

# DEPARTMENT OF TAXATION

## 2009 Fiscal Impact Statement

1. **Patron** John C. Watkins

2. **Bill Number** SB 1419

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

3. **Committee** Passed House and Senate

4. **Title** Short-Term Rental Property Tax

**Second House:**

           **In Committee**

           **Substitute**

  X   **Enrolled**

### 5. **Summary/Purpose:**

This bill would remove the Daily Rental Property Tax as a component of the Merchants' Capital Tax and make it a separate freestanding tax, renamed the Short-Term Rental Property Tax. The bill would expand the criteria for a taxpayer to be deemed as engaged in a short-term rental business and increase the Short-Term Rental Property Tax rate for certain heavy equipment rental property. In addition, this bill would outline the process for the decertification and recertification of previously designated short-term rental property lessors who fail to meet the requirements to be deemed a short-term rental property lessor. The bill would also specify that short-term rental property on which the Short-Term Rental Property Tax is imposed is exempt from the Business Tangible Personal Property Tax.

Under current law, the Merchants' Capital Tax applies to inventory of stock on hand, daily rental vehicles and daily rental property. Daily rental property is subject to the Daily Rental Property Tax component of the Merchants' Capital Tax and generally includes all tangible personal property held for rental and owned by a short-term rental business. A short-term rental business is one that derives 80% or more of its gross rental receipts from transactions involving rental periods of 92 consecutive days or less. Leased tangible personal property that is not owned by a short-term rental business is generally subject to the Tangible Personal Property Tax.

The provisions of this bill would become effective for tax years beginning on and after January 1, 2009.

6. **Fiscal Impact Estimates are:** Not Available. (See Line 8.)

7. **Budget amendment necessary:** No.

### 8. **Fiscal implications:**

This bill would have no impact on state revenues. This bill would result in an impact to local revenues for those localities that currently impose the Daily Rental Property Tax to the extent that this bill would expand the number of businesses subject to the Short-Term

Rental Property Tax and would authorize an increase in the tax rate for certain types of short-term rental property. This bill would also shift the taxation of property that is currently subject to the Tangible Personal Property Tax to the Short-Term Rental Property Tax. The impact would vary by locality depending on the rate of the locality's Tangible Personal Property Tax, the rate of its Short-Term Rental Property Tax, the value of the property and the gross proceeds from the property's rental.

**9. Specific agency or political subdivisions affected:**

All localities that impose a Daily Rental Property Tax

**10. Technical amendment necessary: No.**

**11. Other comments:**

Generally

The Merchants' Capital Tax is a local option property tax imposed on the inventory, daily rental passenger cars, daily rental property, and all other personal property of merchants except for tangible personal property not for sale as merchandise. The tax is currently imposed by 46 counties and 6 towns. Localities that impose the tax are prohibited from imposing a Business, Professional, and Occupational License (BPOL) tax on merchants. Additionally, the tax must be imposed at a rate that does not exceed the rate or ratio that was in effect in that locality on January 1, 1978.

Under the Merchants' Capital Tax, localities may impose a Daily Rental Property Tax that does not exceed 1 percent of the gross proceeds of a business engaged in a short-term rental business. For purposes of this tax, a person is engaged in the short-term rental business if not less than 80% of the gross rental receipts of such business in any year are from transactions involving rental periods of 92 consecutive days or less. The 92-day period includes all extensions and renewals to the same person or a person affiliated with the lessor.

Proposal

This bill would remove the Daily Rental Property Tax as a component of the Merchants' Capital Tax and make it a separate freestanding tax, renamed the Short-Term Rental Property Tax. The bill would retain most of the provisions currently in effect with respect to the Daily Rental Property Tax, but would make the following changes:

***Short-Term Rental***

This bill would make several changes to the determination of whether a person is engaged in a short-term rental business. Under the terms of this bill, a person would be deemed to be engaged in the short-term rental business if: 1) at least 80% of the gross rental receipts of the business during the preceding calendar year arose from transactions involving the rental of short-term rental property, other than heavy equipment property, for periods of 92 consecutive days or less; or 2) at least 60% of the gross receipts of the business in the preceding year arose from transactions involving the rental of heavy

equipment property for periods of 270 consecutive days or less. "Heavy equipment property" would be defined as rental property of an industry that is described under code 532412 or 532490 of the 2002 North American Industry Classification System, excluding office furniture, office equipment, and programmable computer equipment and peripherals.

This bill would also provide that if the local commissioner of the revenue makes a written determination that a business that has been previously certified as a short-term rental business has failed to meet either of the short-term rental requirements during a preceding tax year, the business will lose its certification as a short-term rental business and will become subject to the business personal property tax for all rental property for the tax year in which such certification is lost and any subsequent tax years. In such a case, the business will only be required to refund to customers daily rental property taxes previously collected if the commissioner makes a written determination that the business obtained its certification by knowingly making materially false statements in its application. A determination not to certify or to decertify a rental business as a short-term rental business may be appealed. A rental business that has been decertified will be eligible for recertification for a subsequent tax year if the business shows that it has met one of the two requirements for short-term rentals for at least ten months of operations during the present tax year.

### ***Imposition and Collection of Tax***

As with the current Daily Rental Property Tax, the Short-Term Rental Property Tax would be imposed at a rate of 1%. However, for short-term rentals for which not less than 60% of the gross rental receipts arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less, localities would be authorized to impose the Short-Term Rental Property Tax at a rate of 1½%. The bill would also require that individuals or businesses who are engaged in the short-term rental business and collect the tax file a quarterly return to the Commissioner of the Revenue of the locality where the tax was collected reporting the gross rental proceeds not later than the 15<sup>th</sup> day following the end of the calendar quarter. The tax must be paid not later than the last day of the month following the end of the calendar quarter, and lessors who fail to meet these requirements will be subject to penalties.

This bill would also provide that, with the exception of daily rental vehicles, all rental property must be classified, assessed and taxed as tangible personal property if: 1) The rental property is owned and rented by a person who is not engaged in a short-term rental business; or 2) The rental property has acquired situs in the Commonwealth and is owned and rented by a person who does not collect and remit to a locality within the Commonwealth a short-term rental property tax with respect to the rental of such property.

This bill would also specify that property on which a short-term rental property tax is imposed and collected is exempt from Tangible Personal Property Tax. In addition, this bill would provide that the Daily Rental Tax be administered by local officials in much the same way that the Retail Sales and Use Tax is administered by the Department of Taxation regarding exemptions, penalties and collections.

Finally, this bill would authorize any person engaged in the business of renting “daily rental property” as defined prior to the effective date of this bill, who was collecting the daily rental property tax on December 31, 2008 to remain eligible to collect the tax from January 1, 2009 through June 30, 2009, regardless of the requirement that at least 80% of such person’s gross receipts arising from rentals be from rentals of 92 days or less.

### ***Renter’s Certificate of Registration***

This bill would also clarify that the renter’s certificate of registration, currently required to be filed by every person engaging in the business of short-term rental of tangible personal property, must be filed annually, and that in the application, the lessor must specify the subdivision under which the business asserts that it is qualified for certification.

The provisions of this bill would become effective for tax years beginning on and after January 1, 2009.

### **Similar Legislation**

**House Bill 2472** is identical to this bill.

cc : Secretary of Finance

Date: 2/26/2009 KP  
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