

A Harris to be leaving at 2:45 PM. - add to Chair's Agenda

## March 16, 2016 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair <i>P/E Travel</i>	NA	Oahu	Parking Pass	Yes ✓
Barbara Bennett, 2nd Vice Chair <i>P/E Travel</i>	HA	Kauai	Parking Pass	Yes ✓
Kyoko Kimura <i>P/E Travel</i>	HA	Maui	Parking Pass	Yes ✓
Harris Nakamoto, Vice Chair <i>leaving @ 2:45</i>	NA	Oahu	NA	Yes ✓
Director's ex officio - Mark Richey <i>NA</i>	NA	Oahu	NA	Yes ✓
Robert Cundiff <i>P/E Travel</i>	NA	Oahu	Parking Pass	Yes ✓
Nancy Atmospera-Walch <i>E</i>	NA	Oahu	NA	Yes ✓
Phillip Kasper	HA	Maui	Parking Pass	NO
Garth Yamanaka <i>P/E Travel</i>	HA	B.I.	Parking Pass	Yes ✓

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	✓
Make 12 - 15 copies of rule packages for board packets <i>working on</i>	✓
Poll Board Attendance - Working on <i>ok-working on</i>	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF = Incorrect <i>working on</i>	Not signed by Dir
Airline booking ASAP - Linda <i>working on</i>	✓✓
Draft Agenda to Chair for approval <i>working on approval</i>	✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office <i>Done Done</i>	✓✓
Send Agendas to those people who requested it - IMPORTANT <i>(see attached list)</i>	✓
Mail Board Packets to Board members, Deputy AG <i>1/2 Done</i>	✓
Include "discussion leader" names on the agendas to Board members only.	✓
<i>See Request (attached) for Rules from Dots (Wild Animals, etc.)</i>	✓
Include parking permits in Board members' agenda packets.	✓

STAFF			
Margaret Ahn	<del> </del>		Yes
Dori Palcovich	✓		Yes

Post Meeting Checklist	
<del>Tyler - dgkahalas@gmail.com</del>	
<del>Make sure the items</del>	
<del>list to send agenda</del>	

358-2982

# TAX FOUNDATION

O F H A W A I I

126 Queen Street, Suite 304, Honolulu, Hawaii 96813, Telephone 536-4587, [www.tfhawaii.org](http://www.tfhawaii.org)

## OFFICERS

Richard Anzal  
Chair

Manoj Samaranayake  
Vice Chair

Thomas Yamachika  
President/Secretary

Justina A. Desuaddo  
Vice President/Treasurer

Daniel K. Crebence  
Asst. Secretary

December 21, 2015

Rules Office  
Hawaii Department of Taxation  
830 Punchbowl Street, Room 221  
Honolulu, HI 96813

### Re: **Comments on Proposed Rules Relating to the Car-Sharing Vehicle Surcharge Tax**

## BOARD OF DIRECTORS

Richard Anzal  
Dennis Brown  
Helen Chang  
Jay Chen  
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Scott W. Hayashi  
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Kieran Yap

## EXECUTIVE ADVISORY BOARD OF DIRECTORS

Meredith J. Ching  
Roger H. Epstein  
Richard Henderson  
Richard R. Kelley

Ladies and Gentlemen:

The Tax Foundation of Hawaii is providing comments to the proposed amendments to Chapter 18-251, HAR, in response to the notice of public hearing on January 6, 2016.

The Foundation supports the Department of Taxation's efforts to provide meaningful and timely guidance to taxpayers.

As a general matter, we recommend that the examples in the Chapter 18-251 rules be numbered, similar to those in chapters 18-235 and 18-237D. Because rule language will be replicated across different platforms and devices, numbering the examples will prove to be valuable to those, either in the Department or outside of it, who wish to cite them, as it will be difficult or impossible to refer to page numbers.

In amended section 18-251-2-02, in the example immediately preceding subsection (d), we recommend that the term "special rental" in the last sentence not be used, and that the sentence structure be conformed to the other examples in this section. We suggest that the last sentence of this example be changed to:

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.

Also in amended section 18-251-2-02, we recommend that the first example under subsection (e) be changed to delete the reasoning that "the tax is not a sales tax but a surcharge tax." We consider this argument extremely weak because the U.S. Supreme Court rejected a similar argument in *Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983). We suggest that the example be changed to read as follows starting from the third sentence:

The waiver from payment of tax stated on the card does not apply here because the incidence of tax falls on the rental agency, and not the customer or the government the customer represents. The rental car agency is not prohibited from passing on the cost of the rental motor vehicle surcharge tax to the customer, but is not obligated to do so.

