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To: The Honorable Roy M. Takumi, Chair;
The Honorable Linda Ichiyama, Vice Chair;
and Members of the House Committee on Consumer Protection & Commerce

From: Rona M. Suzuki, Director
Department of Taxation

Re: **H.B. 2368, Relating to Rental Motor Vehicle Marketplace Facilitators**
Date: Thursday, January 30, 2020
Time: 2:30 P.M.
Place: Conference Room 329, State Capitol

The Department of Taxation (Department) strongly supports H.B. 2368. H.B. 2368 amends chapter 251, Hawaii Revised Statutes (HRS) to clarify that rental motor vehicle marketplace facilitators are lessors of rental motor vehicles for purposes of the rental motor vehicle surcharge tax (RVST). The bill is effective January 1, 2021.

H.B. 2368 defines a "rental motor vehicle marketplace facilitator" to mean any person who leases or assists in leaving motor vehicles on behalf of a lessor by providing a forum and collecting payment. This definition is almost identical to the definition of "marketplace facilitator" in Act 2, Session Laws of Hawaii 2019 (Act 2) that applies to general excise tax (GET) which went into effect on January 1, 2020. Under Act 2, a "marketplace facilitator" is deemed to be the retail seller for GET purposes on all sales that are made through its forum. H.B. 2368 applies the same concept to the RVST.

Rental motor vehicle marketplace facilitators are already deemed to be the retail sellers in regard to GET. In most cases, rental motor vehicle marketplace facilitators are in the control of the taxes and fees that are passed on to the customers for a transaction. This means that the marketplace facilitator can pass on the $5 per day RVST and remit it to the State like is done for GET currently.

The Department also believes that H.B. 2368 represents the most efficient way to collect the RVST. Collection of tax from one source is more efficient than collecting from each of the underlying taxpayers. The most well-known example of this is income tax withholding by employers. With this bill, users of third-party motor vehicle rental services (i.e., drivers) will not be burdened with registering for and remitting RVST individually.

Finally, by ensuring that the RVST is properly paid on all rental motor vehicle transactions, there will be not price advantage based on the non-payment of the RVST by rental motor vehicle marketplace facilitators.

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

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: RENTAL MOTOR VEHICLE, Impose Tax on Marketplace Facilitators

BILL NUMBER: HB 2368; SB 2924

INTRODUCED BY: HB by SAIKI by request; SB by KOUCHI by request

EXECUTIVE SUMMARY: Deems rental motor vehicle marketplace facilitators to be the lessors and operators for purposes of rental motor vehicle and tour vehicle surcharge tax under chapter 251, Hawaii Revised Statutes.

SYNOPSIS: Adds a new section to chapter 251, HRS, to provide that a rental motor vehicle marketplace facilitator will be deemed the lessor for purposes of the rental motor vehicle surcharge tax (RVST).

Requires any person other than a rental motor vehicle marketplace facilitator who provides a forum, whether physical or electronic, in which rental motor vehicle lessors list or advertise rental motor vehicles for lease and takes or processes lease orders shall comply with various display and reporting requirements, or alternatively pay the RVST on behalf of their customers. A person who does neither without reasonable cause shall be assessed a penalty of $1,000 per month or fraction thereof during which the failure continues, up to $12,000 in the aggregate.

Specifies that the section shall not apply to transactions involving rental motor vehicles leased by lessors, who in any single month in the past twelve months, has leased one or more rental motor vehicles for thirty or more days or portions of days in the aggregate. For purposes of this exemption, the term "lessor" does not include a rental motor vehicle marketplace facilitator.

Amends section 251-1, HRS, to define "rental motor vehicle marketplace facilitator" as any person who leases or assists in the lease of rental motor vehicles on behalf of another rental motor vehicle lessor by: (1) providing a forum, whether physical or electronic, in which lessors list or advertise the lease of rental motor vehicles; and (2) collecting payment from the rental motor vehicle lessee, either directly or indirectly through an agreement with a third party.

EFFECTIVE DATE: 1/1/2021.

STAFF COMMENTS: This bill is an Administration-sponsored bill from the Department of Taxation, identified as TAX-05 (20).

The bill appears to build on the Department’s recent success in enacting marketplace facilitator legislation for the general excise and use taxes, and is apparently targeting “car sharing” companies such as Turo and DriveHui. The business model for such companies is that an individual owners can list a car with the service, and the service will then match it with a renter. After the ride, the service charges the renter, keeps its cut, and remits the balance to the owner.

Under this model, the individual owners are liable for the RVST but apparently compliance is spotty at best.

