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**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, March 27, 2019
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 162, S.D. 2, H.D. 2, Relating to Taxation

The Department of Taxation (Department) supports S.B. 162, S.D. 2, H.D. 2, and offers the following comments the Committee's consideration.

S.B. 162, S.D. 2, H.D. 2, amends Chapter 251, Hawaii Revised Statutes to change the rental motor vehicle surcharge tax (RVST) to an unspecified dollar amount per day for all lessees. Under current law, the RVST is \$3 per day for lessees with a valid Hawaii driver's license and \$5 per day for lessees without a valid Hawaii driver's license. H.D. 2 has a defective effective date of July 1, 2050.

The Department notes that the current law imposing a higher RVST on rentals to lessees that do not have a valid Hawaii driver's license is likely unconstitutional under the dormant commerce clause of the United States Constitution. This measure would apply the same unspecified rate of RVST to all lessees and would thus remove any possibility that the tax could be held unconstitutional. The Department supports the measure, because it will allow the Department to enforce the RVST without the risk of a constitutional challenge to the tax.

Finally, the Department respectfully requests that if a non-defective effective date is to be inserted, that it be made July 1, 2019.

Thank you for the opportunity to provide testimony in support of this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 162, S.D. 2, H.D. 2, RELATING TO TAXATION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 27, 2019 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Nathan S. C. Chee, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General supports this bill as necessary to correct a legal issue with the present law.

S.B. No. 162, S.D. 2, H.D. 2, amends Chapter 251, Hawaii Revised Statutes (HRS) by repealing the additional \$2 per day surcharge on rental motor vehicles for rentals to individuals without a valid Hawaii driver's license enacted by Act 215, Session Laws of Hawaii (SLH) 2018 and leaving the dollar amount of the remaining surcharge blank. Currently, nonresidents pay a surcharge of \$5 per day, while residents pay \$3 per day. This bill makes the daily rental motor vehicle surcharge the same for all renters regardless of residency.

We believe the current law imposing a higher rental motor vehicle surcharge on nonresidents violates the Dormant Commerce Clause of the United States Constitution. The Commerce Clause generally prohibits state discrimination against interstate commerce. Although the Commerce Clause has most often been applied to measures that discriminate against out-of-state businesses, the Commerce Clause has also been applied to invalidate state laws that discriminate in favor of local consumers over out-of-state consumers. *Opinion of Justices to the House of Representatives*, 428 Mass. 1201, 1206, 702 N.E.2d 8, 13 (1998). In *Opinion of the Justices*, the court determined a proposed measure to be unconstitutional where it proposed to reduce the surcharge on vehicular rental transaction contracts in the city of Boston from \$10 down to \$3, but only for residents of the city of Boston. The court determined that vehicle rentals in Boston

were part of interstate commerce even where the rental vehicles were used locally only within the city and were not driven across state lines. *Id.* at 1205.

Here, the current law is facially discriminatory, as it imposes a higher daily surcharge on persons without a valid Hawaii driver's license. Indeed, the law requires nonresidents to pay \$2 more per day than local residents on motor vehicle rentals in the State. A facially discriminatory law will survive a dormant Commerce Clause challenge only if it "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Oregon Waste Sys., Inc. v. Dep't of Env'tl. Quality*, 511 U.S. 93, 98, 114 S.Ct. 1345, 1351 (1992).

The proposed measure proposing an equal surcharge on all renters regardless of residency shows that a nondiscriminatory alternative for raising additional funds for capital highway improvements exists. This sort of nondiscriminatory surcharge was recently upheld in *Saban Rent-A-Car LLC v. Arizona Dep't of Revenue*, 2019 WL 905192 (Ariz. Feb. 25, 2019). The case involved a law that imposed a surcharge on the gross proceeds of car-rental businesses for rentals in Maricopa County to fund the construction of sports facilities in that county. In determining that the law was not discriminatory, the Arizona Supreme Court noted that "the surcharge applies equally to resident and non-resident car rental agencies operating in Maricopa County and is calculated and imposed without regard to their customers' residencies." *Id.* at *3. "[I]t is imposed uniformly on all car rental agencies, and ultimately on their customers, regardless of the agencies' or customers' residency status." *Id.* at *4. Even though the surcharge arguably targeted the non-resident visitors who purportedly rented most of the vehicles to pay the lion's share of the surcharges, the court determined, "[t]he fact that visitors as a group pay most of the surcharge collected by car rental agencies is not 'discriminatory.'" *Id.* at *3.

