

Senate Ways and Means Committee

Sonja Caldwell 271-2117

HB 15-FN, relative to including under the meals and rooms tax facilitators of Internet transactions of motor vehicle rentals and facilitators of Internet transactions of room occupancies.

Hearing Date: April 19, 2021

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill adds and modifies definitions and requirements in the meals and rooms tax to include facilitators of Internet transactions of motor vehicle rentals and facilitators of Internet transactions of room occupancies.

Sponsors:

Rep. Packard

Rep. Major

Rep. Almy

Rep. Abrami

Who supports the bill: Chryssa Alexis (Enterprise Holdings), Rep. Almy, Rep. Major, Henry Veilleux (NHLRA), Stuart White

Who opposes the bill: John Olsen (Internet Association), Genevieve Strand (American Society of Travel Advisors), Steve DelBianco (NetChoice), Michael McLaughlin (Avail), Maura Weston (Turo), Stephen Shur (Travel Technology Association), Carl Szabo (NetChoice), Christopher Gilrein (TechNet), Alvin See, Tracie Robinson (Expedia Group)

Who is neutral on the bill: Carollynn Lear (DRA)

Summary of testimony presented:

Rep. Packard

- This is the third session this bill has been introduced. The first time, it was delayed due to the Wayfair decision. Last year, it was part of an omnibus bill that was vetoed.
- This bill was combined in the House with Airbnb. His bill as introduced only covered the car rental portion.
- A number of years ago, the legislature decided to apply the meals and rooms tax to a car rental.
- Turo and other companies got into the car rental business. They have a different platform than standard car rental companies like Enterprise, Hertz and Avis that have brick and mortar

stores and own their own cars. It is a different model whereby they facilitate people renting their cars through them. All they do is rent cars.

- This bill says that if they rent cars in NH, the same rules apply to them as to the brick-and-mortar stores. If the legislature eliminated the tax for car rentals, this would be a moot point, but as long as the meals and rooms tax applies to car rentals it should be applied evenly across the board. This is a matter of fairness.
- This is not a new tax. It is applying the existing tax to a different form of car rental.
- Any entity renting cars in NH should be charged the same tax.
- This company says they are a ride sharing company, but someone rented a car from Turo and it was \$90 a day. They have insurance policies.

Sen. Giuda asked if there was any way to quantify how much revenues should be paid to the state that are being missed at this time.

Rep. Packard said he tried to calculate that a while back and at the time it was \$5,000-7,000. We are not trying to discourage this type of industry. If the legislature eliminated the tax on car rentals, that would not bother him, but as long as it exists, it should be applied fairly to all who rent cars in NH. It is not going to generate millions of dollars. It is a matter of fairness. The law should be applied equally to all people.

Rep. Major

- The House spent a lot of time discussing the bill. It levels the playing field between online and retail facilitators of both car and room rentals. Meals and room taxes should be applied equally regardless of whether one's business model is in-person or online.
- This bill is not a new tax.
- House Ways and Means amended the bill to ensure that it does not apply to travel service agencies.
- It is applied to short term rentals, which is anything less than 185 continuous days.

Rep. Almy

- She sent screenshots from the Turo website to the committee. They make it clear that Turo is not an electronic billboard. They provide insurance for both driver and car owner. It provides roadside assistance and customer support. It dictates the cleanliness of the car. It deals with complaints and provides for easy cancellation. On its website it uses comments comparing it to Airbnb.
- The Airbnb part of the bill was uncontroversial when they added it to this bill because they deal with the same section of the meals and rooms tax statute.
- Both aspects of the bill are modernizing the language needed to apply the tax now that a lot of our commerce is online. If we do not, we are under constitutional threat because we are treating the same businesses differently and putting a tax burden on retail NH-based businesses that is not on the national online businesses.
- Airbnb is collecting the meals and rooms tax. They have many smaller competitors that we do not have the bandwidth to go after.
- This bill defines "facilitator" in the modern age. If you are collecting money in order to create a room or car rental and you do not collect and remit it under our law, the person you are collecting it from (the car owner, inn, or home) is liable for that money. If that person is caught by DRA, they must pay the back tax.

Sen. Daniels asked how much revenue we bring in on car rentals.

Rep. Almy said 10% of meals and room tax or about \$8-9 million.

Carollynn Lear (DRA)

- The DRA has no position on HB15; however, it does address a long-standing meals and room tax situation. The NH Supreme Court case in NH v. Priceline is important to understanding this situation.
- The Meals and Rooms tax has always taxed room sharing and car sharing transactions. Under the statute these transactions clearly constitute taxable transactions.
- The Priceline case said DRA could not require online platforms to become licensed to collect the meals and rooms tax for the transactions that they facilitate. Therefore, each individual homeowner who rents their property using an online platform has to register as an operator with the DRA and must collect and remit the tax on those transactions.
- HB15 does not change taxability of the transactions it just says the platform not the homeowner is responsible for collecting the tax.
- DRA would license each platform as the operator instead of the thousands of homeowners who currently must become licensed.
- Audits and collections would be against the platforms. Their expectation is that would reduce the number of audits, returns, and licenses the department issues for these sharing transactions.
- The DRA is ready to administer HB15 with no additional appropriation required.
- HB15 takes effect 60 days after passage. They would suggest for taxpayer record keeping convenience that the effective date take place on the first day of a month. They want to give taxpayers time to prepare for this change. They suggest 60 days is too fast and believe Oct 1, 2021 would work better.

