

TAX FOUNDATION

O F H A W A I I

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December 21, 2015

Rules Office
Hawaii Department of Taxation
830 Punchbowl Street, Room 221
Honolulu, HI 96813

Re: **Comments on Proposed Rules Relating to the Car-Sharing Vehicle
Surcharge Tax**

Ladies and Gentlemen:

The Tax Foundation of Hawaii is providing comments to the proposed amendments to Chapter 18-251, HAR, in response to the notice of public hearing on January 6, 2016.

The Foundation supports the Department of Taxation's efforts to provide meaningful and timely guidance to taxpayers.

As a general matter, we recommend that the examples in the Chapter 18-251 rules be numbered, similar to those in chapters 18-235 and 18-237D. Because rule language will be replicated across different platforms and devices, numbering the examples will prove to be valuable to those, either in the Department or outside of it, who wish to cite them, as it will be difficult or impossible to refer to page numbers.

In amended section 18-251-2-02, in the example immediately preceding subsection (d), we recommend that the term "special rental" in the last sentence not be used, and that the sentence structure be conformed to the other examples in this section. We suggest that the last sentence of this example be changed to:

The second and third cars she used are substitutes for the first car; thus, the rental motor vehicle surcharge tax is due for seven days' total rental.

Also in amended section 18-251-2-02, we recommend that the first example under subsection (e) be changed to delete the reasoning that "the tax is not a sales tax but a surcharge tax." We consider this argument extremely weak because the U.S. Supreme Court rejected a similar argument in *Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983). We suggest that the example be changed to read as follows starting from the third sentence:

The waiver from payment of tax stated on the card does not apply here because the incidence of tax falls on the rental agency, and not the customer or the government the customer represents. The rental car agency is not prohibited from passing on the cost of the rental motor vehicle surcharge tax to the customer, but is not obligated to do so.

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In new section 185-251-2.5-01, we find the definition of "organization" cumbersome and suggest the following instead:

"Organization" means any person or company as defined in section 237-1, HRS.

Also in new section 18-251-2.5-01, we feel that the third example as stated is not useful because we do not think any lessor would charge the customer in that fact pattern. We suggest the following example instead:

Customer rents a vehicle from Lessor at 8:00 a.m. After driving the vehicle, Customer notices a warning light and returns the vehicle to Lessor's facility at 8:30 a.m., at which time the vehicle is put into the shop for maintenance and repaired. It re-enters Lessor's fleet the following day. The paid use period is 30 minutes because after 30 minutes of rental the vehicle became unavailable to any customer.

As for the sixth example in 18-251-2.5-01, there appears to be a computation error. If the vehicle is out at 1:00 and back at 3:15 and the complimentary grace period of 15 minutes is not counted, the paid use period should be two hours.

Turning now to the second and third examples under new section 18-235-2.5-02(a), we suggest cosmetic changes to make the result easier to follow:

Example 2:

CarShare rents Vehicle A for two hours and also rents Vehicle B for six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251- 2.5, HRS, for the rental of Vehicle A. CarShare is liable for car-sharing surcharge tax for one day at the rate set forth in section 251-2, HRS, for the rental of Vehicle B because that rental is six hours or longer.

Example 3: CarShare rents Vehicle C for two hours and rents Vehicle D for twenty-six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251- 2.5, HRS, for the rental of Vehicle C. CarShare is liable for car-sharing surcharge tax for two days at the rate set forth in section 251-2, HRS, for the rental of Vehicle D because that rental is six hours or longer and is for all or part of two days.

Thank you for the opportunity to submit comments.

Very truly yours,



Thomas Yamachika
President