The Department, then, is proposing this bill so it can go after the service operator rather than the numerous individual owners. It does seem to be a more efficient means of skinning the cat.

Digested 1/28/2020

getaround

January 31, 2020

The Honorable Roy Takumi
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Opposition to House Bill 2368

Dear Chairman Takumi,

Thank you for the opportunity to submit testimony in opposition to House Bill 2368 Relating to Rental Motor Vehicle Marketplace Facilitators.

Getaround is a peer-to-peer carsharing marketplace platform that empowers members to safely share their vehicles with others by the hour and the day. Getaround operates in over three hundred cities globally, and while not currently in Hawaii, we certainly would like to be in the future. Our proprietary connected car technology helps users find, book and unlock nearby vehicles on-demand using their smartphones. Getaround's platform connects people whose cars are sitting unused with people who need to use a car -- giving people access to a pool of shared vehicles. It's the modern equivalent of borrowing a friend or family member's car.

Carsharing -- and Getaround's carsharing platform -- makes car ownership more affordable. Carsharing offsets the substantial costs of owning a car by allowing owners to share the car when it would otherwise be sitting idle. That extra money, which in states where Getaround operates can amount to $300 to $600 per month, means a lot to lower and middle-income residents.

And it's not just car owners who benefit. Carsharing provides convenient and affordable on-demand access to vehicles for those who do not own cars or for whom car ownership is cost prohibitive. Low and middle-income residents in particular benefit tremendously from convenient access to affordable transportation— transportation that helps them go to job interviews, run errands, take their children to school, or go away for the weekend with family.

Car sharing also has real environmental benefits. Sharing just one car can take approximately ten other cars out of gridlock. Shared vehicles result in fewer cars on the road, fewer vehicle miles traveled, and a reduction in greenhouse gas emissions. Research from UC Berkeley confirms these benefits.

As one of the nation's leading carsharing platforms, while Getaround has its own requirements and standards, we support consumer-friendly protections and laws that provide certainty around liability and insurance. Where the law is unclear, we want certainty so that we can orient our business accordingly and make sure that everyone -- from our owners, to our users, to third parties who encounter cars on the road -- is protected.

As the growth of carsharing nationwide shows, consumers want to add carsharing to their transportation options. But it is still a young and emerging industry and a series of regulations that is unbalanced, inflexible, or misaligned with the carsharing model may do far more harm that good.

Unfortunately, HB 2368 would make it much harder for consumers to benefit from carsharing by subjecting them to a surcharge that was created for traditional rental cars, without accounting for the real operational, legal, and consumer-facing differences between the businesses. Nor would the bill create tax parity between carsharing and rental car companies. Rental car companies currently enjoy unique tax and financial benefits that others who purchase cars do not. For example, rental car companies have numerous legal benefits not available to carsharing programs, including the ability to purchase cars at wholesale, wholesale rate application of the GET, and the ability to pass vehicle license fees or the motor vehicle rental surcharge onto customers, among others.

Placing the rental car surcharge on carsharing will not achieve tax parity. Increasing taxes will do just the opposite by strengthening the tax advantages rental car companies alone enjoy. Should the legislature consider placing a surcharge on peer-to-peer car sharing, it should be done through a comprehensive bill, such as existing bills HB 1833 and HB 1834, that sets the entire regulatory structure for peer-to-peer carsharing instead of a standalone bill that addresses one part of the entire carsharing industry. Accordingly, Getaround opposes HB 2368.

Best regards,

Andrew Byrnes

Andrew Byrnes
Deputy General Counsel and Global Head of Public Policy
Getaround, Inc.
andrew.byrnes@getaround.com

SanHi
GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

DATE: January 28, 2020

TO: Representative Roy M. Takumi
Chair, Committee on Consumer Protection & Commerce
Submitted Via Capitol Website

FROM: Mihoko Ito

RE: **H.B. 2368 Relating to Rental Motor Vehicle Marketplace Facilitators**
Hearing Date: Thursday, January 30, 2020, 2:30 p.m.
Conference Room: 329

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection & Commerce:

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

Enterprise **supports the intent** of H.B. 2368, which deems rental motor vehicle marketplace facilitators to be the lessors and operators for purposes of rental motor vehicle and tour vehicle surcharge tax under chapter 251, Hawaii Revised Statutes.

The evolution of the rental car industry has created new and innovative ways to rent a car, including via online marketplaces where individuals can list their cars for rent. Enterprise supports the evolution of the industry as long as consumer safety and accountability remain a priority.