Sen. Giuda asked how much the value of revenues lost at present or that might accrue in the future is.

Ms. Lear said they really do not know. A large portion of the tax base, individual homeowners, are complying currently. The bill would not result in an increase in revenue, it just changes which taxpayer is responsible for remitting the tax. There is a group of unknown, noncompliant taxpayers who do not remit on their own currently, but it is unknowable.

John Olsen – Director for the Internet Association in the northeast.

- They represent a number of Internet platforms like Expedia, Turo, Airbnb, and others.
- There is no value in passing this bill in terms of revenue.
- It shifts responsibility to out-of-state Internet platforms. These platforms help NH residents make ends meet or supplement their incomes.
- This is a new tax. It applies not just to home sharing companies but to online travel agents. The bill was amended to remove taxation on commissions but does apply to service fees and the total consumer cost of renting through an online travel platform.
- With peer-to-peer car sharing, there are 400 current consumers in NH using the platform, using their personal vehicles. Turo and other car sharing platforms do not have fleets. The distinction between peer-to-peer car sharing and traditional rental companies is that these are personal vehicles.

Sen. Daniels asked at what point in time something becomes a fleet.

Mr. Olsen said he does not want to quantify what we see with car rental companies, but he would say several hundred.

Sen. Daniels asked if he bought 100 vehicles if he could fit into this area where he would not be taxed.

Mr. Olsen said he would avoid the tax, but that scenario seems unlikely.

Sen. Rosenwald said she looked at the Turo website and in addition to individuals renting out their cars, it also will facilitate transactions for independent car rental agencies. She asked how that does not make them a car rental agency.

Mr. Olsen said that is a new service he is unaware of. He said it probably is not a company at the level of Avis or Hertz.

Genevieve Strand – American Society of Travel Advisors

- They are concerned with the bill. It would impose new taxes on travel agency services.
- The average travel agency has laid off 60% of staff. Average business income in 2020 was down 82%. They question a tax increase on this decimated industry.
- While the bill exempts commissions paid to travel agents by the operators, any fees that travel agents charge their customers for a hotel or car rental booking in the state would be subject to new taxation.
- In 2019 45% agents charged serviced fee. These fees are charged for saving consumers time and money by helping them navigate a complex travel marketplace.
- This would place administrative burdens on these agencies.

Sen. Giuda said this tax would not be an additional burden on the company. It is levied on the renter of the vehicle.

Ms. Strand said the way their business model is set up, sometimes the travel advisors are the ones purchasing the inventory and packaging it to sell to clients. They would be caught up in those taxes because of the business model. They would have to register with the state, collect the tax and administer it to the state and that is not a small burden on a small business.

Michael McLaughlin – AVAIL

- AVAIL is a third party, peer-to-peer car platform.
- The basis of this attempt to increase taxation on individuals in NH or level the playing field. Is putting a \$26.2 billion dollar company against people in the north country that might want to rent a car for the weekend or to get to the doctor. North of Concord it is hard to find Hertz or Avis.
- AVAIL lets a person who does not have a chance otherwise, to rent a car to get transportation.
- No one wants to put the individual in NH on the hook for the tax. The bill specifically exempts the individual from the liability of the tax. The bill says the tax must be collected from the platform.
- Individuals in NH who might want to rent that car should not have to register with the platform. Leveling the playing field can never be done when you are up against millions of dollars of marketing and fleet size.

Steve DelBianco - NetChoice

- NetChoice is a trade organization. Their members include Amazon, eBay, Expedia, Facebook, Turo, and other ecommerce companies.
- HB15 seeks to apply NH's meals and rooms tax to fees travelers pay to their travel agent. Those advisory services are provided at the time and place where the travel agent delivered

the services to the customer. That is typically days or weeks before the traveler shows up at the NH hotel where all tax is currently collected for the amount the hotel receives. This bill demands travel agents outside NH add this tax to their fees when booking travel in NH for a customer.

