PUBLIC HEARING ON

Peer-to-Peer Car Sharing Act of 2023,
Bill 25-0476

Before the
Committee on Business and Economic Development
The Honorable Kenyan R. McDuffie, Chairperson

Council of the District of Columbia

Wednesday, December 18, 2024 at 10:30 a.m.
John A. Wilson Building, Room 500

Comments of

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Chairman McDuffie and Members of the Committee of Business and Economic Development, the Office of Tax and Revenue ("OTR") is pleased to submit comments on Bill 25-076, the "Peer-to-Peer Car Sharing Act of 2023" (the "Bill").

The Bill's stated purpose is to govern "peer-to-peer car sharing programs". It includes various provisions, including insurance coverage, assignment of liability, automobile safety, driver's license verification, and record keeping. These comments do not focus on those provisions, but address clarifications needed regarding the imposition of District sales and use tax on vehicle rental transactions that take place through on-line marketplaces operated by peer-to-peer car sharing programs.

Marketplaces and Marketplace Facilitator Sales Tax Collection

Over the past several years there has been a proliferation of on-line marketplaces where buyers can purchase almost any good or service, including groceries, liquor, prepared food, hotel and other short-term accommodations, parking, and rental cars. To that end, in 2018, the District enacted the Internet Sales Tax Amendment Act of 2018[1] (the "Act") which, among other things,

[1] Effective March 22, 2019 (D.C. Law 22-258; D.C. Official Code § 47-2001 *passim*).

amended Chapter 20, Title 47 to require all "marketplace facilitators" to collect and pay District sales tax on transactions that occur on their platforms.[2]

The Act defined a "marketplace" as "a physical or electronic place, including a store, a booth, an Internet web site, a catalogue, or a dedicated sales software application, where a retail sale . . . occurs." D.C. Official Code § 47-2001(g-4). The Act further defined "marketplace facilitators" as:

> "[A] person that provides a marketplace that lists, advertises, stores, or processes orders for retail sales subject to tax under this chapter for sale by such marketplace sellers, and directly or indirectly collects payment from a purchaser and remits payment to a marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

D.C. Official Code § 47-2001(g-5). As of that April 1, 2019, marketplace facilitators have been required to collect District sales tax and remit to OTR the tax that is due on the sales facilitated on their marketplaces.

Accordingly, and, as it relates to this Bill, since April 1, 2019, all entities that provide an internet or a dedicated sales software application where vehicles

[2] "Marketplace facilitators shall collect and remit sales tax on all sales the marketplace facilitator makes on its own behalf and all sales the marketplace facilitator facilitates on behalf of marketplace sellers to customers in the District of Columbia regardless of whether the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator." D.C. Official Code § 47-2002.01a.

are offered to be rented for consideration, including via peer-to-peer car sharing programs, are and have been required to collect District sales tax on the gross receipts for sales that occur on their platforms. For example, the Bill expressly defines "peer-to-peer car sharing" as a business platform that merely "connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration" rather than the rental of vehicles through an online marketplace. Further, the Bill describes the transaction as "a vehicle that is available for sharing through a peer to-peer car sharing program" and, again, not as a sales transaction for the rental of a vehicle processed by an online marketplace facilitator.

Accordingly, the Office of Chief Financial Officer suggests a technical amendment to clarify that any transaction for the sharing of a vehicle for consideration made through a marketplace, including a peer-to-peer car sharing program, continues to be subject to District sales tax, currently at a tax rate of 10.25%. A copy of proposed clarifications is attached for your reference.

Sales and Use Tax Rate on Rental Vehicles

District law imposes sales tax and use tax on the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services. In general, a 6% sales tax is due on the sale of any tangible personal property that is not otherwise exempt. The Council has also enacted special tax rates for specific types of sales, including the sale of or charges for the rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01. The current rates that apply to the rental or leasing of rental vehicles and utility trailers are 9.25% (pursuant to D.C. Code § 47-2002(a)(4B)) and 1% (pursuant to D.C. Code § 47–2002.02(2)(C)),[3] for a total rate of 10.25%.[4]

Some marketplace facilitators have taken the position that sales made on their marketplaces for vehicle rentals are not subject to the 10.25% rate because, in many cases, the owner of the rental vehicle owns less than 5 rental vehicles. As a result, there can be effectively two tax rates on the sale of rental vehicles in the

[3] The additional 1% tax is dedicated to the Washington Convention Center pursuant to D.C. Official Code § 47–2002.03.

