

DEPARTMENT OF TAXATION

Amendments to Chapter 18-251,
Hawaii Administrative Rules

April 8, 2016

SUMMARY

1. §18-251-1-04(b) is amended.
2. §18-251-2-02 is amended.
3. §18-251-2-04 is amended.
4. §18-251-2-05 is amended.
5. §18-251-2-06 is amended.
6. §18-251-2-07 is amended.
7. A new subchapter 5.1 containing §§18-251-2.5-01 and 18-251-2.5-02 is added.
8. §18-251-3-02 is amended.

**§18-251-1-04 "Rent or lease", defined;
complimentary vehicles. *****

(b) Motor vehicles or vehicles provided in conjunction with public relations and promotional activities, such as familiarization trips (commonly known as "fam trips") and get-away prize packages, shall be subject to the rental motor vehicle surcharge tax.

Example:

ABC Cars participates in a visitor industry project to encourage travel agents to cultivate Hawaii as a vacation destination by providing six cars for a one-week familiarization tour of the islands. All six of the cars are subject to the rental motor vehicle surcharge tax.

Example:

In conjunction with a company promotion, DEF Cars (DEF) gives away coupons to its special customers for "free rentals", no rental rate charge for one day. All customers, including those renting a car for one day or less, who use their coupons are asked to sign rental agreements and contract for a collision damage waiver or to sign an acknowledgment. Cars used by customers in this promotion are subject to the rental motor vehicle surcharge tax for each day's rental, including the day for which no rental rate is charged.

Example:

GHI Rentals (GHI) has a "frequent GHI driver" program, which gives a free day's rental after a customer has rented a car from GHI five times. After the customer has rented a car from GHI on five occasions, the customer does not pay the rental fee on the next (or sixth) rental. All customers receiving a free rental are asked

to sign rental agreements and contract for a collision damage waiver or to sign an acknowledgment. Cars used by customers for the sixth rental period, which are provided without charge, in the GHI frequent driver program are subject to the rental motor vehicle surcharge tax.

[Eff 1/27/92; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-1)

§18-251-2-02 Surcharge tax on rental motor vehicles or vehicles; computation of tax. (a) For purposes of this chapter, "day" means a twenty-four hour period of time, which shall be computed from the time that the motor vehicle or vehicle is rented or leased.

Example:

Ms. Visitor rents a car for a day. She picks up her car at 9:00 a.m. on Monday and returns it to the car rental station at 8:59 a.m. on Tuesday. There is a surcharge tax at the rate set forth in section 251-2, HRS, for the one-day rental.

(b) For purposes of this chapter, "any portion of a day" means one minute or more of a twenty-four hour period of time that the motor vehicle or vehicle is rented or leased; provided that the computation of time shall not include any incidental grace period allowed by a lessor. The grace period shall be without any additional rental charge, overtime or service fee, or any other charge or fee or waiver relating to a delayed return of a vehicle.

Example:

Mr. Businessman travels from Oahu to Maui for business and rents a car from ABC Rental on Maui from 8:00 a.m. to 12:00 p.m. when Mr. Businessman returns to Oahu. At 1:00 p.m. ABC Rental rents the same car to Ms. Visitor until 8:00 p.m. Assuming ABC Rental is not a car-sharing organization, ABC Rental is subject to the rental motor vehicle surcharge tax for the daily rate for each portion of a day's rental. In other words, rental motor vehicle surcharge tax is due for two days total rental.

Example:

Mr. Tourist travels to Maui and rents a car. He picks up his car at 11:00 a.m. on Friday and returns it to the car rental station at 11:01 a.m. on Monday. The rental car company charges Mr. Tourist the rental rate for three days and one hour. Mr. Tourist has rented the car for three days and a portion of a fourth day; therefore, rental motor vehicle surcharge tax is due for four days total rental.

Example:

Ms. Mover is moving to a new house and rents a truck for a day. She picks up the truck at 9:00 a.m. on Wednesday and returns it to the truck rental location at 9:10 a.m. on Thursday. The rental company has a grace period of fifteen minutes and only charges Ms. Mover for one day's rental. Ms. Mover has rented the truck for one day, and rental motor vehicle surcharge tax is due for one day total rental.

