



Department of Revenue Brief Analysis of Turo (Vehicle Rental Platform)

Background

Turo is a peer-to-peer car-sharing company. Formerly known as RelayRides, Turo allows car owners to make extra cash by renting out their vehicles while providing a convenient and quick way to rent a car to those needing transportation. Unlike traditional car-rental services, Turo does not own or maintain any cars. The company offers a platform on which car owners can rent their cars. Turo claims that its rental costs are lower compared to traditional car rental services.

Structure of the vehicle rental taxes in Alaska

Alaska levies an excise tax on fees and costs charged for the lease or rental of a passenger or recreational vehicle if the lease or rental does not exceed a period of 90 consecutive days.

The person working for the rental/lease agency that provides the leased or rental vehicle collects the tax from the individual renting or leasing the vehicle. The rental/lease agency in turn remits the tax to the Department of Revenue's Tax Division. For passenger vehicles, the rate is 10% of the total fees and costs for renting or leasing. For recreational vehicles, the rate is 3% of the total fees and costs for renting or leasing.

Vehicle rental/lease agencies file tax returns and remit taxes quarterly. The returns and payments are due the last day of the month following the end of the calendar quarter in which the rental/lease agencies collected the tax. All revenue from the vehicle rental tax is deposited into a special vehicle rental account in the General Fund. The Alaska Legislature may appropriate the balance in the vehicle rental tax account for tourism development and marketing.

Legislative History

2003 – The Legislature enacted the vehicle rental tax on Aug. 20, 2003. The tax became effective Jan. 1, 2004.

2004 – The Legislature exempted the rental of taxicabs by taxicab drivers from the vehicle rental tax. Effective May 8, 2004, and retroactive to Jan. 1, 2004, the division refunded any tax collected or remitted for taxicab rentals between Jan. 1 and May 8, 2004.

2006 – The Legislature exempted trucks rented by individuals for moving personal property and for vehicles provided to customers by automobile dealers as replacement transportation during warranty, recall, or service contract repairs, effective Jan. 27, 2006.

2013 – Effective May 10, 2013, the Legislature excluded motorcycles and motor-driven cycles as defined by AS 28.90.990 from the tax.

2014 – House Bill 193 (CH 74 SLA 14) added a new subsection to AS 43.52.080 allowing the department to share taxpayer information with a municipality relating to vehicle rental tax, as long as the municipality grants similar privileges to the department, it provides adequate safeguards for taxpayer confidentiality; and it uses the information for tax purposes.

2020 - The municipality of Anchorage passed ordinance AO No. 2020-55 to establish the duties and responsibilities of a rental vehicle hosting platform; and to establish the rules and responsibilities of rental agencies who use a hosting platform to conduct motor vehicle rental transactions.

Department of Revenues Views and Obligations

From the Department of Revenue’s perspective, when a charge for a vehicle rental occurs under Alaska Statutes a collection liability follows. If a vehicle is rented through Turo and the taxes are not remitted, then the Department of Revenue has taken the position that both Turo and vehicle owners using Turo are persons providing rentals that are responsible for collection and the tax may be enforced against either or both until collected in full. The legislature when it adopted the vehicle rental taxes gave specific authority to the Department of Revenue to adopt the regulations to implement the tax.¹ This indicates a degree of legislative leeway in the Department’s administration of the tax.² The Department of Revenue may receive a deference in its interpretation if the issue were taken to court. The Department of Revenue regulations would allow for the argument that Turo is acting in combination with the vehicle owner as a person providing the rental.

Legal Framework

AS 43.52.010: “There is imposed an excise tax on the charge for the lease or rental of a passenger vehicle in this state if the lease or rental of the passenger vehicle does not exceed a period of 90 consecutive days.”

AS 43.52.050: taxes “shall be collected and paid to the department by the person who provides the leased or rented vehicle.”

¹ 15 AAC 52.099(6) “‘person’ means an individual, firm, partnership, joint venture, government, association, corporation, estate, trust, receiver, or other group or combination acting as a unit.

