HOUSE BILL 537:
Alt. Hwy Use Tax Vehicle Subscriptions.

2019-2020 General Assembly

Committee:		**Date:**	November 14, 2019
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	S.L. 2019-69		Staff Attorney

***OVERVIEW:** S.L. 2019-69 defines "vehicle subscription" for purposes of the application of the alternate highway use tax and sets the tax rate at 5%, which is applied to the gross receipts derived from vehicle subscriptions. Under prior law, these subscriptions were considered short-term rentals by way of an interpretation of the Department of Revenue, which are subject to a rate of 8%.*

This act became effective October 1, 2019, and applies to vehicle subscription agreements entered on or after that date.

CURRENT LAW:

Alternate Highway Use Tax. – The sale of a motor vehicle for which a certificate of title is issued is subject to a 3% highway use tax.[1] A retailer who purchases a motor vehicle for lease or rental has the option of paying an alternate tax, in lieu of the highway use tax, on the gross receipts derived from the lease or rental of the vehicle. The rate is 3% for long-term leases or rentals and 8% for short-term leases or rentals.

A long-term lease or rental is defined as a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days. A short-term lease or rental is a lease or rental that is not a long-term lease or rental.

Like the highway use tax, the alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on the retailer, but it is added to the lease or rental price and paid by the person who leases or rents the vehicle.

Taxes collected at the rate of 3% are credited to the Highway Trust Fund. Of the taxes collected at the rate of 8%, $10 million is credited annually to the Highway Fund and the remainder is credited to the General Fund.

Additional Taxes on Short-Term Rentals. – Short-term rentals may be subject to two additional taxes. A county may levy a tax of up to 1.5% on the gross receipts derived from short-term leases or rentals of vehicles, the proceeds of which are retained by the county. Forty-two counties currently levy this tax. A regional public transportation authority or a regional transportation authority[2] may also levy a tax of up to 5% on short-term leases or rentals. An authority may use the funds for any purpose for which the authority is authorized to use funds, including pledging funds in connection with the financing of a public transportation system.

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[1] For the retail sale of a vehicle, the tax applies to the retail sales price of the motor vehicle including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a trade-in.

[2] The two Authorities that levy a 5% tax on short-term vehicle rentals are: (1) the Research Triangle Regional Transportation Authority, known as Go Triangle, which serves Durham, Orange, and Wake Counties; and (2) the Piedmont Authority for Regional Transportation (PART), which has 10 member counties, including Forsyth and Guilford.

Vehicle Subscription Services. – A vehicle subscription service is a relatively new business model that is a variation of the traditional lease or rental concept. There are a small number of companies currently operating under this model in North Carolina. Under a vehicle subscription, a customer typically pays a "joining fee" plus a monthly subscription fee to have the right to use a vehicle from the company's fleet of vehicles and to swap the vehicle for a different type of vehicle. Depending on the pricing tier, a customer may have unlimited swaps or may be limited to a certain number of swaps. A customer can initiate an exchange through the company's mobile application, and the company will deliver the new vehicle and retrieve the vehicle currently in the customer's possession. The company provides insurance coverage and access to roadside assistance and performs routine maintenance and repairs on the vehicles.

Department of Revenue Interpretation. – To the extent the prior law did not address or define vehicle subscriptions, a taxpayer requested a private letter ruling from the Department on the issue of which tax rate applies to their business model, and, more specifically, whether a vehicle subscription qualifies as a long-term lease or rental. The Department's ruling focused on the use of the term "property" in the definition of a long-term lease and opined that the term referred to a single motor vehicle rather than an agreement for the use of multiple vehicles. The Department concluded that since a vehicle subscription agreement does not meet the definition of a long-term lease or rental, it is a short-term lease or rental, and, therefore, is subject to the 8% rate.

BILL ANALYSIS: S.L. 2019-69 does the following:

- Defines "vehicle subscription" as a written agreement that grants a person the right to use and exchange motor vehicles owned, directly or indirectly, by the person offering the agreement upon payment of a subscription fee, but it does not include a vehicle sharing service. The subscription fee must provide a person exclusive use of an agreed-upon number of motor vehicles at any given time during the full term of the subscription.
- Lowers from 8% to 5%, the alternate highway use tax rate that applies to vehicle subscriptions. Because the term "vehicle subscription" was not previously defined, the prior rate was based on an interpretation of the Department of Revenue that the subscriptions were short-term leases or rentals.
- Defines "vehicle sharing service" and clarifies that a vehicle sharing service, as distinguished from a vehicle subscription, is a short-term lease or rental. The definition is "a service for which a person pays a membership fee for the right to use a motor vehicle or motor vehicles upon payment of an additional time-based or mileage-based fee." An example of a vehicle sharing service would be Zipcar. The act does not change the tax treatment of this type of rental. Though not specifically defined under prior law, a vehicle sharing service was, and will continue to be, treated as a short-term rental.
- Makes various conforming changes:
    - Creates the term "limited possession commitment" as a global term that includes all three types of agreements subject to the alternate highway use tax for easier reference within the statutes.
    - Provides for the disposition of the tax proceeds generated from the new 5% tax to be treated in the same manner as the proceeds from the 8% tax. Of the proceeds from these two taxes, the first $10 million will be credited annually to the Highway Fund, and the remainder will be credited to the General Fund.
    - Makes consistent the reference to "short-term lease or rental" for purposes of the optional county tax and the transportation authority tax.

EFFECTIVE DATE: This act became effective October 1, 2019, and applies to vehicle subscription agreements entered into on or after that date.