(c) The substitution of a motor vehicle or vehicle with another motor vehicle or vehicle shall not incur an additional rental motor vehicle surcharge tax amount for a day or portion of a day if:

- (1) The substitution is made on the same rental contract or agreement;
- (2) The rental or lease period is uninterrupted, continuous; and
- (3) If the rental or lease period is longer than one day, the rental or lease period shall occur over consecutive days.

When there is a substitution of vehicle, the burden is upon the lessor to show that the substitution is proper and not a surcharge tax avoidance scheme and subject to the rental motor vehicle surcharge tax.

Example:

Mr. Sales flies to Oahu for a one-day trip. He rents a car at the airport and drives off to his meeting in Kaaawa. Before he gets too far, Mr. Sales realizes that the car is not in very good condition. He decides to return to the airport station and exchange the car for another one in proper working condition. The second car is a substitute for the first car, therefore, the rental motor vehicle surcharge tax is due for one day total rental.

Example :

To ease traveling to neighbor islands for its customers, ABC Rentals (ABC) has a "one-stop 7-day islandhopping" special: a customer signs one rental car contract; pays the rental fee for seven days; and may pick up a car from any of ABC's business locations on any island during that time period. Ms. Visitor decides on the special rate. She picks up a car at the airport on Oahu at 8:00 a.m. on Monday; returns the car to the Oahu station at 8:00 a.m. on Tuesday; and flies to Molokai, picking up a car there at 9:00 a.m. At 5:00 p.m., she returns the car to the Molokai station and flies to Maui, picking up a car at 6:00 p.m. Ms. Visitor spends the rest of the week on Maui, returning the car to the Maui station at 7:55 a.m. the next Monday. Ms. Visitor actually used three different cars on Tuesday. The second and third cars she used are substitutes for the first car; thus, the rental motor vehicle surcharge tax is due for seven days' total rental.

(d) The rental motor vehicle surcharge tax due on a motor vehicle or vehicle which is not returned to the lessor or is abandoned by persons renting or leasing the motor vehicle or vehicle shall be calculated on:

- (1) The days or portion of days set forth in the rental contract or agreement; or

- (2) The days or portion of days for which the person renting or leasing the motor vehicle or vehicle is actually charged if that number of days is greater than set forth in the rental contract or agreement.

Example :

ABC Cars rents a car to Jane and John Doe. The rental contract states that the car will be rented from Monday 9:00 a.m. and must be returned by Wednesday 9:00 a.m. Because they are late for their flight back to the mainland, instead of returning the car to the car rental station, the Does leave the car at the airport terminal. The car is towed away by airport security. ABC does not locate the car until the following Monday at 11:00 a.m.; thus, the car is gone from the car rental station for a total of eight days. The surcharge tax, however, is only calculated on the two days set forth in the Does' contract.

(e) The status of the person renting or leasing the vehicle shall have no bearing on the imposition of the rental motor vehicle surcharge tax. Motor vehicles or vehicles rented or leased to the following persons are nevertheless subject to the rental motor vehicle surcharge tax:

- (1) Persons which are nonprofit charitable or educational corporations, associations, or similar organizations exempt from tax under the federal Internal Revenue Code of 1986, as amended; and
- (2) Persons who present cards or certificates stating that the holder is exempted from state sales taxes.

Example :

VIP Rentals (VIP), rents a car to a customer who is a staff member of a foreign embassy. The staff member presents a diplomatic card stating:

"The bearer of this card shall not be subject to state sales taxes under treaty agreements between the United States and the staff member's country." The waiver from payment of tax stated on the card does not apply here; the incidence of tax falls on the rental agency, not the customer. The rental car agency is not prohibited from passing on the cost of the rental motor vehicle surcharge tax to the customer.

- (f) The designation by the lessor of:
 - (1) The rental or lease period; or
 - (2) Consideration received from the rental or lease of a motor vehicle or vehicle to a specific time period;

is not controlling and may not necessarily determine the number of days a motor vehicle or vehicle is rented or leased.

