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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2014-02

RE: Act 326, Session Laws of Hawaii 2012, Relating to Taxation

This Announcement supersedes Department of Taxation Announcement no. 2013-02, dated March 4, 2013. This Announcement updates Announcement no. 2013-02 by extending the transition period described therein and providing information about how to report the relevant information required.

House Bill 2078, H.D. 2, S.D. 2, C.D. 1 became law without Governor Neil Abercrombie's signature as Act 326 (the "Act"), effective July 1, 2012.

Part I of this Announcement describes the reporting requirements for transient accommodation operators, associations of apartment/unit owners and planned community associations. Part II of this Announcement summarizes the Act. Part III of this Announcement describes the transition period the Department is allowing before it begins enforcement of the Act.

I. REPORTING REQUIREMENTS

The Act creates reporting requirements for both operators of transient accommodations ("TAs") and associations of apartment/unit owners or planned community associations. Below is a summary of who must report, what must be reported, when it must be reported, and how to report it.

A. Operators:

1. Who Must Report: Operators of transient accommodations must report to their unit's association of apartment/unit owners or planned community association. An operator is any person furnishing a room, apartment, suite, house, condominium, or the like which is customarily occupied by a transient for less than 180 days. If you only operate Hawaii real property rented out on a long-term basis (for periods of 180 days or more), then you are not subject to this reporting requirement.
2. What to Report: You must report (1) your name; (2) your mailing address; (3) your phone number and any other relevant contact information; (4) your TA tax license

number; (5) the website address of all websites on which you advertise the property for rent; (6) the name of a local contact residing on the same island as the property (note: you can designate yourself if you are on the same island as the property); (7) the local contact's mailing address; and (8) the local contact's phone number and any other relevant contact information.

3. **Due Date for Reporting:** The above-described information relevant to units that you operated at any time on or after January 1, 2013, and before January 15, 2014, must be reported by **March 31, 2014**. If you continue to be a TA operator after January 14, 2014, you must report any changes to your information within 60 days of the change.
4. **How to Report:** You must report this information to the association of apartment/unit owners or planned community association ("Association") on whose property the unit you are operating exists. If you are operating multiple units at multiple sites, you must report to all applicable Associations. Please contact your Association to determine the best way to transmit this information. If your unit is at a location that has neither an association of apartment/unit owners nor a planned community association, you do not need to report at this time.

B. Associations of Apartment/Unit Owners and Planned Community Associations:

1. **Who Must Report.** The following types of organizations must report to the Department:
 - a. "Associations of apartment owners" for condominium property regimes as defined under Hawaii Revised Statutes ("HRS") Section 514A-3 ("all of the apartment owners acting as a group in accordance with the bylaws and declaration");
 - b. "Boards" or "boards of directors" for condominiums as defined under HRS § 514B-3 ("the body ... designated in the declaration or bylaws to act on behalf of the association"); and
 - c. "Boards" or "boards of directors" for planned community associations as defined under HRS § 421J-2 ("the executive board or other body ... designated in the association documents to act on behalf of the association").
2. **What to Report:** If any units on your property are being operated as a transient accommodation, you must report (1) your property's tax map key number; (2) your property's name; (3) your property's address; (4) the name, mailing address and telephone number of the owner of any unit used as a transient accommodation on or after January 1, 2013; (5) the name, mailing address and telephone number of the operator of such unit(s) (note: owner and operator can be the same person); (6) the name, mailing address and phone number of the designated local contact for such units (note: local contact can be the same as the owner and/or operator if on the same island as the unit); (7) the TA tax license number of all operators operating units as transient accommodations; (8) the website address of all websites on which the units

were advertised. Information related to units not used as transient accommodations during the year, such as owner-occupied or long-term tenant-occupied units, need not be reported. If a unit has been used as a transient accommodation since January 1, 2013, but at the time of reporting is no longer being used as a transient accommodation, you must report the unit's information, but you will be able to mark the unit as "inactive" after submitting the information.

3. **Due Date for Filing:** If any units on the property were operated as transient accommodations on or after January 1, 2013, and before January 1, 2014, the information relevant to those units must be reported to the Department electronically at: <https://dotax.ehawaii.gov/resreport> by **April 30, 2014**. If units are operated as transient accommodations on or after January 1, 2014, the information must be reported before the end of the year, or updated within 60 days of a change in your records, whichever is later. If a transient accommodation unit ceases to be operated as a transient accommodation, you must update the information for that unit before the end of the year or within 60 days of the change in your records, whichever is later. If during the course of the year the status of your units does not change (i.e., all units being operated as transient accommodations continue to be operated as transient accommodations under the same circumstances, and all units not being operated as transient accommodations continue to not be so), you do not need to do anything. However, please log on to the site at least once yearly to double check your information.
4. **How to Report:** You must report information to the Department electronically via this website: <https://dotax.ehawaii.gov/resreport>. The website contains instructions for setting up an account as well as for reporting and updating the information. Please do not send information to the Department by mail as this will not be deemed compliance for purposes of the Act and you may still be subject to penalties. If you have any questions about the website, please send an email to: Tax.Act326.Reporting@hawaii.gov.

