

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** John C. Watkins

3. **Committee** House Finance

4. **Title** Daily Rental Property Tax

2. **Bill Number** SB 1419

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 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. The bill would also expand the criteria for a taxpayer to be deemed to be engaged in a short-term rental business. The bill would also specify that daily rental property on which the Daily Rental Property Tax is imposed is exempt from the Tangible Personal Property Tax. Additionally, the bill would require that businesses engaged in short-term rentals would be required to file a quarterly return to the local commissioner of the revenue reporting the gross rental proceeds collected.

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.

This bill would become effective on January 1, 2010, provided that the bill is reenacted by the 2010 Regular Session of the General Assembly.

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 impose the Daily Rental Property Tax to the extent that this bill would expand the number of businesses subject to the Daily Rental Property Tax and therefore shift the taxation of property that is currently subject to the Tangible Personal Property Tax to the Daily 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 Daily Rental Property Tax, the value of the property and the gross proceeds from its 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. 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 rentals:

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) an average of at least 80% of the gross rental receipts of the business during the preceding three calendar years arose from transactions involving rental periods of 92 consecutive days or less; or 2) an average of at least 60% of the gross receipts of the business in the preceding three calendar years arose from transactions involving rental to the public of equipment for direct use in construction, agricultural, silvicultural, industrial, or mining operations for periods of 365 consecutive days or less. Lessors in business for less than three years would make the computation based on the actual period during which their business had operated. Newcomers applying for a short-term rental certificate of registration would be

allowed to certify that they anticipate meeting either the 80% or 60% requirement during the year they apply for the certificate.

Imposition and Collection of Tax

This bill would also specify that property on which a daily rental property tax is imposed and collected is exempt from Tangible Personal Property Tax. 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. 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.

This bill would become effective on January 1, 2010, provided that the bill is reenacted by the 2010 Regular Session of the General Assembly.

Similar Legislation

House Bill 2472 would deem that contracts for the rental of tangible personal property that allow both the lessor and the lessee to terminate the contract at any time to be short term rental contracts for purposes of determining whether the lessor is engaged in a short term rental business subject to the Daily Rental Property Tax component of the Merchants' Capital Tax.

cc : Secretary of Finance

Date: 2/10/2009 KP
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