with any of the Department of Commerce and Consumer Affairs' Business Action Centers.

28. Are there any registration fees?

Yes. The registration fee for the GET is \$20.00. The registration fee for the TAT is \$5.00 if you have 1 to 5 transient accommodation units and \$15.00 if you have 6 or more transient accommodation units. The registration fees are due when you file your application.

29. Will I be given separate identification numbers for the GET and TAT?

Yes. We will assign separate Hawaii Tax Identification Numbers for the GET and TAT licenses.

30. If I have more than one rental property, do I need a separate identification number for each property?

No. You only need one Hawaii Tax Identification Number for all of your Hawaii rental properties. (See the special rule for spouses and civil union partners in question 32.)

31. If I am currently registered for the GET, how do I register for the TAT?

Complete Form BB-1X, State of Hawaii Basic Business Amended Application, to request a TAT identification number. This form may be submitted by mail or in person at any district tax office.

32. If I own rental property jointly with my spouse (or civil union partner), do we need to have separate Hawaii Tax Identification Numbers?

No. You are not required to have separate Hawaii Tax Identification Numbers. Co-owners such as spouses, civil union partners, or relatives who rent and maintain property, but who do not operate as a partnership, corporation, or trust, may report gross rental income under a single Hawaii Tax Identification Number.

In addition, spouses and civil union partners may report their rental income from properties which they individually own and properties which they jointly own with their spouse or civil union partner under a single Hawaii Tax Identification Number (that includes both names) as long as they are not operating as a partnership, corporation, or trust.

33. If I sell or gift my rental property to someone else, can I transfer my Hawaii Tax Identification Number to the new owner?

No. A Hawaii Tax Identification Number is issued to a specific person or entity and may **not** be transferred to a different person or entity.

34. If my rental property is held in a trust, how do I register for the GET and TAT?

The trustee may register the trust by completing Form BB-1, State of Hawaii Basic Business Application. (See the special rule for revocable living trusts in question 35.)

35. If my rental property is held in a revocable living trust, do I register for the GET and the TAT under my name as an individual or under the trust's name?

You may register under your name. For more information, refer to Tax Information Release No. 94-5, "Licensing Requirements for Certain Trusts Under Hawaii's General Excise Tax Law."

Tax Forms & Filing Requirements

36. What GET forms do I file to report my rental income?

Use **Forms G-45** (periodic GET/Use tax return) and **G-49** (annual GET/Use tax return) to report your rental income and pay your general excise, use, and county surcharge taxes. You must file Form G-45 monthly, quarterly, or semiannually throughout the year and Form G-49 annually. See the form instructions for more information.

Form G-49 is a summary of your activity for the entire year. No additional tax is due if you accurately reported and paid the tax due with your periodic returns. If your periodic returns are not accurate, you may use Form G-49 to make corrections to the amounts previously reported. For example, if you forgot to claim an exemption on one of your periodic GET/use tax returns, you may include the exemption on your annual GET/Use tax return.

Use **Schedule GE (Form G-45/G-49)** to report your allowable exemptions and attach it to Forms G-45 and G-49. If you do not attach this form, then your exemptions will be disallowed.

Complete **Form G-75** and attach it to Forms G-45 and G-49 if you have rental property on more than one island.

37. What TAT forms do I file to report my rental income?

Use **Forms TA-1** (periodic TAT return) and **TA-2** (annual TAT return) to report your transient rental income and pay your transient accommodations taxes. You must file Form TA-1 monthly, quarterly, or semiannually throughout the year and Form TA-2 annually. See the form instructions for more information.

Form TA-2 is a summary of your activity for the entire year. No additional tax is due if you accurately reported and paid the tax due with your periodic returns. If your periodic returns are not accurate, you may use Form TA-2 to make corrections to the amounts previously reported. For example, if you forgot to claim an exemption on one of your periodic TAT returns, you may include the exemption on your annual TAT return.

38. When are my GET and TAT returns due?

Periodic tax returns (Forms G-45 and TA-1) are due on the 20th day of the calendar month following the close of the filing period. For example, the tax return for the semiannual period January through June must be filed by July 20.

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 by April 20.

A return is filed on time if it is dropped off at any district tax office or postmarked by the due date of the return. If the due date falls on a weekend or legal holiday, the tax return is considered timely filed if filed on the first business day immediately following that weekend or holiday.

39. Where do I file my GET and TAT returns?

The mailing addresses are listed on the GET and TAT returns. You may also file and pay online at tax.hawaii.gov/eservices/.

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

If you are a resident individual, file Form N-11 to report your net rental income or loss. This amount will already be included in your federal adjusted gross income that is reported on Form N-11.

