

SUBJECT: Imposing motor vehicle rental taxes on marketplace rental providers

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer,  
Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — Don Schwent, EAN Holdings, LLC; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Clifford Sparks, City of Dallas; TJ Patterson, City of Fort Worth; Dean McWilliams, Dallas-Fort Worth International Airport; Amanda Schar, Harris County Houston Sports Authority; Monty Wynn, Texas Municipal League)

Against — Amber Knott, Expedia Group; Stephen Shur, Travel Technology Association; Adam Goldman, Turo; (*Registered, but did not testify*: Bradford Shields, Getaround Inc.)

On — Karey Barton, Comptroller of Public Accounts; (*Registered, but did not testify*: Chris Tjon, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 152 governs state taxes on the sale, rental, and use of motor vehicles. Sec. 152.026 imposes a tax of 10 percent of the gross rental receipts from the rental of a motor vehicle for 30 days or less. For a vehicle rented more than 30 days, the tax rate is 6.25 percent. The motor vehicle retail sales tax of 6.25 percent is not due on a motor vehicle as long as it is registered as a rental vehicle.

Local Government Code ch. 334, subch. E allows a municipality or county to impose a short-term motor vehicle rental tax. The tax generally may not exceed 5 percent of the gross rental receipts. The owner of a vehicle subject to the tax must collect the tax by adding it, along with the state gross rental receipts tax, to the rental charge.

DIGEST: HB 2415 would impose state and local motor vehicle rental taxes on rentals conducted through marketplace rental providers.

A "marketplace rental provider" would be defined as a person who:

- operated a marketplace by which the owner of a motor vehicle listed, marketed, or advertised the vehicle for rental by others for consideration in the state;
- facilitated the vehicle rental by communicating between the owner and renter the terms of agreement; and
- directly or indirectly collected or processed the receipts or rental charges paid by the renter for the vehicle owner.

The bill would require a marketplace rental provider to collect, report, and pay the gross rental receipts tax and the short-term motor vehicle rental tax on vehicles rented through the provider unless the vehicle owner elected to do so. Providers generally would be subject to collection, reporting, payment, and record-keeping requirements established under current law. The bill also would require providers to register as retailers with the comptroller.

HB 2415 would require a marketplace rental provider to certify to the owner of a vehicle rented through the provider that the provider had collected, reported, and paid the applicable gross rental receipts and short-term motor vehicle rental taxes. An owner who in good faith accepted the certification would not be required to collect, report, or pay the taxes.

The owner of a vehicle rented through a marketplace rental provider could elect to report and pay the rental taxes if the owner registered as a retailer with the comptroller and informed the provider in writing of the election. The provider then would forward the collected taxes to the owner.

The bill would require a marketplace rental provider to send the owner of a rented vehicle a report each month that showed the amount of tax collected, reported, and paid. The provider would not be required to send the report to an owner who elected to report and pay the tax.

The bill would take effect October 1, 2021, and apply only to a rental agreement entered into on or after that date.

SUPPORTERS  
SAY:

HB 2415 would apply consistent rules on vehicle rental obligations to all car rental companies, including new peer-to-peer rental platforms. Many vehicle owners using peer-to-peer platforms are unaware of their tax obligations under current law. This means that the state and cities and counties that have opted into a local rental tax are not able to collect all the revenue they are due, underfunding public services like community venues. The bill would outline the tax obligations of marketplace rental providers clearly, creating a mechanism to collect these taxes and ensuring that all vehicle rental service providers were treated equally.

Last session, the Legislature began imposing sales and use taxes on remote marketplace providers, such as online websites through which individuals may offer taxable items for sale. HB 2415 would continue to apply existing tax obligations to marketplace providers by ensuring that such providers collected vehicle rental taxes. These are taxes that are already due, according to the comptroller's office, and should be paid by marketplace rental providers such as peer-to-peer platforms in the same manner as other taxes.

While some claim that peer-to-peer platforms are not marketplace providers, they operate similarly to other popular online or app-based websites through which sellers may offer a good or service. Peer-to-peer platforms are in the business of renting cars in the same manner as other traditional vehicle rental companies, which qualifies them as rental companies. Because peer-to-peer platforms provide the same service to the same base of customers, they should be taxed equally to traditional rental companies.

The bill would not impose a tax on the vehicle owner but on the marketplace provider. An individual renting out a vehicle through peer-to-peer services could request a waiver on their vehicle sales tax if they collected the rental tax and otherwise qualified. But because this waiver is intended for business purposes, the individual would have to pay a use tax

when driving the car for personal use.

Critics who say the bill should remove the vehicle sales tax waiver are misinformed. This is standard practice for assets purchased for business purposes, and taxing those vehicles again would amount to double taxation.

The bill would not impose new obligations on a third party travel website that facilitated vehicle rentals. Rental taxes still could be collected and remitted by rental car companies as provided by law.

CRITICS  
SAY:

HB 2415 incorrectly would categorize peer-to-peer car rental platforms as marketplace providers and as vehicle rental companies. These apps do not sell taxable goods nor do they own the vehicles that are being rented by individuals but instead simply facilitate communications between two people. While the service should be taxed, the bill wrongly would impose a vehicle rental tax of 10 percent.

The bill would impose an unfair additional tax on Texans who agreed to rent their personal vehicles to other individuals. While rental car companies are exempt from the motor vehicle sales tax under current law, that exemption does not extend to individuals renting out their own cars. The tax scheme under the bill would amount to double taxation on these individuals' vehicles, including both sales and rental taxes, creating an uneven playing field and stifling competition.

If the Legislature did choose to impose rental taxes on individuals renting out their personal vehicles, it also should repeal the motor vehicle sales tax exemption for rental companies to create an equal tax burden.

OTHER  
CRITICS  
SAY:

The scope of HB 2415 should be narrowed to only include peer-to-peer vehicle rental platforms. The bill's definition of "marketplace rental provider" could wrongly include traditional car bookings on third party travel websites, which should not have to collect and remit the rental tax.

NOTES:

According to the Legislative Budget Board, HB 2415 would increase

general revenue related funds by \$61.1 million through fiscal 2022-23.