

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee in Finance and Tax

BILL: CS/SB 484

INTRODUCER: Commerce and Tourism Committee and Senator Braynon

SUBJECT: Rental Car Sales and Use Tax Surcharges

DATE: April 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Cote</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 212.0606(1), F.S., imposes a surcharge of \$2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers.

CS/SB 484 provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of 8 cents (\$0.08) per hour of usage rounded up to the nearest hour. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of \$2.00 per day or any part of a day.

The bill provides that the new hourly surcharge on a car-sharing service does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

The Revenue Estimating Conference determined that the bill will have a nonrecurring, negative impact of \$0.1 million to the General Revenue Fund and a nonrecurring, negative impact of \$0.6 million to trust funds.

II. Present Situation:

Rental Car Surcharge

Section 212.0606(1), F.S., imposes a surcharge of \$2.00 per day or any part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether such vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections by county, attributing the surcharge to the county where the rental agreement was made.

The surcharge applies to only the first 30 days of the term of any lease or rental, whether or not the vehicle is licensed in Florida. If the rental or lease of a vehicle is for longer than 30 days, only the first 30 days are subject to the surcharge. If the lease is renewed, the first 30 days of the renewed lease is subject to the surcharge. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies.

The surcharge is not imposed on leases or rentals to tax-exempt entities.¹ Section 212.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

After deduction for administrative fees, the rental car surcharge is distributed as follows:

- 80 percent of the surcharge to the State Transportation Trust Fund (STTF);
- 15.75 percent of the surcharge to the Tourism Promotional Trust Fund; and
- 4.25 percent of the surcharge to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Florida Department of Transportation (FDOT) district, except the Turnpike District, for transportation projects based on the amount of proceeds collected in the counties within each respective district.

For-Hire Vehicles

With limited exception, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a “for-hire vehicle” under s. 320.01(15)(a), F.S.:

“For-hire vehicle” means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a “share-expense” basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor

¹ Section 212.08, F.S.; Rule 12A-1.1038, F.A.C.

vehicle not owned by the person owning the goods, such transportation is “for hire.” The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire.”

Rental Car Industry

In recent years there has been a growing sub-industry of rental cars known as “car-sharing” services. Companies, or programs, like “Zipcar”², “car2go”³, and “Hertz 24/7”⁴ allow members to reserve the use of a car without visiting a rental car location. This model is seen as an alternative to the traditional rental car business model as well as an alternative to owning a car in a major metropolitan area. As a new and developing industry, car-sharing services are facing the challenge of varying regulations and taxes across different local and state governments. The CarSharing Association (CSA) represents several car-sharing companies and “works with shared-use mobility operators to advance industry standards, best practices and public policy advocacy.”⁵ Car-sharing services are promoted by some organizations as a form of “collaborative consumption,” which is described as a “shift in consumer values from ownership to access.”⁶

Three major varieties of car-sharing models exist currently:⁷

- Peer to Peer: “A fleet of cars is owned by a community. The marketplace matches owners of cars that are available to other drivers to rent.”
- Business to Consumer: “A company owns a fleet of cars and facilitates the sharing among members.”
- Not-For-Profit or Co-Op: “A local organization or community that facilitates car sharing with the goal of changing driving habits over making a profit.”

A 2006 study conducted by Travelocity⁸ (an online travel agency) found that taxes imposed by state and local governments accounted for an average of 28 percent of the total cost of renting a motor vehicle at airport locations and an average of almost 15 percent at neighborhood locations. Many rental companies also charge additional fees for drivers under 25 years of age, additional drivers, airport concession fees, refueling charges, loss and damage waivers, drop-off charges, partial days, mileage limits, frequent flyer fees, child safety seats, and GPS rental.

² Zipcar website, <http://www.zipcar.com/> (last visited February 3, 2014).

³ car2go website, <https://www.car2go.com/en/austin/> (last visited February 3, 2014).

⁴ Hertz website, <https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=hertzondemand.jsp> (last visited February 4, 2014).

⁵ CSA website, <http://carsharing.org/> (last visited February 3, 2014).

⁶ Collaborative Consumption website, <http://www.collaborativeconsumption.com/> (last visited February 3, 2014).

⁷ Collaborative Fund and Hyperakt, *The Bright Future of CarSharing*, <http://futureofcarsharing.com/> (last visited February 3, 2014).