² State v. Jeffery, 170 P.3d 226, 231 (Alaska 2007) (lack of guidance “necessarily grants the [agency] a certain degree of discretion”; thus the decision “is a question that involves [agency] expertise.”).

AS 44.23.020(b)(2): “The attorney general shall...(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue.”

AS 44.25.020(1) & (2): “The Department of Revenue shall (1) enforce the tax laws of the state; (2) collect, account for, have custody of, invest, and manage all state funds and all revenues of the state [with certain exceptions like the permanent fund].”

Dick Fischer Development No. 2 Inc. v. DOA, superior court case: Neither a commissioner nor any other state official has the authority to deprive the state treasury of public monies unless authorized by law. (Although this case is not binding, it aligns with the Department’s longstanding position on these issues.).

Case Law

The extent and nature of Turo’s activities have been a subject of recent litigation in other jurisdictions. A California court of appeals recently held that Turo was not a car rental company for the purposes of a California law that allows city operated airports to require car rental companies to collect a fee from customers.³ The decision looked to other definitions of “rent” in statute and the dictionary.⁴ A key factor in the decision was that Turo did not own the vehicles unlike the car fleets owned by rental companies.⁵

Massachusetts’ highest appellate court affirmed a preliminary injunction against Turo for listing vehicles as available for pickup or drop off at Logan Airport.⁶ Massachusetts’s port authority sought the injunction on the grounds that Turo was aiding and abetting vehicle owners in trespassing of the Logan Airport because the rentals were unauthorized commercial activity at the airport. In sum, California considered Turo not to have enough control over rentals to be a car rental company for the purposes of a tax, however Massachusetts considered Turo’s business activity close enough for rentals to be abetting trespassing in tort.

In 2020, the municipality of Anchorage passed ordinance AO No. 2020-55 to establish the duties and responsibilities of a rental vehicle hosting platform; and to establish the rules and responsibilities of rental agencies who use a hosting platform to conduct motor vehicle rental transactions. The ordinance required all online platforms offering rental vehicles to register, collect, and remit vehicle rental tax on behalf of the rental agencies or individual renters using the platform under the procedures and requirements set forth in 12.45.051 of the municipal code.

The United States Supreme Court decision in *South Dakota v. Wayfair, Inc.*, where the Court held that a physical presence in a taxing jurisdiction is no longer required for an entity to have a

³ Turo Inc. v. Superior Court of City and County of San Francisco, 80 Cal.App.5th 517 (2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Massachusetts Port Authority v. Turo, Inc.*, 166 N.E.3d 972 (Mass. 2021).

substantial connection with a jurisdiction. Thus, local and state taxing authorities now have the authority to require online hosting platforms to remit local taxes.

Conclusion

Historically, the Department of Revenue has tried to go after Turo to collect and remit the tax from the vehicle owners as their APP has the capability to do so, however Turo has not been cooperative in enabling the tax collection feature in their APP. More than three years ago, due to Turo's lack of cooperation, the Department of Revenue began seeking remittance from the vehicle owners, who are clearly liable of the tax under the state statutes. That said, the Department of Revenue's position on Turo's liability and the ability to enforce that tax collection obligation against Turo is not as clear as the vehicle owner's liability. To ensure Turo is the liable party for collection purposes, the statute would require an amendment.

In the last three months, the Commissioners office has facilitated several meetings with the Turo and the rental car companies' representatives in an effort to find a legislative fix moving forward for the tax collection of the vehicle rental sharing platform. Unfortunately, Turo representatives have been unwilling to find a workable solution with the brick-and-mortar rental car companies in order to propose a legislative fix. As a result, the rental car companies have approached Senator Claman to put forward legislation to address this issue moving forward. Senator Claman's office reached out to the Commissioner's office and requested a meeting to get the Department of Revenues views on this matter. The Department of Revenue is in support of finding a legislative fix to enable the Department to collect the tax from the vehicle rental network/platform.

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