

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 Committee on Transportation

BILL: SB 140

INTRODUCER: Senator Braynon

SUBJECT: Rental Car Sales and Use Tax Surcharges

DATE: January 24, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	AFT	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 140 defines the term “car-sharing service” and exempts the provision of vehicles to individuals by such services from the rental car surcharge.

This bill amends section 212.0606(4), Florida Statutes.

II. Present Situation:

Rental Car Surcharge

Section 216.0606(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 rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed.

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, i.e., churches and governmental organizations, holding a valid Consumer’s Certificate of Exemption.¹ Section 216.0606(4), F.S., exempts from payment of the surcharge a

¹ Florida Department of Revenue website: http://dor.myflorida.com/dor/taxes/rental_car.html. Last visited Jan. 24, 2013.

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 and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80% of the surcharge to the State Transportation Trust Fund (STTF);
- 15.75% of the surcharge to the Tourism Promotional Trust Fund; and
- 4.25% 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 for transportation projects, based on the amount of proceeds collected in the counties within each respective district. Rental car surcharge revenues reported by the Department of Revenue (DOR) for each of the seven FDOT districts for fiscal year 2011-2012 are as follows:

District	FY 2012	Share
1	14,445,868	9.64%
2	8,108,404	5.41%
3	7,731,925	5.16%
4	32,726,540	21.84%
5	41,397,895	27.63%
6	27,931,163	18.64%
7	17,473,633	11.66%
Total	149,815,428	

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 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.”

Car-Sharing Services

Car-sharing is generally marketed as an alternative to conventional car rental and car ownership and now exists in a number of forms.

“Traditional carsharing provides members access to a vehicle for short-term daily use. Automobiles owned or leased by a carsharing operator are distributed throughout a network; members access the vehicles with a reservation and are charged per time and often per mile....

“Traditional carsharing is intended for short trips and as a supplement to public transit. Initial market entry in North America focused on the neighborhood carsharing model, characterized by a fleet of shared-use vehicles parked in designated areas throughout a neighborhood or municipality. In recent years, business models have advanced and diversified. Variations on the neighborhood model developed in North America include: business; college/university; government/institutional fleet; and public transit (carsharing provided at public transit stations or multi-modal nodes). Despite differences in target markets, these models share a similar organizational structure, capital ownership, and revenue stream.

“The next generation of shared-use vehicle services, which provide access to a fleet of shared-use vehicles, incorporates new concepts, technologies, and operational methods. These models represent innovative solutions and notable advances. They include one-way carsharing and personal vehicle sharing. One-way carsharing, also known as “free-floating” carsharing, frees users from the restriction of having to return a vehicle to the same location from which it was accessed. Instead, users leave vehicles parked at any spot within the organization’s operating area, allowing for the possibility of one-way trips. The one-way model resembles more traditional forms of carsharing—except for the logistics of vehicle redistribution and the need for expanded vehicle parking.

“Personal vehicle sharing ... represents a more distinct model due to differences in organizational structure, capital stock, and liability. Personal vehicle sharing involves short-term access to privately-owned vehicles, enabling a lower operating cost and a wider vehicle distribution. ...”²

While car sharing began at the local, grassroots level, car-sharing services are now also provided by conventional rental car companies, such as Avis, Enterprise, and Hertz.³

Environmental and Social Benefits

Car-sharing provides a number of benefits. Aside from the renter’s convenience (lower operating costs, ease of access, ability to obtain one-way sharing, etc.), use of shared vehicles can reduce overall vehicle ownership numbers, reducing damage to the roadways. Carsharing also facilitates use of other transportation modes, such as walking, biking, or public transit,

² Shaheen, Susan, Mark Mallory, and Karly Kingsley (2012). “Personal Vehicle Sharing Services in North America,” *Research in Transportation Business & Management*, Vol. 3, pp.71-81.

³ Kell, John, Jan. 2, 2013, “Avis to Buy Car-Sharing Service Zipcar,” *The Wall Street Journal*.

leading to reductions in traffic, congestion, and parking demand in urban areas. Vehicle miles traveled and greenhouse gas emissions are reduced, thereby improving air quality.⁴

Current Practice Relating to Surcharge

On September 17, 2012, the DOR issued its Technical Assistance Advisement 12A-022 in which the question presented to DOR was 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 40 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.”

First noting taxpayer’s assertion that it is not engaged in the “traditional” rental of cars, DOR concluded that the taxpayer is clearly renting cars, is engaged in the rental of motor vehicles and, therefore, the rental car surcharge does apply. However, DOR further cited its rule, Fla. Admin. Code 12A-16.002(3)(b): “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.”

Highlighting the fact that 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 that members are charged for every trip within the same twenty-four hour period on a single daily invoice, DOR concluded that 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.”

III. Effect of Proposed Changes:

This bill amends s. 212.0606(4), F.S., to provide that the rental car surcharge does not apply to a motor vehicle provided to a person through a car-sharing service and to define “car-sharing service” to mean a business with membership criteria requirements that provide the use of a motor vehicle for a limited time to registered members for a fee. As a result, a car-sharing service as defined in the bill will no longer collect the \$2.00 surcharge per day or any part of a day from a member renting a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether such vehicle is licensed in Florida.

⁴ Id. at 72-73.

As literally written, the exemption arguably eliminates the entire rental car surcharge. Whether the fee to be charged is a fee for membership or a fee for rental or lease of a vehicle, or both, is unclear from the language. If the former is intended, certain rental car companies would need only to establish a membership fee to avoid collection of the surcharge from its customers. For example, Avis provides an Avis Wizard Number service, under which customers enjoy faster reservations and rentals. The service is currently offered free of charge, but registration is required. Imposition of a Wizard membership fee would appear to make Avis qualify as a “car-sharing service,” and rental of its vehicles under the Wizard service would not be subject to the surcharge.

If, on the other hand, the language is intended to mean only that a fee is charged for rental of a motor vehicle, then entities that rent or lease vehicles would apparently need only to require registration as a member. Having registration as a member in place, and providing the use of a motor vehicle for a limited time to registered members for a fee, any entity renting or leasing a vehicle would again appear to qualify as a “car-sharing service” under the bill’s definition and, therefore, the entity would not be required to collect the surcharge from its customers.

The same result follows even if registration for a fee and providing a vehicle for a fee are both required: Minor adjustments to business practices are all that is required to fit into the bill’s definition of “car-sharing service,” to the extent that virtually any entity in the business of renting or leasing motor vehicles for a limited time for a fee could qualify under the definition, thereby eliminating the surcharge entirely.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet analyzed the fiscal impact of this bill. However, this bill will have a negative impact on rental car surcharge collection.

B. Private Sector Impact:

Entities that qualify under the bill's definition as a "car-sharing service" will not collect the rental car surcharge from its customers. The private sector will continue to enjoy the environmental and social benefits of car-sharing.

C. Government Sector Impact:

The bill will reduce (and possibly eliminate) the amount of distributions of rental car surcharge proceeds to the previously identified Trust Funds for their intended purposes. The government sector will continue to enjoy the environmental and social benefits of car-sharing.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.