Example :

DEF Rental Cars (DEF) has a variety of rental fees, depending upon the number of days a customer rents a vehicle. There is an hourly rate, daily rate, weekly rate, and monthly rate. DEF also has a special business rate. If the business traveler rents a car for five weekdays, the business traveler may keep the car over the weekend without an additional rental charge. When DEF rents a car to a customer for a week under the special business rate and the car is kept for seven days, the car is subject to the rental motor vehicle surcharge tax for all seven days. [Eff 1/27/92; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

§18-251-2-04 Surcharge tax on rental motor vehicles or vehicles; adjustments. The rental motor vehicle surcharge tax is imposed in accordance with sections 18-251-2-02 and 18-251-2-03; provided that the lessor shall not be required to pay the surcharge tax if the entire rental contract is voided and all fees, charges, and consideration in any form are returned to the person renting or leasing the motor vehicle or vehicle.

Example:

Cheep Fleet (Cheep) rents a car to Mr. Roe. Mr. Roe takes the car out on Monday at 9:00 a.m. Dissatisfied with the car's performance, at 12:00 p.m. Mr. Roe exchanges the car for another one. At 5:00 p.m., he's back. This time he demands that Cheep return his money. Cheep voids the rental car contract and returns all money collected from Mr. Roe: the rental fee, insurance fee, extra driver fee, and the pass-on of the rental motor vehicle surcharge tax. Cheep does not charge Mr. Roe an administrative service fee for the return of the car. The rental motor vehicle surcharge tax will not be imposed on Cheep for the use of the cars by Mr. Roe. [Eff 1/27/92; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

§18-251-2-05 Surcharge tax on rental motor vehicles or vehicles; subject to general excise tax.

(a) The rental motor vehicle surcharge tax imposed on a lessor is included as gross income subject to the general excise tax, chapter 237, HRS, except as provided in subsection (b).

(b) Rental motor vehicle surcharge taxes which are:

- (1) Separately stated and visibly passed on; and
- (2) Collected from persons renting or leasing vehicles by lessors holding certificates of registration under chapter 251, HRS, and this chapter;

shall be excluded from gross income subject to the general excise tax.

Example:

ABC Rentals (ABC) rents cars to residents and visitors. Every person renting a car is given a rental car agreement which includes a breakdown of charges for the customer. The surcharge tax amount is listed separately in every contract. The surcharge taxes that ABC collects from its customers are not included as gross income for general excise tax purposes.

Example:

Cheep Fleet (Cheep) targets the budget traveler and advertises a flat daily rate, "\$12, no more, no less" in its flyers. Cheep's rental contracts do not break out any costs and simply lists "Total Due: \$12" on the last line. Although a portion of the \$12 represents the surcharge tax which must be paid under this chapter, because the surcharge tax is not visibly broken out and shown on the contract, the entire \$12 is gross income subject to the general excise tax. [Eff 1/27/92; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

§18-251-2-06 Surcharge tax on tour vehicles; imposition and rates. There is levied on the tour vehicle operator, and assessed and collected each month, a tour vehicle surcharge tax for each tour vehicle used or partially used during the month at the rates set forth in section 251-2(b), HRS.

Example:

ABC Bus Tours (ABC) owns ten buses that fall in the over twenty-five seat category and sells around-the-island tours on Hawaii. ABC also provides "as needed" transportation services to large groups. In January 1992, ABC conducts tours using five buses; uses one bus to transport one group of visitors that disembarked from a ship in Hilo to a luau and back to the ship; and does not use the remaining four buses, which are serviced that month. The tour vehicle surcharge tax for the month of January 1992 is imposed on six buses.

Example:

DEF Sightseeing (DEF) owns ten vans and minibuses with passenger capacities between eight to twenty-five persons. As part of a model transportation project, DEF agrees to use all of its vehicles to transport workers from neighborhood sites to central locations downtown in the morning and to return the workers back to the neighborhood sites in the early evening. The project lasts for one month. DEF also uses four of the vehicles in the evening to regularly transport tourists to places of interest. DEF uses the same vehicles each evening. One evening, however, one of the vehicles breaks down and DEF uses an alternate minibus for an hour. Because five of the vehicles only were used for commuting purposes, these are not subject to the surcharge tax for the month of the project. The surcharge tax is imposed on the other five

vehicles – the four that were usually used in the evenings and the additional one used on the night of the breakdown. The tour vehicle surcharge tax for the month is imposed on five minibuses. [Eff 1/27/92; am 1/2/93; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2]