In new section 185-251-2.5-01, we find the definition of "organization" cumbersome and suggest the following instead:

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

Also in new section 18-251-2.5-01, we feel that the third example as stated is not useful because we do not think any lessor would charge the customer in that fact pattern. We suggest the following example instead:

Customer rents a vehicle from Lessor at 8:00 a.m. After driving the vehicle, Customer notices a warning light and returns the vehicle to Lessor's facility at 8:30 a.m., at which time the vehicle is put into the shop for maintenance and repaired. It re-enters Lessor's fleet the following day. The paid use period is 30 minutes because after 30 minutes of rental the vehicle became unavailable to any customer.

As for the sixth example in 18-251-2.5-01, there appears to be a computation error. If the vehicle is out at 1:00 and back at 3:15 and the complimentary grace period of 15 minutes is not counted, the paid use period should be two hours.

Turning now to the second and third examples under new section 18-235-2.5-02(a), we suggest cosmetic changes to make the result easier to follow:

**Example 2:**

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.

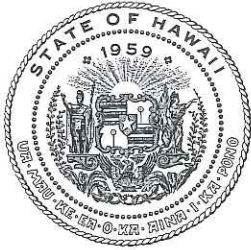
**Example 3:** CarShare rents Vehicle C for two hours and rents Vehicle D for twenty-six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251- 2.5, HRS, for the rental of Vehicle C. CarShare is liable for car-sharing surcharge tax for two days 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.

Thank you for the opportunity to submit comments.

Very truly yours,



Thomas Yamachika  
President



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594

### AGENDA

Wednesday, March 16, 2016 ★ 1:00 p.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Harris Nakamoto  
Vice Chairperson  
Oahu

Barbara Bennett  
2<sup>nd</sup> Vice Chairperson  
Kauai

Kyoko Y. Kimura  
Maui

Robert Cundiff  
Oahu

Nancy Atmospera-Walch  
Oahu

Phillip Kasper  
Maui

Garth Yamanaka  
Hawaii

Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of February 17, 2016 Meeting Minutes

#### III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 18 Chapter 231, Income Tax Law, and Chapter 251, Rental Motor Vehicle, Tour Vehicle and Car-Sharing Vehicle Surcharge Tax, promulgated by Department of Taxation – *attached and incorporated as Exhibit 1*

#### IV. Legislative Matters

- A. Discussion and Action on Governor's Message No. 525 – "Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Harris Nakamoto, for a term to expire June 30, 2019"
- B. Discussion, Status and Action on House Bill 774, HD1, SD1, "Relating to Small Business" – Makes an appropriation to the Department of Business, Economic Development and Tourism for the Small Business Regulatory Review Board to hire additional staff

#### V. Administrative Matters

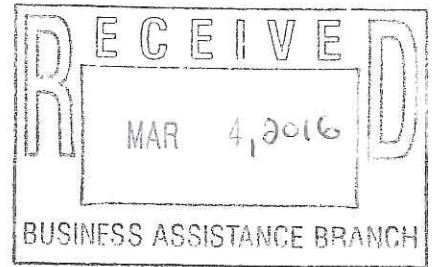
- A. Discussion and Action on Draft "2016 Periodic Review; Evaluation Report," in accordance with Section 201M-7, Hawaii Revised Statutes (HRS)
- B. Discussion of this Board's Upcoming Advocacy Activities and Programs in accordance with the Board's "Powers" under Section 201M-5, HRS

#### VI. Next Meeting: Scheduled for Wednesday, April 20, 2016, at 1:00 p.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

#### VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

# Exhibit 1



DEPARTMENT OF TAXATION

Adoption of Chapter 18-231  
Hawaii Administrative Rules

\_\_\_\_\_, 2016

1. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-231-3-1.1 Request for Reconsideration of Assessment.** (a) A request for reconsideration of assessment means the process by which a taxpayer requests the department to grant a reconsideration of assessment under section 18-231-3-1.2.

(b) A request for reconsideration of assessment is a purely administrative matter. A taxpayer's appeal rights are unaffected by a request for reconsideration of assessment, and a request for reconsideration of assessment does not constitute an appeal to the Board of Review or the Tax Appeal Court, or participation in the Expedited Appeals and Dispute Resolution Program described in section 231-7.5, HRS.