C. Additional Information about the Act 326 Transient Accommodations Reporting Website:

As noted above, the Department has created a reporting system accessible by website that Associations or their agents may use to report the information required under the Act. The website will allow both Associations themselves or agents working for such Associations to register with a unique account and password. After logging in to the website, the Associations or their agents will be able to report all relevant information for all units on the Association's property being used as transient accommodations.

Again, the website can be found at:

<https://dotax.ehawaii.gov/resreport>.

Instructions for logging in and reporting relevant information are available on the website's FAQ page. In order to use the Act 326 Transient Accommodations Reporting website, you will first need to create an ehawaii.gov account if you have not already done so. The website will walk you through this process. Once you have an ehawaii.gov account, you will need to know the Association's general excise tax license issued under HRS § 237-9 (a.k.a., the Association's GE tax license number). Tax licenses can be searched at the Department's website at: <https://dotax.ehawaii.gov/tls/app>. You may also need an access password from the Association if you are not the person who set up the Association's account initially.

If you have problems accessing the website or reporting relevant information, please email Tax.Act326.Reporting@hawaii.gov, or call the Department of Taxation Rules Office at 808-587-1577.

The website will be available for access beginning January 15, 2014. Again, Associations or their agents must report relevant information for 2013 by April 30, 2014. New or updated relevant information in subsequent years must be reported no later than December 31 of that year, or within 60 days of a change, whichever is later.

Again, **Associations must use the website to report the relevant information**. Please do not mail your relevant information to the Department as this will not be considered proper reporting for purposes of the Act. Any Association providing information by mail but not via the website will still be subject to penalties.

II. SUMMARY OF ACT 326

A. Requirements for Operators

The Act requires operators of transient accommodations to do the following:

1. Designate a local contact residing on the same island as the transient accommodation. The local contact can be any individual residing on the island or any entity with its principal place of business on the island. The contact need not be a licensed real estate broker or be accredited in any other manner.
2. Provide the local contact's contact information to any entity with covenants, bylaws or administrative provisions operational with respect to the property on which the transient accommodation exists (e.g., an association of apartment owners). Such information must be updated within 60 days of any change.
3. Include the local contact's name and phone number in any contract or written rental agreement.

4. Provide on a website or by online link and display in all advertisements and solicitations on websites the registration identification number issued under HRS § 237D-4. This registration identification number is also sometimes referred to as the TAT tax license number. Please also note that for some persons the TAT tax license number may contain a different suffix from the person's GET tax license number.

B. Requirements for Associations

The Act requires any nongovernmental entity with covenants, bylaws and administrative provisions which is formed pursuant to chapter 514A, 514B or 421J (an "Association") to do the following:

1. Provide to the Department of Taxation (the "Department") relevant information related to operators leasing transient accommodations on its property. The relevant information includes the operator's name, address, contact information, registration identification number issued under HRS § 237D-4 (i.e., the TAT tax license number) and website address if advertising or soliciting the transient accommodation on the internet. See Section I of this Announcement for a more specific description of what information to report to the Department.
2. Provide the relevant information by December 31 of each year, or within 60 days of a change, whichever is later.

III. TRANSITION PERIOD BEFORE THE DEPARTMENT BEGINS ENFORCEMENT

The Department will provide a transition period to allow operators and Associations to meet the requirements of this Act. No penalties will be imposed on Associations who fail to provide to the Department before May 1, 2014 relevant information required by the Act; however a penalty will be imposed if the Association fails to timely provide the relevant information after April 30, 2014. Associations are only required to report information about operators who leased transient accommodations on or after January 1, 2013 and will not be required to report any information from 2012 or earlier.

The Department notes that the Act's definition of "relevant information" is broader than the information operators are required to submit to the Associations (e.g., website address). No penalties will be imposed on Associations who fail to provide relevant information where the law does not require an operator to provide that relevant information to the Association. Please also note that Associations are required only to submit the information maintained in their records and will not be penalized for failing to provide information that was never provided to them by the operators operating transient accommodations. For purposes of maintaining their records, the Department will deem an Association's records to be sufficient if it sends out a once yearly communication by mail, email, phone or otherwise, to all owners, asking for updated relevant

information. Associations do not have an affirmative duty to gather information that operators fail to provide to them in response to any such communication. However, this does not excuse a willful failure to receive information that is made available by an operator.

Additionally, no penalties will be imposed for operators of transient accommodations who fail to designate a local contact before April 1, 2014, nor for operators who fail to provide the local contact's information before April 1, 2014, nor for operators who fail to include the local contact's name or phone number in any contract or written rental agreement executed before April 1, 2014. However, penalties will be imposed for operators who fail to designate a local contact after March 31, 2014, fail to provide the local contact's information after March 31, 2014 or fail to include the local contact's name or phone number in any contract or written rental agreement executed after March 31, 2014.

Further, operators have until April 1, 2014 to comply with the requirement to display registration identification numbers on websites.

For more information, please contact Tax.Act326.Reporting@hawaii.gov or visit the Department's website at tax.hawaii.gov.

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