**§18-251-2-07 Surcharge tax on tour vehicles;
cost not deductible from public service company tax.**

The tour vehicle surcharge tax imposed on a tour vehicle operator is not deductible from gross income subject to the public service company tax, chapter 239, HRS. [Eff 1/27/92; am 1/2/93; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

SUBCHAPTER 5.1

IMPOSITION OF CAR-SHARING VEHICLE SURCHARGE TAX

§18-251-2.5-01 Car-sharing vehicle surcharge

tax. (a) For purposes of the car-sharing vehicle surcharge tax:

"Average paid use period" means the total time a lessor's vehicles are rented or leased divided by the total number of rentals entered into. Average paid use period is calculated per taxable period.

"Organization" means any person or company as defined in section 237-1, HRS.

"Paid use period" means the total time a lessor's vehicle is rented or leased and is computed from the time the vehicle is rented or leased until the time the vehicle becomes available for rent or lease to a different customer or becomes unavailable to any customer. "Paid use period" shall not include any complimentary grace period provided by a lessor.

"Taxable period" means the organization's taxable year.

(b) For purposes of determining the total number of rentals entered into by a lessor, a single rental continues until the vehicle rented becomes available to a different customer or becomes unavailable to any customer.

(c) The determination of whether a lessor is a car-sharing organization is made on a per organization basis.

Example:

Customer rents a vehicle from Lessor at 10:00 a.m. Customer parks and shops for one hour. During the time Customer is shopping, the vehicle remains available only to Customer and is not available to other customers of Lessor. Customer then returns to the vehicle, drives home to deliver her purchases, and relinquishes the vehicle at 1:00 p.m. the same day, at which time the vehicle becomes available to other customers

of Lessor. Lessor has entered into one rental for which the paid use period is three hours. Even if Customer is not charged for the time she is shopping, the rental in this example may not be treated as two separate rentals because the vehicle did not become available to a different customer of Lessor during that time and remained available to Customer.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. and relinquishes the vehicle at 8:00 a.m. the following day. The vehicle becomes available to other customers of Lessor at that time. Customer then decides she needs to use a car again, immediately returns to the same vehicle, rents the vehicle from Lessor at 8:02 a.m., and relinquishes the vehicle at 10:02 a.m. the same day. Because the vehicle became available to other customers between periods of rental, Lessor has entered into two rentals, one with a paid use period of one day and another with a paid use period of two hours.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. The vehicle is faulty and Customer returns the vehicle to Lessor's facility at 8:10 a.m., at which time it is put into the shop for maintenance, repaired and re-enters Lessor's fleet the following day. The paid use period is ten minutes because after ten minutes of rental the vehicle became unavailable to any customer.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. and returns the vehicle at 10:00 a.m. the following day. Lessor has entered into one rental for which the paid use period is twenty-

six hours. Note that even if Lessor is a car-sharing organization, Lessor is liable for tax for two days at the rate set forth in section 251-2, HRS, because the paid use period is six hours or more.

Example:

Lessor rents a vehicle for a two-day period, beginning at 9:00 a.m. Monday and ending 9:00 a.m. Wednesday by which time the vehicle must be returned to lessor. The customer returns the vehicle at 5:00 a.m. Wednesday. The paid use period is forty-eight hours unless Lessor can prove that the vehicle became available to other customers at 5:00 a.m. or became unavailable to any customer at 5:00 a.m. Note that even if Lessor is a car-sharing organization, Lessor is liable for tax for two days at the rate set forth in section 251-2, HRS, because the paid use period is six hours or more.

Example:

Customer rents a vehicle from Lessor at 1:00 p.m. Lessor offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 3:15 p.m. the same day. Per Lessor's terms, Customer's rental qualifies for a complimentary grace period of fifteen minutes. The paid use period for the rental is two hours.

Example:

For a taxable period, Lessor enters into seventy-five separate rentals consisting of twenty-five thirty-minute rentals, twenty-five one-hour rentals, and twenty-five twelve-hour rentals. Lessor has rented vehicles for a total of 337.5 hours during the taxable period. The average paid use period is calculated by dividing 337.5 total rental hours by seventy-five total

rentals. The average paid use period for the taxable period is 4.5. Lessor satisfies the average paid use period requirement to qualify as a car-sharing organization.

