

**"CHAPTER 251
RENTAL MOTOR VEHICLE, TOUR VEHICLE, AND CAR-SHARING VEHICLE
SURCHARGE TAX**

Section

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Note

Chapter heading amended by L 2014, c 110, §4.

" **§251-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Car-sharing organization" means a rental motor vehicle lessor that operates a membership program in which:

- (1) Self-service access to a fleet of vehicles is provided, with or without requiring a reservation, exclusively to members of the organization who have paid a membership fee;
- (2) Members are charged a usage rate, either hourly or by the minute, for each use of a vehicle;
- (3) Members are not required to enter into a separate written agreement with the organization each time the member reserves and uses a vehicle; and
- (4) The average paid use period for all vehicles provided by the organization during any taxable period is six hours or less.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Lessor" means any person in the business of providing rental motor vehicles to the public.

"Person" has the same meaning as defined in section 237-1.

"Rental motor vehicle" or "vehicle" means every vehicle which is:

- (1) Self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails which is rented or leased or offered for rent or lease in this State, whether for personal or commercial use, for a period of six months or less; and
- (2) Designed to carry seventeen passengers or fewer.

"Rental motor vehicle" or "vehicle" shall not include:

- (1) Mopeds as defined in section 286-2;
- (2) Any trucks, truck-tractors, tractor-semitrailer combinations, or truck-trailer combinations, with:
 - (A) A manufacturer's nominal carrying capacity of one thousand pounds or more; and
 - (B) A barrier or separation between the operator's compartment and the cargo area; and
- (3) Cargo vans with no more than two seats, including the driver's seat; provided that vans with a recreational vehicle converter package and vans with quick release passenger seats shall not be classified as cargo vans.

"Surcharge tax" means the rental motor vehicle and tour vehicle surcharge tax established under this chapter.

"Tour vehicle" means any vehicle, including vans, minibuses, and buses used for the purpose of transporting persons for pleasure or sightseeing trips, or transporting persons to pleasure or sightseeing cruises or destinations. The term does not include any vehicle used solely for the purposes of transporting individuals to and from a place of work or a public or private school or of transporting persons with disabilities.

"Tour vehicle operator" means a person who owns, manages, or dispatches tour vehicles. [L 1991, c 263, pt of §1; am L 1992, c 77, §1 and c 126, §1; am L 2014, c 110, §3]

" **§251-2 Rental motor vehicle and tour vehicle surcharge tax.** (a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$7.50 a day, except that after June 30, 2012, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) A record of the repair order for the vehicle is retained either by the lessor for two years for verification purposes or by a motor vehicle repair dealer for two years as provided in section 437B-16.

(b) There is levied and shall be assessed and collected each month a tour vehicle surcharge tax of:

- (1) \$65 for each tour vehicle used or partially used during the month that falls into the over twenty-five passenger seat category; and
- (2) \$15 for each tour vehicle used or partially used during the month that falls into the eight to twenty-five passenger seat category.

The tour vehicle surcharge tax shall be levied upon the tour vehicle operator. [L 1991, c 263, pt of §1; am L 1992, c 77, §2; am L 1999, c 223, §1; am L 2005, c 67, §1; am L 2006, c 142, §2; am L 2007, c 258, §2; am L 2008, c 226, §13; am L 2011, c 104, §3]

" **[\$251-2.5] Car-sharing vehicle surcharge tax.** (a) There is levied and shall be assessed and collected a car-sharing vehicle surcharge tax of 25 cents per half-hour, or any portion

of a half-hour, that a rental motor vehicle is rented or leased by a car-sharing organization; provided that for each rental of six hours or more, the tax shall be assessed in a manner provided in section 251-2. The car-sharing vehicle surcharge tax shall be levied upon the car-sharing organization.

(b) An organization that qualifies as a car-sharing organization as defined in section 251-1, that is registered with the department pursuant to section 251-3, and that is subject to the surcharges imposed by this section shall not be subject to the surcharges imposed by section 251-2; provided that any organization registered with the department pursuant to section 251-3 shall be subject to at least one surcharge imposed by this chapter. [L 2014, c 110, §2]

" **§251-3 Certificate of registration.** (a) Each person as a condition precedent to engaging or continuing in the business of providing rental motor vehicles to the public, engaging or continuing in the tour vehicle operator business, or engaging or continuing in a car-sharing organization business shall register with the director. A person required to so register shall make a one-time payment of \$20, upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued.

(b) The registration shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee in subsection (a). The director may revoke or cancel any certificate of registration issued under this chapter for cause as provided by rule under chapter 91.

(c) If the registration fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 251-13 be invoked to

restrain the exercise of such a privilege, or the carrying on of such commerce.

(d) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of providing rental motor vehicles or tour vehicles to the public subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any officer or director of a corporation who permits, aids, or abets the corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for violation of that section. [L 1991, c 263, pt of §1; am L 2014, c 110, §5]

" **§251-4 Return and payments; penalties.** (a) On or before the twentieth day of each calendar month, every person taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the surcharge tax in the form required by section 251-5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 20, July 20, October 20, and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before

the twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 20 and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the seventh month following the beginning of the fiscal year and on or before the twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; provided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a person filing the return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the return or the payment of the surcharge taxes due thereon, or if the liability of a person, who possesses a permit to file the return and to make payments on a semiannual basis exceeds \$2,000 in surcharge taxes during the calendar year or exceeds \$4,000 in surcharge taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the surcharge tax, the director, at any time, may revoke a person's permit, in which case the person then shall be required to file the person's return and make payments thereon as provided in subsection (a).