The Department of the Attorney General supports this bill as necessary to correct the constitutional issue noted above with respect to the current law.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: RENTAL MOTOR VEHICLE AND TOUR VEHICLE SURCHARGE, Rate Hike, Repeal Exemption for Hawaii Drivers' License Holders

BILL NUMBER: SB 162, HD-2

INTRODUCED BY: House Committee on Consumer Protection & Commerce

EXECUTIVE SUMMARY: Establishes a rental motor vehicle surcharge of \$5 per day for those who rent motor vehicles with or without a valid Hawaii driver's license. The entire surcharge tax is to be deposited into the state highway fund but is to be used in the county in which the moneys are generated.

SYNOPSIS: Amends section 251-2, HRS, to increase the rental motor vehicle surcharge tax to \$5 for each day, or portion of a day, that a rental motor vehicle is rented or leased; and repeals the exemption from paying an additional fee from the rental motor vehicle surcharge tax for operators who possess a valid Hawaii driver's license.

Further provides that \$__ per day or portion of a day from each lessee shall be deposited into the state treasury to the credit of the respective county subaccount of the state highway fund that corresponds to the county in which the rental motor vehicle was driven under rental or lease, for highway road capacity projects in that county. The balance is to go to the state highway fund for statewide use.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: The proposed measure would add another tax increase and would perpetuate the earmarking of rental motor vehicle and tour vehicle surcharge tax revenues. Yes, our highways and bridges need work, and the fuel tax that now feeds the highway fund has proven to be less stable as more and more consumers start using alternative fuel vehicles, electric vehicles, and hybrids. But does that justify burdening the visitor industry with yet another tax and without going through the normal appropriation and budgeting process that also considers sweltering primary schools, underfunded state pensions, or the unique costs of intercollegiate athletics?

Rather than the continual earmarking of revenues, a direct appropriation of general funds would be preferable. Earmarking revenues from any tax type for a particular purpose decreases transparency and accountability.

Next, it should be remembered that revenues diverted for a special purpose, in this case to fund highways and bridges, will not be counted against the state's spending ceiling or debt limit and will obscure the state's true financial condition.

Re: SB 162, HD-2
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As a technical matter, we note that the chapter 251 tax is imposed on lessors, not lessees, so we suggest that in section 2 of the bill the language “per day or portion of a day from each lessee” be changed to “per day or portion of a day per lessee” in proposed section 251-2(b)(1) and (b)(2).

Digested 3/25/2019



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Representative Sylvia Luke, Chair
Representative Ty Cullen, Vice Chair
House Committee on Finance

Wednesday, March 27, 2019; 2:00 p.m.
Hawaii State Capitol; Conference Room 308; Agenda #1

RE: SB 162 SD2 HD2 – Relating to Taxation – Comments

Aloha Chair Luke, Vice Chair Cullen and members of the committee:

Avis Budget appreciates this opportunity to provide comments on SB 162 SD2 HD2, which amends the amount of the rental motor vehicle surcharge tax and repeals the additional surcharge tax for lessees who do not possess a valid Hawaii driver's license.

Last session, we expressed concerns with HB 2601 CD2 (Act 215), which established the additional surcharge of \$2.00 per day for out-of-state customers, because we believed the additional surcharge violated the Dormant Commerce Clause, Equal Protection Clause and the Privileges and Immunities Clause of the United States Constitution.

SB 162 SD2 HD2 addresses these legal concerns because it repeals the additional surcharge for out-of-state customers; however, Avis Budget asks the Committee to address the practical issues resulting from the collection and remittance of the additional surcharge since Act 215 took effect on January 1, 2019.

Since Act 215 took effect on January 1, 2019, Avis Budget has been collecting the additional \$2 per day surcharge from out-of-state customers and has been remitting these funds to the State Department of Taxation. Avis Budget respectfully requests that this bill provide a safe harbor and immunity from liability for companies such as Avis Budget that complied with Act 215 and collected the surcharge despite the legal issues raised.

Hawaii rental car customers currently pay a rental motor vehicle customer facility charge of \$4.50 per day and a rental motor vehicle surcharge tax of \$3.00 per day, which is applied to the state highway fund. We are concerned with the blank amount in the bill, as pending the amount of the increase, the total surcharge amount before GET could be among the highest in the country.

Thank you for the opportunity to provide comments.