⁸ Travelocity, *2006/2007 Study Rates U.S. Airports in Terms of Sticker Shock and Compares Taxes When Renting at On-Airport vs. Neighborhood Locations*, December 12, 2006, <http://news.travelocity.com/phoenix.zhtml?c=75787&p=irol-newsArticle&ID=941259> (last visited February 3, 2014).

Rental Car Surcharge and Car-Sharing Services

On September 17, 2012, the Department of Revenue (DOR) issued Technical Assistance Advisement 12A-022 which answered the question of whether a member based car-sharing service is subject to the Florida rental car surcharge. The facts presented to DOR were as follows:

Taxpayer [the car-sharing service] offers a member based car-sharing service with a fleet of vehicles available for use by registered members at any time of the day, seven days a week. A member can reserve a vehicle before use, or simply locate one and access it. Each use is labeled as a “trip” and can last up to four consecutive days. A unique feature of Taxpayer’s car-sharing service is members may, and often do, use a car for a much shorter period of time than typical car rentals. According to Taxpayer, the typical trip lasts twenty-five to forty minutes, costing between \$7 and \$10 before taxes. Members are invoiced daily for all trips that occur and Taxpayer adds the rental car surcharge and sales tax to this invoice.⁹

Despite the taxpayer’s assertion that it is not engaged in the “traditional” rental of cars, DOR concluded that the taxpayer is renting cars and, therefore, the rental car surcharge does apply. The DOR further concluded that because the taxpayer’s members may make multiple trips in one day without executing any additional agreement and without any action required of the taxpayer, and because members are charged for every trip within the same 24-hour period on a single daily invoice, the rental car “surcharge is due from Taxpayer’s members once a day, regardless of the number of trips taken by a member in a twenty-four hour period.”¹⁰

III. Effect of Proposed Changes:

CS/SB 484 provides that a member of a car-sharing service who uses a motor vehicle for less than 24 hours must pay a surcharge of 8 cents (\$0.08) per hour of usage rounded up to the nearest hour. A member of a car-sharing service who uses the same motor vehicle for at least 24 consecutive hours must pay a surcharge of \$2.00 per day or any part of a day.

The bill defines a “car-sharing service” as a membership-based organization or business which requires payment of a membership fee and provides the member with access to motor vehicles:

- Only at locations that are not staffed by service personnel employed solely for the purpose of interacting with members;
- Twenty-four hours per day, 7 days per week;
- Only through automated means;
- On an hourly basis or shorter period of time;
- Without a separate fee for refueling the motor vehicle;

⁹ DOR Technical Assistance Advisement 12A-022, [https://revenue.law.state.fl.us/LawLibraryDocuments/2012/09/TAA-111870_deleted%20with%20summary%2012A-022.pdf#search="technical assistance advisement 12A-022"](https://revenue.law.state.fl.us/LawLibraryDocuments/2012/09/TAA-111870_deleted%20with%20summary%2012A-022.pdf#search=technical%20assistance%20advisement%2012A-022) (last visited February 3, 2014).

¹⁰ To support its finding, DOR cited Rule Code 12A-16.002(3)(b), F.A.C.: “When the terms of a lease or rental agreement authorize the lessee to extend the lease or rental beyond the initial lease term without executing an additional lease or agreement and without any action on the part of the lessor, the extension period will not be considered a new lease or rental.”

- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The bill provides that the new hourly surcharge does not apply to the lease, rental, or use of a motor vehicle from a location owned, operated, leased by or for the benefit of an airport or airport authority.

The bill provides an effective date of January 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The bill will reduce the amount of the municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. However, an exemption from the mandates provision may apply because the reduction in local governments' revenue-raising authority may result in an insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will have a nonrecurring, negative impact of \$0.1 million to the General Revenue Fund and a nonrecurring, negative impact of \$0.6 million to trust funds.

B. Private Sector Impact:

Individuals using car-sharing services for less than a 24-hour period will see a reduction in the rental car surcharge that they will pay.

C. Government Sector Impact:

The Department of Revenue estimated an insignificant operational impact.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.0606, Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on February 10, 2014

The committee substitute changes the bill's effective date to January 1, 2015.

- B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹¹ Department of Revenue, *Analysis SB 484*, (February 24, 2014).