(c) The department may grant or deny any request for reconsideration of assessment in its sole discretion.

(d) A request for reconsideration of assessment shall be made by the taxpayer in writing to the auditor or tax return examiner listed on the Notice of Final Assessment or Denial Letter. The request for reconsideration of assessment shall be signed by the taxpayer and shall include:

- (1) A detailed summary of facts and circumstances that the taxpayer believes would, if taken into consideration, result in a different assessment;
- (2) A list of documentation, evidence, or other information not previously considered by the department that supports the taxpayer's position under paragraph (1); provided that if the department grants a request for

reconsideration of assessment under subsection (g), the taxpayer shall provide all such listed documentation, evidence, or other information within thirty days unless otherwise specified by the department; and

- (3) An explanation of why the taxpayer did not provide the facts, documentation, evidence, or information under paragraphs (1) and (2) during the audit or before the department issued the Notice of Final Assessment or Denial Letter.

(e) If the time for the taxpayer to appeal a Notice of Final Assessment or Denial Letter has elapsed, the department may require the taxpayer to pay no more than thirty per cent of the portion of the assessment in dispute prior to granting a request for reconsideration of assessment. The amount paid under this subsection shall be applied according to section 231-27, HRS, and shall not be considered a payment under protest under section 40-35, HRS.

(f) The granting of a request for reconsideration of assessment is merely an acknowledgment that the department will consider the additional documentation, evidence, or other information listed in the taxpayer's request, and in no way ensures or indicates that the department will issue a new, modified, or amended Notice of Final Assessment or Denial Letter after such reconsideration.

(g) The department shall notify the taxpayer in writing of the grant or denial of a request for reconsideration of assessment. If the department elects to grant a request for reconsideration of assessment, the department shall notify the taxpayer in writing that:

- (1) The department has granted the taxpayer's request for reconsideration of assessment; and
- (2) Reconsideration of assessment does not affect the taxpayer's appeal rights and the taxpayer should take steps to ensure it perfects any appeal rights related to the

existing Notice of Final Assessment or Denial Letter." [Eff ]  
(Auth: HRS §231-3(9)) (Imp: HRS §231-3)

2. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

**"§18-231-3-1.2 Reconsideration of Assessment.**

(a) For purposes of this section, "reconsideration of assessment" means the process by which the department reevaluates the results of:

(1) A prior audit where tax was assessed and remains unpaid; or

(2) A prior denial of a taxpayer's claim of a refund or tax credit.

(b) Upon granting a request for reconsideration of assessment under section 18-231-3-1.1, the department may:

(1) Request additional substantiation, worksheets, spreadsheets, explanations and other documentation; and

(2) Amend or rescind existing assessments, issue new assessments, or let existing assessments stand in its sole discretion." [Eff

] (Auth: HRS §231-3(9)) (Imp: HRS §231-3)

3. Material to be repealed is bracketed and stricken. New material is underscored.

4. These amendments to Chapter 18-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.



I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Director  
Department of Taxation

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

DRAFT

DEPARTMENT OF TAXATION

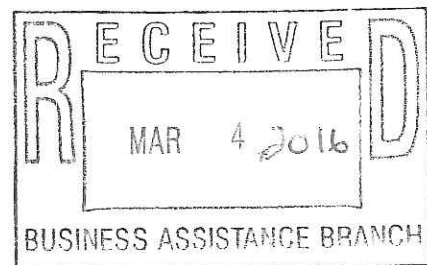
Amendments to Chapter 18-231,  
Hawaii Administrative Rules

\_\_\_\_\_, 2016

SUMMARY

1. New §§ 18-231-3-1.1 and 18-231-3-1.2 are added.

DRAFT



**§18-231-3-1.1 Request for Reconsideration of Assessment.** (a) A request for reconsideration of assessment means the process by which a taxpayer requests the department to grant a reconsideration of assessment under section 18-231-3-1.2.

(b) A request for reconsideration of assessment is a purely administrative matter. A taxpayer's appeal rights are unaffected by a request for reconsideration of assessment, and a request for reconsideration of assessment does not constitute an appeal to the Board of Review or the Tax Appeal Court, or participation in the Expedited Appeals and Dispute Resolution Program described in section 231-7.5, HRS.