- A few years ago in 2018, after the Wayfair ruling, NH adopted the exact opposite policy.
- SB242, adopted in 2019 completely contradicts HB15.
- This bill tries to tax a travel agent outside NH providing travel services to customers outside NH. He asked how NH would enforce the bill against travel agents outside of the state.
- Wayfair is about sales tax not meals and room tax.
- He said the legislature contradicted its beliefs on interstate sales taxes and that undermines the NH attorney general's cases to protect NH businesses against foreign states.
- The same is true for that part of HB15 that requires peer-to-peer car sharing companies to add taxes. You can force a NH car or truck owner to pay meals and rooms tax on the amount they receive, but you cannot enforce the tax on extra fees charged on peer-to-peer car rentals outside of NH. Revenue will only be from NH residents, car-owners, and travel agents.

Maura Weston – Turo

- They are opposed to the bill.
- This captures all peer-to-peer car sharing activity.
- Their marketplace provides a service and an economic opportunity for NH car owners to earn a small amount of extra income. Their hosts earn on average, about \$300 a month. This service can help drivers with transportation problems and provides a solution especially in rural areas.
- She asked the committee to think about the impact of this bill on NH citizens who are hosts, such as a college student who might need their car only a few days a week and who wants to rent it to offset debt, or someone who might need a pickup truck for a day.
- Neither Turo nor their hosts are car rental companies. They should not be taxed or regulated as one. Turo owns no vehicles. The vehicles are owned and shared by NH citizens. The amount someone pays for the car is set by the host.
- This is a government interference with the use of personal property. This would shut down the opportunity for peer-to-peer car sharing in NH.

Sen. Rosenwald said the website says Turo is primarily person to person, but rental companies can share their fleets by offering commercial rental insurance to guests. If a rental car company rents out their fleet through their own site, they would pay meals and rooms tax but if they advertise that same fleet on Turo, they would not pay the tax. She asked if that was correct.

Ms. Weston said the tax is imposed on individual using the vehicle. She is not familiar with how car rental companies work. HB15 shifts for those people who use a platform to collect and remit.

Sen. Rosenwald said that if a rental car company paying the tax, switches to advertising the same fleet on Turo they are avoiding taxation.

Ms. Weston said what she is getting at is two different business models. Rental car companies own and buy the cars. That is one business model. Peer-to-peer car sharing is a very different business model. The platform itself does not own the cars. Any fleet owner would have to be licensed in NH. They would be liable to the state of NH if they own a fleet.

Steve Shur – Travel Technology Assoc. President

- Represents Expedia, Priceline, Airbnb, and others.

- They are concerned about the tax implications for hotel rooms and car rentals booked on sites like Expedia and Priceline.
- He thinks the bill should be limited to just car sharing.
- This is an expansion of the meals and rooms tax to all transactions, short-term rentals, hotel rooms, and car rentals booked on online travel sites.
- NH is already getting all applicable taxes on hotels and car rentals that are booked via online travel sites.
- Because of Airbnb's agreement with the state as well as local realtors and property managers who are collecting the tax on behalf of the homeowners, NH is getting taxes on virtually all short-term rentals.
- He wants to focus on the transactions of hotel bookings via online travel sites as well as car rentals. Online travel sites do not buy hotel rooms, they are travel agents and charge the consumer a service fee, which would be subject to this tax under this legislation.
- When you book a room on Expedia, the price includes the room rate, taxes on the room, and a small service fee the travel agent charges the traveler. The hotel controls the price.

Sen. Giuda asked him to elaborate on his suggestion that we split out the two parts of the bill. Mr. Shur said the House Speaker's intent is to establish a new regulatory regime for Turo and peer-to-peer car sharing services. It was amended to include short term bookings via online platforms.

Chris Gilrein – TechNet in the northeast

- They are an industry organization that represents companies throughout the innovation spectrum including several peer-to-peer car sharing platforms and they are opposed to the bill.
- Peer-to-peer car sharing allows people to earn money on one of their biggest investments. It provides an opportunity to earn extra income by providing the marketplace for people to loan out their cars to others.
- This would levy a tax between neighbors simply because it was done on a platform.

Chryssa Alexis – Enterprise Holdings

- She is a NH resident and with Enterprise Holdings, she employs 400 people.
- Enterprise Holdings contributed \$8 million in state tax revenues. They are heavily invested in NH.
- Enterprise supports equal rules for all rental transactions.
- This is about compliance and fairness.
- The way rental car transactions are made has changed. These platforms do not collect the tax and their users do not realize they need to collect and remit the tax.
- This is not a new tax. The platforms being asked to collect the tax do not actually pay the tax.

Henry Veilleux – NH Lodging and Restaurant Assoc.

- They sternly support HB15. It is long overdue. Many bed and breakfasts and small inns in NH compete with these platforms. They want the tax applied evenly. There are some not collecting the tax that the state is not aware of.

Speaker Packard

- If you go to your neighbor and borrow his truck, that does not come under the rooms and meals tax. If you borrow a truck from your boss, that does not come under the meals and rooms tax. This applies to those who are renting their vehicles. It is a different platform. This should not be misconstrued.

Rep. Almy

- DRA has been collecting a lot of taxes from places not based in NH but have activities in NH.

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Date Hearing Report completed: April 22, 2021