

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 647 Rental Car Sales and Use Tax Surcharges

SPONSOR(S): Transportation & Highway Safety Subcommittee; Nuñez

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 2 N, As CS	Johnson	Miller
2) Finance & Tax Subcommittee	17 Y, 0 N, As CS	Flieger	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Section 212.0606(1), F.S., provides that a surcharge of \$2.00 per day, or any part of a day, is imposed upon the lease or rental of a motor vehicle for hire and designed to carry less than nine passengers regardless of whether the motor vehicle is licensed in Florida. The surcharge applies to the first 30 days of the term of any lease or rental and is subject to all taxes imposed by ch. 212, F.S.

The bill creates s. 212.0606(4)(b), F.S., providing that the rental car surcharge does not apply to a motor vehicle provided to a person who is a registered member of a car-sharing service. The bill defines the terms "car-sharing service" to require that it be a membership based organization which requires payment of an application fee and provides its members access to a vehicle:

- Only at unstaffed locations,
- The vehicles must be available anytime,
- Only through decentralized and automated means,
- Charged in hourly or shorter increments,
- Only for single trips that require return of the vehicle to a designated area,
- Without any additional charge for fuel or insurance costs.

The committee substitute has not yet been evaluated by the Revenue Estimating Conference, but staff estimates that it will likely have a negative impact to state revenues, with that impact primarily affecting the State Transportation Trust Fund.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 the 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 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. Section 216.0606(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 and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

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

The proceeds of the rental car surcharge deposited into the STTF are allocated to each Department of Transportation (DOT) 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 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 or car ownership and 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. ...”¹

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.²

Current Practice Relating to Surcharge

On September 17, 2012, DOR issued 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

¹ Shaheen, Susan, Mark Mallery, and Karly Kingsley (2012). “Personal Vehicle Sharing Services in North America,” *Research in Transportation Business & Management*, Vol. 3, pp.71-81.

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

trips taken by a member in a twenty-four hour period.” Therefore, car-sharing services must pay the \$2.00 surcharge per day for each member who uses the car-sharing service that day.

Proposed Changes

The bill creates s. 212.0606(4)(b), F.S., providing that the rental car surcharge does not apply to a motor vehicle provided to a person who is a registered member of a car-sharing service. The bill defines the terms “car-sharing service” to require that it be a membership based organization which requires payment of an application fee and provides its members access to a vehicle:

- Only at unstaffed locations
- The vehicles must be available anytime
- Only through decentralized and automated means
- Charged in hourly or shorter increments
- Only for single trips that require return of the vehicle to a designated area
- Without any additional charge for fuel or insurance costs.

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.

The bill has an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.0606, F.S., relating to the rental car surcharge.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The committee substitute has not yet been evaluated by the Revenue Estimating Conference, but staff estimates that it will likely have a negative impact to state revenues, with that impact primarily affecting the State Transportation Trust Fund.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities that qualify under the bill’s definition as a “car sharing service” will not collect the rental car surcharge from its customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Transportation & Highway Safety Subcommittee adopted one amendment and reported the bill as a committee substitute. The amendment:

- Provides that car-sharing is for a single trip of six hours or less.
- Defines “car-sharing service” and “single trip.”

On April 3, 2013, the Finance and Tax Subcommittee adopted one amendment and reported the bill as a committee substitute. The amendment removed the definition of “single trip” and made significant changes elaborating on the definition of “car sharing service”.

The analysis is drafted to the committee substitute.