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(d) A request for reconsideration of assessment shall be made by the taxpayer in writing to the auditor or tax return examiner listed on the Notice of Final Assessment or Denial Letter. The request for reconsideration of assessment shall be signed by the taxpayer and shall include:

- (1) A detailed summary of facts and circumstances that the taxpayer believes would, if taken into consideration, result in a different assessment;
- (2) A list of documentation, evidence, or other information not previously considered by the department that supports the taxpayer's position under paragraph (1); provided that if the department grants a request for reconsideration of assessment under subsection (g), the taxpayer shall provide all such listed documentation, evidence, or other information within thirty days unless otherwise specified by the department; and
- (3) An explanation of why the taxpayer did not provide the facts, documentation, evidence, or information under paragraphs (1) and (2) during the audit or before the department issued the Notice of Final Assessment or Denial Letter.

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- (1) The department has granted the taxpayer's request for reconsideration of assessment; and
- (2) Reconsideration of assessment does not affect the taxpayer's appeal rights and the taxpayer should take steps to ensure it perfects any appeal rights related to the existing Notice of Final Assessment or Denial Letter. [Eff \_\_\_\_\_ ] (Auth: HRS §231-3(9)) (Imp: HRS §231-3)

**§18-231-3-1.2 Reconsideration of Assessment.**

(a) For purposes of this section, "reconsideration of assessment" means the process by which the department reevaluates the results of:

- (1) A prior audit where tax was assessed and remains unpaid; or
- (2) A prior denial of a taxpayer's claim of a refund or tax credit.

(b) Upon granting a request for reconsideration of assessment under section 18-231-3-1.1, the department may:

- (1) Request additional substantiation, worksheets, spreadsheets, explanations and other documentation; and
- (2) Amend or rescind existing assessments, issue new assessments, or let existing assessments stand in its sole discretion. [Eff ] (Auth: HRS §231-3(9)) (Imp: HRS §231-3)

DEPARTMENT OF TAXATION

Chapter 18-231, Hawaii Administrative Rules, on the Summary Page dated \_\_\_\_\_, was adopted on \_\_\_\_\_, 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 18-231 shall take effect ten days after filing with the Office of the Lieutenant Governor.

\_\_\_\_\_  
MARIA E. ZIELINSKI  
Director of Taxation

APPROVED:

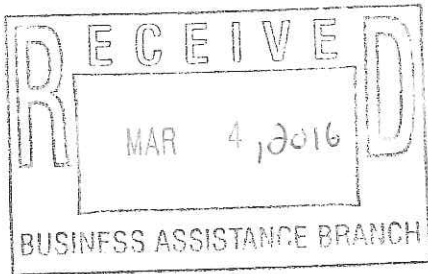
\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Filed



DEPARTMENT OF TAXATION

Amendments to Chapter 18-251  
Hawaii Administrative Rules

\_\_\_\_\_, 2016

1. Section 18-251-1-04, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"(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 ~~[6]~~ six cars for a one-week familiarization tour of the islands. All ~~[6]~~ six of the cars are subject to the rental motor vehicle surcharge tax~~[-as follows: \$2 a day for 7 days, for 6 cars totaling \$84 (\$14 x 6) surcharge tax due].~~

**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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-1)

2. Section 18-251-2-02, Hawaii Administrative Rules, is amended to read as follows:

**"§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~~] 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 [~~of \$2~~] 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 noon,]~~ 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 [a \$4] the rental motor vehicle surcharge tax[~~, \$2 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]~~ 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, [~~there is a~~] rental motor vehicle surcharge tax [~~of \$8.~~] 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]

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 [~~15~~] fifteen minutes and only charges Ms. Mover for one day's rental. Ms. Mover has rented the truck for one day, and [~~there is a~~] rental motor vehicle surcharge tax [~~of \$2.~~] 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 [~~is \$2.~~] 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] 8:00 a.m. on Monday; returns the car to the Oahu station at [8] 8:00 a.m. on Tuesday; and flies to Molokai, picking up a car there at [9] 9:00 a.m. At [5] 5:00 p.m., she returns the car to the Molokai station and flies to Maui, picking up a car at [6] 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 ~~[for that day is only \$2, and the total surcharge tax for the entire 7 days' rental is \$14.]~~ 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] 9:00 a.m. and must be

returned by Wednesday [9] 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~~] 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 [~~, and the surcharge tax due is \$4~~].