[4] The 10.25% rate applies to rental vehicles "*as defined in § 50-1505.01"*. Section 50-1505.01(8) defines "rental vehicle" as "a motor vehicle owned by a rental operator and *which is a part of a rental fleet*." Section 50-1505.01(5) defines "rental fleet" as "5 or more rental vehicles or 5 or more utility trailers which a rental operator designates as a rental fleet." Further, Section 50-1505.01(6) defines "rental operator" as "an owner of 5 or more rental vehicles . . . who is engaged in the business of renting or leasing, or of offering to rent or lease, to others, such vehicles or trailers without drivers."

District – 10.25% for traditional vehicle rentals (online or brick & mortar) and 6% for certain marketplace vehicle rentals. The Office of Chief Financial Officer suggests a technical amendment to clarify that the 10.25% total sales tax rate applies to both rental vehicle transactions through an online marketplace and the sharing of vehicles for consideration via a peer-to-peer car sharing program, with a conforming change to the use tax rate. Again, a copy of proposed clarifications is attached for your reference.

Thank you for the opportunity to comment on the Bill. Please feel free to contact me if you have any questions.

§ 47–2002. Imposition of tax.

(a) A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale at retail" in this chapter).

* * *

(4B) The rate of tax shall be 9.25% of the gross receipts from the following transactions:

(A) ~~t~~The sale of or charges for rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01; or

(B) The sale of or charges from any transaction for the sharing of a vehicle or utility trailer for consideration made through a marketplace as defined in § 47-2001(g-4), including, but not limited to, a peer-to-peer sharing program, regardless of whether the rental vehicle or utility trailer is owned by a rental operator as defined in § 50-1505.01(6) or part of a rental fleet as defined in § 50-1505.01(5);

§ 47–2002.02. Tax on gross receipts for transient lodgings or accommodations; food or drink for immediate consumption; spirits sold for consumption on premises; rental vehicles.

A tax, separate from, and in addition to, the tax imposed pursuant to § 47-2002, is imposed on vendors engaging in the business activities listed in paragraphs (1) and (2) of this section for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sales" and "sale at retail" pursuant to § 47-2001(n)(1)). The rate of the tax shall be:

* * *

(2) 1% of the gross receipts from the sale or charges made for:

* * *

(C) (i) Rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01(8) and (9); or

(ii) Any transaction for the sharing of a vehicle or utility trailer for consideration made through a marketplace as defined in § 47-2001(g-4), including, but not limited to, a peer-to-peer sharing program, regardless of whether the rental vehicle or utility trailer is owned by a rental operator as defined in § 50-1505.01(6) or part of a rental fleet as defined in § 50-1505.01(5);; or

§ 47–2202. Imposition of tax.

(a) There is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and service sold or purchased at retail sale.

* * *

(3B) The rate of tax shall be 9.25% of the gross receipts from the following transactions:

(A) T~~t~~he sale of or charges for rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01; or

(B) The sale of or charges from any transaction for the sharing of a vehicle or utility trailer for consideration made through a marketplace as defined in § 47-2001(g-4), including, but not limited to, a peer-to-peer sharing program, regardless of whether the rental vehicle or utility trailer is owned by a rental operator as defined in § 50-1505.01(6) or part of a rental fleet as defined in § 50-1505.01(5);

§ 47–2202.01. Tax on gross receipts for transient lodgings or accommodations; food or drink for immediate consumption; spirits sold for consumption on premises; rental vehicles.

A tax, separate from, and in addition to, the taxes imposed pursuant to § 47-2202 is imposed on the use, storage, or consumption of certain tangible personal property and services sold or purchased at retail sale in the District. Vendors engaging in the business activities listed in paragraphs (1) and (2) of this section and purchasers of the vendors' tangible personal property and services shall pay the tax at the following rate:

* * *

(2) 1% of the gross receipts from the sale or charges made for:

* * *

(C) (i) Rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01(8) and (9) or

(ii) Any transaction for the sharing of a vehicle or utility trailer for consideration made through a marketplace as defined in § 47-2001(g-4), including, but not limited to, a peer-to-peer sharing program, regardless of whether the rental vehicle or utility trailer is owned by a rental operator as defined in § 50-1505.01(6) or part of a rental fleet as defined in § 50-1505.01(5);; or