Example:

For a taxable period, Lessor enters into two hundred separate rentals consisting of seventy-five thirty-minute rentals, fifty one-hour rentals, forty two-hour rentals, twenty-five twelve-hour rentals, and ten two-day (forty-eight hours each) rentals. Lessor has rented vehicles for a total of 947.5 hours during the taxable period. The average paid use period is calculated by dividing 947.5 total rental hours by two hundred total rentals. The average paid use period is 4.73. Lessor satisfies the average paid use period requirement to qualify as a car-sharing organization. [Eff 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

§18-251-2.5-02 Car-sharing vehicle surcharge tax; imposition. (a) The car-sharing vehicle surcharge tax is levied per half-hour or part of a half-hour that a vehicle is rented or leased by a car-sharing organization. The car-sharing vehicle surcharge tax is levied at the rate and in the manner set forth in section 251-2, HRS, on all rentals of six hours or more. For purposes of calculating the tax, the time length of rentals shall not include any complimentary grace period provided by a lessor.

Example:

CarShare, a car-sharing organization, rents a vehicle for two hours. CarShare is liable for the car-sharing surcharge tax for a total of four half-hours at the rate set forth in section 251-2.5, HRS.

Example :

CarShare rents Vehicle A for two hours and also rents Vehicle B for six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251-2.5, HRS, for the rental of Vehicle A. CarShare is liable for car-sharing surcharge tax for one day at the rate set forth in section 251-2, HRS, for the rental of Vehicle B because that rental is six hours or longer.

Example :

CarShare rents Vehicle C for two hours and rents Vehicle D for twenty-six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251-2.5, HRS, for the rental of Vehicle C. CarShare is liable for car-sharing surcharge tax for two days at the rate set forth in section 251-2, HRS, for the rental of Vehicle D because that rental is six hours or longer and is for all or part of two days.

Example :

Customer rents a vehicle from CarShare at 1:00 p.m. CarShare offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 7:10 p.m. the same day. Customer's rental qualifies for a complimentary grace period of fifteen minutes and customer is charged for a rental of five hours and fifty-five minutes. The car-sharing organization is liable for car-sharing surcharge tax for twelve half-hours at the rate set forth in section 251-2.5, HRS, because the rental period is not six hours or longer.

Example :

Customer rents a vehicle from CarShare at 1:00 p.m. CarShare offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 7:30 p.m. the same day. Customer's rental qualifies for a complimentary grace period of fifteen minutes and customer is charged for a rental of six hours and fifteen minutes. CarShare is liable for car-sharing surcharge tax for one day at the rate set forth in section 251-2, HRS, because the rental is six hours or longer. [Eff 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

§18-251-3-02 Display of registration

certificate. (a) Each person at all times shall conspicuously display the certificate of registration or a notice as set forth in subsection (b) at each place for which the certificate of registration is issued.

(b) Where the person providing rental motor vehicles to the public or engaging in the tour operator business has more than one place of business, the director shall issue one certificate of registration. The person may post a notice at each place of business notifying the public where the certificate may be inspected.

Example:

Hawaii, Inc. provides rental motor vehicles to the public at two places of business located at the Honolulu Airport and in Waikiki. To register, Hawaii, Inc. must list both places of business and pay a \$20 fee. A master certificate shall be issued. Hawaii, Inc. is not required to post a copy of the certificate at either place of business but may post a notice at each place of business stating that the business of providing rental motor vehicles to the public has been properly registered and that a true copy of the certificate may be inspected or examined at a place designated in the notice. [Eff 1/27/92; am 4/8/16] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-3)

DEPARTMENT OF TAXATION

Chapter 18-251, Hawaii Administrative Rules, on the Summary Page dated April 8, 2016, was adopted on April 8, 2016, following public hearing held on January 6, 2016 after public notice was given in the Honolulu Star Advertiser, the Garden Isle, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald on December 4, 2015.

These amendments to chapter 18-251 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/

MARIA E. ZIELINSKI
Director of Taxation

APPROVED:

/s/

DAVID Y. IGE
Governor
State of Hawaii

Dated: March 28, 2016

APPROVED AS TO FORM:

/s/

Deputy Attorney General

Filed