Under H.B. 2368, peer-to-peer car sharing companies would be subject to the same requirement to pay the rental motor vehicle surcharge tax that is currently is paid by rental car companies. Under the proposed language, peer-to-peer car sharing companies must collect and remit the rental car surcharge tax from the renter of the vehicle. The funds generated from this tax contribute to the highway fund, which is used for road projects across the State.

Enterprise would note that H.B. 1834 contains an alternative approach to collecting a road surcharge tax from peer-to-peer car sharing companies and is being discussed among various stakeholders. Enterprise is supportive of both bills and supports the overall goal of accomplishing parity, so that all companies engaged in the business of providing cars for rent to consumers regardless of business model are contributing to the highway fund.

For the above reasons, Enterprise supports the intent of this bill and respectfully requests that the committee pass this measure.

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January 29, 2020

Representative Saiki
415 South Beretania St
Honolulu, HI 96813

RE: OPPOSE HB 2368

Dear Representative Saiki,

On behalf of TechNet, I am writing today in opposition to HB 2368, related to Peer-to-Peer Car Sharing. TechNet is the national, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

<u>Unfortunately, HB 2368 would place the motor vehicle rental surcharge onto peer-to-peer car sharing marketplaces and would negatively impact the availability of peer-to-peer car sharing in Hawaii.</u>

Peer-to-peer car sharing companies host a platform that connects vehicle owners with people who need access to a car, including Hawaii residents. It provides users with more choice and allows car owning residents of Hawaii to create passive income opportunities. They are innovative and have a fundamentally different business model from traditional rental car companies which purchase large swaths of vehicles and rent them to consumers in a more static and less environmentally friendly manner. HB 2368 applies a car rental tax to peer-to-peer car sharing and limits dynamism in the marketplace, forcing consumers into a one-size-fits all economic choice.

Peer-to-peer car sharing is different from the traditional rental car model in a number of ways and the same taxes should not be applied to this new, innovative industry. In peer-to-peer car sharing Hawaii residents are sharing their personal vehicles as opposed to a corporation owning and renting a fleet of cars. Hawaii residents are able to take advantage of this opportunity to access a car from one of their neighbors or another Hawaii resident. The economics of peer-to-peer car sharing puts money back into the state's economy instead of into a corporation based on the mainland.

Also, rental car companies are afforded tax benefits that are not provided to Hawaii residents sharing their personal vehicle on a car sharing platform. Car rental companies are given a wholesale general excise tax rate and able to negotiate that rate while Hawaii residents are required to pay the established excise tax rate. Rental car companies also have the privilege to recover fees paid for vehicle registrations from their customers through the vehicle license fee. Under HB 2368 platforms that Hawaii residents utilize to share their vehicle would be subject to the same tax requirements as rental car companies without any of the privileges or benefits given to rental car companies.

This bill only looks at one aspect of peer-to-peer car sharing and applies a tax to it. There are current efforts through the House and Senate Transportation Committees to come up with an appropriate, comprehensive regulatory structure for peer-to-peer car sharing, which will include a fee for peer-to-peer car sharing transactions. We should ensure that any conversations about peer-to-peer car sharing are done in a comprehensive way that looks at economics of this business model and how this opportunity is different than traditional industries.

Peer-to-peer car sharing has become an incredibly convenient way of connecting people wishing to utilize internet-based platforms to safely and securely share their personal vehicle with drivers seeking affordable, convenient, accessible and locally sourced mobility options. We urge you to **OPPOSE HB 2368** which TechNet believes will impact the ability of every day Hawaii residents to use their vehicle to create passive income for themselves and their families.

If you have any questions regarding TechNet's opposition to HB 2368, please do not hesitate to contact Courtney Jensen, Executive Director, at 916-600-3551 or cjensen@technet.org.

Thank you,

Courtney Jensen
Executive Director, Southwest
TechNet

LATE

Testimony of
Charles Melton – Senior Public Policy Manager
Turo Inc., San Francisco, CA

In Opposition of House Bill 2368

January 30, 2020

Chair Takumi and members of the House Committee on Consumer Protection and Commerce, I respectfully submit the written testimony of Turo, an internet-based, peer-to-peer car sharing platform on HB 2368. Thank you for this opportunity to express our **opposition** for HB 2368.

Turo is a peer-to-peer car sharing platform that connects personal car owners with those in need of a mobility solution. Through the Turo online marketplace, anyone with the need of a mobility option can obtain the freedom a vehicle can provide. In Hawai`i our community of car owners share their vehicle with mothers, fathers, neighbors and community members while earning a little extra income to help recover the cost of car ownership.

