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February 10, 2021

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2021-04

RE: Temporary Administrative Rules Related to Peer-to-Peer Car-Sharing Marketplaces

Under its authority in section 231-10.7, Hawaii Revised Statutes (HRS), the Department of Taxation (Department) recently promulgated temporary administrative rules sections 18-251-1-01 to 02 relating to peer-to-peer car-sharing marketplaces. The temporary rules are effective February 9, 2021 and automatically expire August 9, 2022.

In order to provide sufficient time for taxpayers to comply, Department will be enforcing the temporary rules beginning on March 1, 2021. Affected taxpayers must register for a license prior to March 1, 2021. All rentals occurring on or after March 1, 2021 and before August 9, 2022 are subject to these temporary rules. As such, all "lessors" as defined by the temporary rules must report and pay the Rental Motor Vehicle Surcharge Tax under Chapter 251, HRS, for this period.

The Department will also be issuing the rules as proposed administrative rules for formal adoption subject to the procedural requirements of Chapter 91 and Chapter 201M, HRS, including providing a public hearing and opportunity for public input.

The temporary rules define rental motor vehicle lessors to include peer-to-peer car-sharing marketplaces, meaning such persons would be responsible for reporting and paying the Rental Motor Vehicle Surcharge Tax under Chapter 251, HRS, on any rental car transactions carried out on the provided marketplace. The temporary rules define a peer-to-peer car-sharing marketplace as:

> Any person who assists in the business of providing rental motor vehicles or vehicles to the public by:
>
> (1) Providing a forum, whether physical or electronic, in which vehicle owners or authorized possessors list or advertise vehicles for rent; and
> (2) Collecting payment from the lessee, either directly or indirectly through an agreement with a third party.

The temporary rules also provide the following example to help explain how the tax will apply under these temporary rules:

> Giro Transportation (Giro) is a peer-to-peer car-sharing marketplace company that provides a forum where prospective rental motor vehicle lessees may browse for cars they wish to rent. Giro enters into an agreement with car owners to provide cars to lessees for ground transportation. The lessee pays Giro the rental amount for the car and takes possession from the owner. The surcharge tax is imposed on Giro, not the owner, because Giro is the lessor, Giro provided the lessee a rental vehicle for a fee, and Giro is not a wholesaler, tour packager, nor travel agent. The owner is a wholesaler and is not subject to the tax under this chapter.

As stated above, although the temporary rules are effective February 9, 2021, the Department will not begin enforcing them until March 1, 2021, in order to give any peer-to-peer car-sharing marketplaces operating in Hawaii opportunity to prepare to file and pay taxes on these transactions. Thus, the first Rental Motor Vehicle Surcharge Tax return a peer-to-peer car-sharing marketplace would need to file would be due April 20, 2021.

The temporary rules can be viewed on the Department's website at https://tax.hawaii.gov/legal/taxlawandrules/ and are attached to this Announcement. Forms and instructions are available on the Department's website at https://tax.hawaii.gov/forms/.

If you have any questions, you may contact the Department of Taxation Rules Office at tax.rules.office@hawaii.gov, or call (808) 587-1530.

ISAAC W. CHOY
Director of Taxation

Attached: Temporary HAR §§ 18-251-1-01 to 02

TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUTES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON February 9, 2021.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON August 9, 2022.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-251,
Hawaii Administrative Rules

Dated: February 2, 2021

SUMMARY

1. §§18-251-1-01 and 18-251-1-02 are amended.

§18-251-1-01 Definitions, generally. As used in this chapter, unless the context otherwise requires:

"Department" means the department of taxation.

"Director" means the director of taxation.

"Peer-to-peer car-sharing marketplace" means any person who assists in the business of providing rental motor vehicles or vehicles to the public by:

(1) Providing a forum, whether physical or electronic, in which vehicle owners or authorized possessors list or advertise vehicles for rent; and

(2) Collecting payment from the lessee, either directly or indirectly through an agreement with a third party.

"Person" has the same meaning as defined in section 237-1, HRS, specifically, every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction.

"Surcharge tax" means the rental motor vehicle and tour vehicle surcharge tax established under chapter 251, HRS, and implemented by this chapter [Eff 1/27/92; Am 2/9/2021] (Auth: HRS §231-10.7) (Imp: HRS §251-1)

§18-251-1-02 "Lessor", defined. (a) As used in this chapter, "lessor" means any person in the business of providing rental motor vehicles or vehicles to the public and includes any person operating a peer-to-peer car-sharing marketplace.

Example 1:

ABC U-Drive (ABC) owns 100 cars and is in the business of providing cars to customers for a fee. ABC is the lessor of these cars, and the incidence of the rental motor vehicle surcharge tax is on ABC.

Example 2:

Giro Transportation (Giro) is a peer-to-peer car-sharing marketplace company that provides a forum where prospective rental motor vehicle lessees may browse for cars they wish to rent. Giro enters into an agreement with car owners to provide cars to lessees for ground transportation. The lessee pays Giro the rental amount for the car and takes possession from the owner. The surcharge tax is imposed on Giro, not the owner, because Giro is the lessor, Giro provided the lessee a rental vehicle for a fee, and Giro is not a wholesaler, tour packager, nor travel agent. The owner is a wholesaler and is not subject to the tax under this chapter.

(b) For purposes of this chapter, a wholesaler, tour packager, or travel agent whose business and service may include arranging the rental vehicle transportation for a person shall not be deemed a lessor, unless the wholesaler, tour packager, or travel agent actually rents or leases (as defined in section 18-251-1-04) the vehicle.

Example 1:

Vacation Services (Vacation) is a tour packager company that arranges a variety of visitor industry services, such as air transportation, hotel room accommodations, ground transportation, tours, classes, and luaus into packages, and sells these services to tourists. ABC U-Drive (ABC) enters into an agreement with Vacation to provide the cars for ground transportation. When the customer receives a rental car from ABC, the rental motor vehicle surcharge tax is triggered, and the surcharge tax is imposed on ABC, not Vacation, because Vacation is a tour packager who arranged rental vehicle transportation.

Example 2:

Vacation Services (Vacation) decides that its business would become more profitable if it started to use its own cars instead of making arrangements with ABC U-Drive. Vacation acquires 5 cars and provides them to customers for a fee. Vacation is now the lessor of these cars, and the rental motor vehicle surcharge tax is imposed on Vacation." [Eff 1/27/92; Am 2/9/2021] (Auth: HRS §231-10.7) (Imp: HRS §251-1)

DEPARTMENT OF TAXATION

As is required by section 231-10.7, Hawaii Revised Statues, these temporary administrative rules have been approved by the Governor and are also being proposed for formal adoption pursuant to Chapter 91, Hawaii Revised Statutes.

Public notice was given statewide in the Honolulu Star-Advertiser, the Garden Island, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald newspaper on January 29, 2021.

The temporary adoption of chapter 18-251, Hawaii Administrative Rules, as amended, shall take effect seven days after public notice is issued. Pursuant to section 231-10.7, Hawaii Revised Statutes, these rules shall be effective for eighteen months from their effective date.

/s/Isaac W. Choy/s/
ISAAC W. CHOY
Director of Taxation

APPROVED:

/s/David Y. Ige/s/
DAVID Y. IGE
Governor
State of Hawaii