If you are a nonresident or part-year resident individual, file Form N-15 to report your net rental income or loss. You may use federal Schedule E as a worksheet to calculate your net rental income or loss for Hawaii income tax purposes. This worksheet is not required to be attached to Form N-15.

41. Do I have to file a Hawaii income tax return if I have a loss on my rental?

Yes. You must file a Hawaii income tax return whether you have a profit or a loss from your rental business.

42. How does paying the GET and TAT affect my state income tax?

The GET and TAT that you pay may **not** be taken as a credit against your income tax liability. However, the GET and TAT may be taken 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 are available on our website, by mail, and at any district tax office.

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

If the rental was your only business activity, you should cancel your GET and TAT licenses by completing Form GEW-TA-RV-1, Notification of Cancellation of Tax Licenses and Tax Permits. However, if you think you may acquire another rental property or start another business in the future, continue filing your periodic and annual returns.

If you stop doing business for an extended period of time, you may submit a written request to have your GET and TAT licenses placed on inactive status for up to two years. Notify us in writing to reactivate your GET and TAT

licenses or extend the inactive period for an additional two-year period.

If we place your GET and TAT licenses on inactive status, then you don't have to file periodic tax returns (Forms G-45 and TA-1); however, you must continue to file your annual returns (Forms G-49 and TA-2).

If you are still operating other businesses, you should delete the address of the rental property 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 & Car-Sharing Vehicle Surcharge Application Changes.

A capital gain realized on the sale of residential rental property is subject to Hawaii income tax. If you are a resident individual filing Form N-11, the capital gain or loss from the sale of the rental property will already be included in your federal adjusted gross income that is reported on Form N-11.

If you are a nonresident or part-year resident individual filing Form N-15, you must report the capital gain or loss from the sale of the rental property on Schedule D-1, Sales of Business Property, and on the Capital Gain/Loss Worksheet in the instructions for Form N-15. More information on the income tax is available on our website.

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

Because you are a nonresident, the buyer 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 as an estimated tax payment for the year of sale and may be used to reduce the amount of income tax due when you file your income tax return. For more information, refer to Tax Information Release No. 2002-2 (Revised 1/2014), "Withholding of State Income Taxes on the Disposition of Hawaii Real Property," and Tax Facts 2010-1, "Understanding HARPTA."

Where to Get More Information

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

The 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".

46. Where can I get additional information about the GET and TAT?

Additional information is available on our website at **tax.hawaii.gov**. For general information, please refer to our brochures entitled, “An Introduction to the General Excise Tax” and “An Introduction to the Transient Accommodations Tax.”

Additional information for completing the GET and TAT returns may be found in the instructions for the GET and TAT returns.

Finally, you may call or email any district tax office for information and forms. Our contact information is provided to you at the end of this brochure.

For More Information, Forms, Publications, & Assistance

Website: tax.hawaii.gov

OAHU DISTRICT OFFICE

Princess Ruth Keelikolani Building
830 Punchbowl Street
Honolulu, HI 96813-5094

Taxpayer Services Branch

Telephone: 808-587-4242
Toll-Free: 1-800-222-3229

Telephone for the hearing impaired
Telephone: 808-587-1418
Toll-Free: 1-800-887-8974

Fax: 808-587-1488

Email:

Taxpayer.Services@hawaii.gov

P.O. Box 259
Honolulu, HI 96809-0259

Compliance Division

Telephone: 808-587-1611

Office Audit Branch

Telephone: 808-587-1644

Fax: 808-587-1633

Collections Branch

Telephone: 808-587-1600

Fax: 808-587-1720

MAUI DISTRICT OFFICE

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

Telephone: 808-984-8500

Fax: 808-984-8522

Email: Tax.Maui.Office@hawaii.gov

Molokai
35 Ala Malama Street, Room 101
Kaunakakai, HI 96748

Telephone: 808-553-5541

Fax: 808-553-9878

HAWAII DISTRICT OFFICE

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

Telephone: 808-974-6321

Fax: 808-974-6300

Email: Tax.Hilo.Office@hawaii.gov

State Office Building
82-6130 Mamalahoa Hwy., #8
Captain Cook, HI 96704

Telephone: 808-323-4597

Fax: 808-323-4599

KAUAI DISTRICT OFFICE

State Office Building
3060 Eiwa Street, #105
Lihue, HI 96766-1889

Email: Tax.Kauai.Office@hawaii.gov

Telephone: 808-274-3456

Fax: 808-274-3461

Regular office hours are from 7:45 A.M. to 4:30 P.M. Monday through Friday, except state holidays.