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: March 26, 2019

TO: Representative Sylvia Luke
Chair, Committee on Finance
Submitted Via Capitol Website

FROM: Mihoko Ito

RE: **S.B. 162, S.D.2, H.D.2 – Relating to Taxation**
Hearing Date: Wednesday, March 27, 2019 at 2:00 p.m.
Conference Room: 308

Dear Chair Luke and Members of the Committee on Finance:

We submit this testimony on behalf of Enterprise Holdings, which includes Enterprise Rent-A-Car, Alamo Rent-A-Car, National Car Rental, Enterprise CarShare and Enterprise Commute (Van Pool).

Enterprise **submits comments** regarding S.B. 162, S.D.2, H.D.2 Relating to Taxation, which increases the rental motor vehicle surcharge tax and repeals the exemption from paying the additional fee of the rental motor vehicle surcharge tax for operators who possess a valid Hawaii driver's license.

S.B. 162, S.D.2, H.D.2 seeks to amend Act 215, Session Laws of Hawaii 2018, which increased the rental motor vehicle surcharge tax for lessees without a valid Hawaii driver's license by an additional \$2 each day, to be expended for road capacity projects in the county in which the rental motor vehicle was rented.

Enterprise has concerns that Act 215 on its face discriminates against out-of-state visitors to Hawaii and, for that reason, violates the Dormant Commerce Clause (see *Bacchus Imports, Ltd v. Dias*, 468 U.S. 263 (1984)), Equal Protection Clause, and Privileges and Immunities Clause of the United States Constitution. By imposing the fee only on renters without a valid Hawaii driver's license, the existing law appears likely to be found unconstitutional if challenged in court.

We appreciate the State's need for revenue and are supportive of the effort to make the change proposed in S.B. 162, S.D.2, H.D.2 because it resolves the legal issues with the existing law, even though it is not our preference to raise the rental motor vehicle surcharge to \$5 on all renters. We would note that while this bill will specifically raise the tax on local renters, the overall impact of the proposed rental car surcharge tax is still primarily on out of state visitors (approximately 75% of Enterprise's customers are from out of state).

We note that the prior Committee blanked out the specific rental car surcharge tax amounts, and request that the amounts be restored to reflect a total tax of \$5 (\$3 to the highway fund and \$2 for county capacity projects).

As of January 1, 2019, Enterprise and other rental car companies have been collecting and remitting the extra \$2 fee per rental per day to the State. We would note that Enterprise is awaiting additional guidance from the State at this time on whether the existing law will be enforced until this bill is adopted.

Thank you for the opportunity to submit testimony regarding this measure.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097**

March 27, 2019
2:00 p.m.
State Capitol, Room 308

**S.B. 162 SD2, HD2
RELATING TO TAXATION**



House Committee on Finance

The Department of Transportation (DOT) **supports** this bill and requests amending §248-9 State highway fund, §251-2 Rental motor vehicle and tour vehicle surcharge tax, §251-5 Remittances, and adding §251-__ Highway road capacity special fund; establishment. Specifically, this proposed amendment establishes the highway road capacity special fund and county subaccounts therein, to fund capacity projects within the respective county of additional surcharge collection. Although there are means to manage this revenue stream within the Division through county subaccounts to be established within the state highway fund, a special fund will allow for much greater transparency in receipts, uses, and balances. It will also provide greater clarity in financial reporting, auditing, and fiscal representation as a whole.

Additionally, the DOT respectfully requests appropriation out of this newly established highway road capacity special fund, to cover payment of the 5% central services assessment.

Please refer to the attached bill language.

The DOT also respectfully requests that the portion of the rental motor vehicle surcharge tax for statewide Highways Division use be equivalent to the current \$3 per day or portion of a day from each lessee, so that the Division can continue operations as required to maintain current service levels of repair and maintenance, including pothole repair, landscaping and other roadside maintenance; replacing equipment and motor vehicles; as well as constructing special maintenance projects. As this revenue stream also supports highway revenue bond issuances, continued collection to service repayment is necessary for the Highways Division's capital improvement program.

Funds directed for capacity project use, will allow for the development of projects such as the following:

Oahu:

H1 East bound widening
Farrington Highway Widening – Leeward Coast
Other areas of congestion:
 H201 Gulick Overpass
 H201 Punahou East Bound Exit

Maui:

Honoapiilani Highway Bypass – Phase 1C
Paia Bypass

Kauai:

Kuhio Highway Widening – Kapule to North Leho
Add North bound lane to Kapaa Bypass – Olohena to North Kuhio Highway
Intersection.

Hawaii:

Daniel K. Inouye Highway West-Side Extension
Puainako Street - Hilo

Thank you for the opportunity to provide testimony.