(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 [~~:- first, the tax is not a sales tax but a surcharge tax, and second,~~] ; 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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

3. Section 18-251-2-04, Hawaii Administrative Rules, is amended to read as follows:

**"§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] 9:00 a.m. Dissatisfied with the car's performance, at [~~noon~~] 12:00 p.m. Mr. Roe exchanges the car for another one. At [5] 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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

4. Section 18-251-2-05, Hawaii Administrative Rules, is amended to read as follows:

**"§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, [~~and is not deductible~~] 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 [~~\$2-a day~~] 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 [~~breakout~~] break out any costs and simply lists "Total Due: \$12" on the last line. Although [~~\$2~~] 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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

5. Section 18-251-2-06, Hawaii Administrative Rules, is amended to read as follows:

**"§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 [~~as follows:~~

- ~~(1) \$65 each month for each tour vehicle that falls into the over twenty five passenger seat category; and~~
- ~~(2) \$15 each month for each tour vehicle that falls into the eight to twenty five passenger seat category.] at the rates set forth in section 251-2(b), HRS.~~

**Example:**

ABC Bus Tours (ABC) owns [~~10~~] 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[~~7~~] 1992, ABC conducts tours using [~~5~~] five buses; uses [~~1~~] 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 [~~4~~] four buses, which are serviced that month. The tour vehicle surcharge tax for the month of January[~~7~~] 1992[~~7~~] is imposed on [~~6~~] six buses[~~7~~ totaling ~~(6 X \$65) \$390~~].

**Example:**

DEF Sightseeing (DEF) owns [~~10~~] 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 [~~4~~] 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 [~~5~~] 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 [~~5~~] five vehicles - the [~~4~~] four that were usually used in the evenings and the additional [~~1~~] one used on the night of the breakdown. The [~~total~~] tour vehicle surcharge tax for the month is [~~45 X \$15) \$75~~] imposed on five minibuses." [Eff



1/27/92; am 1/2/93; am ] (Auth: HRS  
§§231-3(9), 251-15(b)) (Imp: HRS §251-2]

6. Section 18-251-2-07, Hawaii Administrative Rules, is amended to read as follows:

**"§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.

**[Example:**

~~GHI Tours (GHI) owns 10 vans and minibuses with passenger capacities between eight to twenty five persons. GHI uses all of its vehicles every month in its business. The amount of GHI's total tour vehicle surcharge tax liability for each month, \$150, is not deductible from gross income under the public service company tax law, chapter 239, HRS.]~~ [Eff  
1/27/92; am 1/2/93; am ] (Auth: HRS  
§§231-3(9), 251-15(b)) (Imp: HRS §251-2)

7. Chapter 18-251, Hawaii Administrative Rules, is amended by adding a new subchapter to read as follows:

"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 ]  
(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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

8. Section 18-251-3-02, Hawaii Administrative Rules, is amended to read as follows:

**"§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.

~~[(c) Subsections (a) and (b) are illustrated as follows:]~~

**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 ] (Auth: HRS §§231-3(9), 251-  
15(b)) (Imp: HRS §251-3)

9. Material to be repealed is bracketed and  
stricken. New material is underscored.

10. These amendments to Chapter 18-251, Hawaii  
Administrative Rules, shall take effect ten days after  
filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the  
rules, drafted in the Ramseyer format pursuant to the  
requirements of section 91-4.1, Hawaii Revised  
Statutes, which were adopted on October 9, 1981, and  
filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Director  
Department of Taxation

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



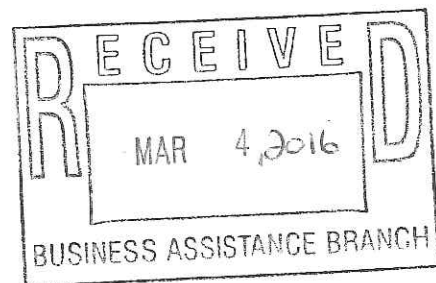
DEPARTMENT OF TAXATION

Amendments to Chapter 18-251,  
Hawaii Administrative Rules

\_\_\_\_\_, 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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-1)

DRAFT

**§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 ] (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 ](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 ] (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 four vehicle surcharge tax for the month is imposed on five minibuses. [Eff 1/27/92; am 1/2/93; am ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2]

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**§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 ]  
(Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

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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 ]  
(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 ] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

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**§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 ] (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 \_\_\_\_\_, was adopted on \_\_\_\_\_, 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.

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MARIA E. ZIELINSKI  
Director of Taxation

APPROVED:

\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Filed