HB 2368 places the existing rental motor vehicle surcharge onto peer-to-peer car sharing, a completely separate and different industry. This legislation does not take into consideration any of the existing economic benefits that are provided to motor vehicle rental companies that are not provided to peer-to-peer car sharing. The existing benefits given to motor vehicle rental companies include the ability to purchase vehicles at wholesale, the wholesale application of the general excise tax on vehicle purchases, and the ability to pass vehicle registration and licensing fees onto customers. This legislation takes an existing surcharge, established exclusively for the rental car industry and applies to a completely different and separate industry. Applying the rental motor vehicle surcharge to peer-to-peer car sharing does not create tax parity, but instead further strengthens the economic advantages of the rental car industry while impacting Hawai`i residents who use peer-to-peer car sharing.

Turo believes that the consideration of applying any surcharge or fee to peer-to-peer car sharing should not be done in a vacuum, but rather through comprehensive regulations on peer-to-peer car sharing. Currently there are two bills, HB 1833 and HB 1834, that are under consideration by this legislature, that seek to establish comprehensive regulations on peer-to-peer car sharing, including the applicability of a surcharge or fee to peer-to-peer car sharing. We firmly believe that comprehensive regulatory legislation on peer-to-peer car sharing is the appropriate manner to consider the application of a surcharge or fee.

Placing the rental motor vehicle surcharge on peer-to-peer car sharing will strengthen the tax advantages rental car companies enjoy while impacting the residents of Hawai`i who share their personal vehicle or need access to their neighbor's or another resident's vehicle. For the reasons stated above, on behalf of our community of Hawai'i peer-to-peer car sharing residents, Turo is **opposed to HB 2368**.

January 29, 2020

Chairman Roy Takumi
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

LATE

Re: Oppose H.B. 2368 – Rental Motor Vehicle Marketplace Facilitators

Aloha Chairman Takumi:

Avail is a peer-to-peer car sharing company that is backed by Allstate. It allows car-owners to share their cars with drivers in need of convenient, affordable transit options. Peer-to-peer car sharing is a way for individual car owners to earn extra income and for individuals to access a new transit option. Car sharing gives Hawaii residents a new solution to longstanding mobility needs, including offering transportation where public transit is not an option and consumer friendly alternatives to traditional car rental companies. By using existing personal vehicles, car sharing has been shown to reduce traffic congestion as well.

We respectfully write to you today to discuss H.B. 2368 on peer-to-peer car sharing, which is scheduled to be heard by the House Committee on Consumer Protection & Commerce. We are appreciative of your interest in this pro-consumer and innovate business platform. However, the legislation as currently drafted ignores some key differences between car sharing and traditional rental car companies and in turn would apply an inappropriate and unfair tax structure to both Hawaii residents and our business.

Peer-to-peer car sharing is a three-party transaction between an individual vehicle owner, a shared vehicle driver and the platform which differs greatly from the two-party system of traditional rental cars. Thus, these activities should not be taxed in the same manner. Rental car companies enjoy enormous tax benefits such as being exempt from the General Excise Tax on the purchase of their vehicles as well as being allowed to negotiate their licensing fees with local jurisdictions which are then passed onto the consumer. Everyday Hawaii residents sharing their cars on our platform have already paid the General Excise Tax on their cars, in addition to their registration, licensing and titles fees which are set by the state. This disparity alone advantages the rental car companies.

Adding to this unfairness, this bill would apply all rental car taxes and fees to peer-to-peer car sharing. This would amount to extra taxation of Hawaii residents looking to make extra income from their already taxed vehicle as well as make it cost prohibitive for those residents looking for transportation alternatives while traveling to other islands. Applying these rental car taxes creates an unfair and unlevel playing field – one that discourages innovation and disadvantages Hawaii residents.

Finally, we believe tax issues should be part of the broader legislative discussion on how best to regulate the peer-to-peer car sharing industry – an effort that is already being examined in other legislation – and should not be decided in a separate bill such as H.B. 2368.

Our industry welcomes the opportunity to further discuss the appropriate tax structure for car sharing that recognizes the diametrically different business model in which we operate and the current tax obligations of individual vehicle owners.

Thank you again for this thoughtful legislation, and we look forward to working with you as this bill continues through the legislative process.

Mahalo,

Danielle Lenth

Danielle Lenth
Director of External Relations
Avail/Allstate

LATE

Hawaii Should Reconsider Extending the Rental Motor Vehicle Surcharge onto Peer-to-Peer Car Sharing

Garrett Watson
Senior Policy Analyst, Tax Foundation

Written Testimony to the Committee on Consumer Protection & Commerce, Hawaii State House of Representatives

January 30, 2020

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

My name is Garrett Watson, and I'm a senior policy analyst at the Tax Foundation, the nation's leading nonpartisan, nonprofit tax research organization that has informed smarter tax policy at the state, federal, and global levels since 1937. We have produced the *Facts & Figures* handbook since 1941, we calculate *Tax Freedom Day* each year, we produce the *State Business Tax Climate Index*, and we have a wealth of other data, rankings, and analysis at our website, www.TaxFoundation.org.