(d) Section 232-2 does not apply to a monthly, quarterly, or semiannual return. [L 1991, c 263, pt of §1; am L 1993, c 39, §4; am L Sp 2001 3d, c 8, §5; am L 2010, c 22, §9]

" **§251-5 Remittances.** All remittances of surcharge taxes imposed under this chapter shall be made by cash, bank draft, cashier's check, money order, or certificate of deposit to the office of the taxation district to which the return was transmitted. The department shall deposit the moneys into the state treasury to the credit of the state highway fund. [L 1991, c 263, pt of §1; am L 2011, c 104, §§4, 8]

" **[§251-6] Annual return.** On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of the surcharge taxes under this chapter during the preceding tax year shall file a return summarizing the person's liability under this chapter for the year, in such form as the director prescribes. The person shall transmit with the return a remittance covering the residue of the surcharge tax chargeable to the person, if any, to the office of the appropriate state district tax assessor designated in section 251-7. The return shall be signed by the person, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint adventure, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the same on behalf of the person. If for any reason it is not practicable for the individual person to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any person and grant such reasonable additional time within which to make the return as the department may deem advisable.

Section 232-2 applies to the annual return, but not to a monthly, quarterly, or semiannual return. [L 1991, c 263, pt of §1]

" **[§251-7] Filing of returns.** All monthly, quarterly, semiannual, and annual returns shall be transmitted to the office of the taxation district in which the person's place of business is situated or to the office of the first taxation district in Honolulu. [L 1991, c 263, pt of §1]

" **§251-8 Assessment of surcharge tax upon failure to make return; limitation period; exceptions; extension by agreement.**

(a) If any person fails to make a return as required by this chapter, the director shall make an estimate of the surcharge tax liability of the person from any information the director obtains, and according to the estimate so made, assess the surcharge taxes, interest, and penalty due the State from the person, give notice of the assessment to the person, and make demand upon the person for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section 251-10, the contrary shall be clearly proved by the person assessed, and the burden of proof

upon the appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any surcharge tax due under this chapter, the director shall assess the surcharge taxes, interest, and penalty due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) Except as otherwise provided by this section, the amount of surcharge taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such surcharge taxes shall begin after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the State if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the State the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.

(e) Where, before the expiration of the period prescribed in subsection (c), both the department of taxation and the person have consented in writing to the assessment or levy of the surcharge tax after the date fixed by subsection (c), the

surcharge tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. [L 1991, c 263, pt of §1; am L 1993, c 257, §5; am L 2009, c 166, §12]

Note

In subsection (d), "235-111(c)" substituted for "235-11(c)".
Applicability of 2009 amendment. L 2009, c 166, §27.

" **§251-9 Overpayment; refunds.** Upon application by a person, if the director determines that any surcharge tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the surcharge tax, interest, or penalty shall be credited by the director on any surcharge taxes then due from the person under this chapter. The director shall refund the balance to the person or the person's successors, administrators, executors, or assigns in accordance with section 231-23(d). No credit or refund shall be allowed for any surcharge tax imposed by this chapter, unless a claim for the credit or refund is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return, whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section 251-10.

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive. [L 1991, c 263, pt of §1; am L 1994, c 19, §5]

" **§251-10 Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. [L 1991, c 263, pt of §1; am L 2000, c 199, §10; am L 2004, c 123, §10]

Note

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

" **§251-11 Records to be kept; examination.** Every person shall keep in the English language within the State, and preserve for a period of three years, suitable records relating to the surcharge tax levied and assessed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, operators records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [L 1991, c 263, pt of §1; am L 1995, c 92, §19]

" **§251-12 Disclosure of returns unlawful; destruction of returns.** (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any tax return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor's or tour vehicle operator's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;

- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) through (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory;
- (11) The Multistate Tax Commission or its authorized representative; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a class C felony. Nothing in this subsection shall prohibit the publication of statistics that are classified to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section 251-4, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the surcharge taxes so returned accrued. [L 1991, c 263, pt of §1; am L 1997, c 178, §10; am L 2014, c 136, §7]

" **[\$251-13] Collection by suit; injunction.** The department may collect surcharge taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the surcharge taxes arose. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a certificate as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the certificate, the department may proceed in the circuit court of the judicial circuit in which the rental motor vehicles were leased or the tour vehicles were hired, to obtain an injunction restraining the further furnishing of services until full

payment shall have been made of all surcharge taxes, penalties, and interest due under this chapter, or until the certificate is secured, or both, as the circumstances of the case may require. [L 1991, c 263, pt of §1]

" **[\$251-14] Application of surcharge tax.** The surcharge tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided in this chapter; provided that if it be held by any court of competent jurisdiction that the surcharge tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use thereof, then this chapter shall be deemed not to apply to such property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to such property and use. [L 1991, c 263, pt of §1]

" **[\$251-15] Administration and enforcement; rules.** (a) The director shall administer and enforce this chapter in respect of:

- (1) The examination of books and records and of lessors, tour vehicle operators, and other persons;
- (2) Procedure and powers upon failure or refusal by a person to make a return or proper return; and
- (3) The general administration of this chapter.

All of the provisions of chapter 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the department, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the surcharge taxes imposed by this chapter, and to the assessment, levy, and collection thereof.

(b) The director may adopt, amend, or repeal rules under chapter 91 to carry out this chapter. [L 1991, c 263, pt of §1]

" **§251-16 REPEALED.** L 1995, c 92, §32.