I am pleased to submit written testimony on House Bill 2368, which would classify rental motor vehicle marketplace facilitators as rental motor vehicle lessors for the purposes of Hawaii's rental motor vehicle surcharge. This would extend Hawaii's rental motor vehicle surcharge on to peer-to-peer car sharing arrangements. While I take no position on this bill, I will argue that Hawaii should reconsider extending the rental motor vehicle surcharge onto peer-to-peer car sharing and should instead contemplate ways to reform and repeal the state's motor vehicle surcharge.

Rental Car Excise Taxes Are Unsound Tax Policy

Rental car excise taxes are a common source of revenue for state and local governments. Forty-four states, including Hawaii, levy an excise tax or taxes on rental cars.

Excise taxes on car rentals are unsound tax policy, as they are a narrow source of revenue targeted at one industry.[1] Rental car surcharges and other taxes export the tax base onto nonresidents, as tourists, business travelers, or other visitors are more likely to use rental car services. Despite this intent, rental car excise taxes may create economic harm for residents

[1] Garrett Watson, "Reforming Rental Car Excise Taxes," Tax Foundation, Mar. 26, 2019, https://taxfoundation.org/reforming-rental-car-excise-taxes/.

despite not being the target of the tax. For example, there is evidence that consumers may decide to travel to lower tax jurisdictions, depriving the higher tax jurisdictions of both tax revenue and economic activity that otherwise would have occurred.[2]

Ideally, rental car services would be subject to the same sales tax that all other goods and services should be subject to in a state or locality. In Hawaii, rental car services are subject to the state's general excise tax, which is levied in addition to the motor vehicle surcharge.

Rental car surcharges also pose administrative costs for firms and consumers. For example, consumers may be faced with concession recovery fees, facility charges, and sales taxes in addition to the rental car surcharge. This makes it challenging to estimate the final cost of rental car services and increases administrative burdens on firms who collect and remit tax paid.

It is appropriate for nonresidents to support government services they benefit from while visiting Hawaii. The tax code should provide equal treatment for visitors and residents alike, and this can be achieved by assessing taxes with a broad tax base, not a narrowly applied tax on nonresidents.

Rental Motor Vehicle Surcharge and Peer-to-Peer Car Sharing

The rise of the sharing economy means that there are new business models to connect consumers with transportation options. Peer-to-peer car sharing arrangements enable individuals to share their vehicle with consumers via an online marketplace run by intermediary firms. This provides flexibility for consumers and an income opportunity for vehicle owners. This has led to questions over how peer-to-peer car sharing arrangements should be taxed, including whether to apply rental car excise taxes onto these services.

While some argue that peer-to-peer car sharing arrangements should be taxed exactly as rental car firms, important differences between these business models weakens the case. For example, rental car firms are exempt from sales tax on purchases of vehicle fleets, while peer-to-peer car sharing hosts pay sales tax when purchasing their cars. While the sales tax exemption for rental car firms is the proper tax treatment for a business input, this illustrates how peer-to-peer car sharing is disadvantaged in the current system. This disadvantage should be considered when deciding whether it is appropriate to extend the motor vehicle surcharge onto these services.

Excise taxes with narrow bases, such as the rental motor vehicle surcharge, are prone to creating disagreements over how they should be applied in the marketplace, creating uncertainty for firms and customers. Taxes with broad, equable bases are less likely to create uneven playing fields, have fewer economic distortions, and have lower administrative costs.

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[2] William G. Gale and Kim Rueben, "Taken for a Ride: Economic Effects of Car Rental Excise Taxes," National Business Travelers Association, republished via the Heartland Institute, July 17, 2006, https://heartland.org/publications-resources/publications/taken-for-a-ride-economic-effects-of-car-rental-taxes.

Conclusion

Extending the motor vehicle surcharge onto peer-to-peer car sharing as proposed in House Bill 2368 would harm consumers, raise administrative costs, and not provide an equitable playing field between car rental firms and peer-to-peer car sharing services.

Instead of extending the rental motor vehicle surcharge onto peer-to-peer car sharing arrangements, there is an opportunity to revisit the policy rationale for the surcharge. A level playing field between car rental firms and peer-to-peer car sharing will not be found by extending a discriminatory and inefficient tax onto more firms, and by extension, consumers.

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