February 18, 2021
The Honorable Anne R. Kaiser, Chair
House Ways and Means Committee
Room 131
House Office Building
Annapolis, Maryland 21401

HB869 Sales and Use Vehicle Excise Taxes Peer-to-Peer Car Sharing and Short-Term Vehicle Rentals - Alterations and Distribution

FAVORABLE

Madam Chair, Delegate Smith and members of the committee, my name is Louis Bertuca and I am the Senior Director of Government Relations at Turo.

Turo is a peer-to-peer car sharing platform that connects car owners (Maryland citizens) with people in need of a car. We are a small business with about 300 employees worldwide.

We are here today to voice strong support for HB869. HB869 is a bill of fairness at its core. The bill creates a dedicated revenue source for Maryland Historically Black Colleges and Universities which have long been unjustly underfunded by the state. This underfunding has long been justified by the tired old saying, “we do not have any money right now.” Quickly followed by an empty pledge to remedy the inequity in the future.

Part of the reason the state of Maryland claims to have a difficult time finding resources for these institutions of excellence is because misplaced priorities-- In this case a corporate handout that has cost Maryland taxpayers hundreds of millions of dollars.

We are talking about traditional rental car companies avoidance of paying titling tax in the state of Maryland.

History of Car Rental Company Tax Policy in Maryland

Since the early 1990s, Maryland has given rental car companies a full exemption from the titling tax due upon purchase of a vehicle. In exchange for this extraordinarily generous subsidy, the State imposes a special 11.5% tax on rental transactions. At the time this framework began, advocates from the rental car industry claimed, preposterously, that this special deal would be “revenue neutral” for the State. Some voices at the time like the department of transportation

pointed out that giving the special titling tax exemption to the rental car industry would be so expensive that even an increase in tax on rental car transactions would never offset the negative impact to the state's coffers. Maryland's Comptroller estimates that in recent fiscal years, the rental car companies' exemption from titling tax results in an annual loss of $84 million from the State's coffers. Reliable recent estimates from the Board of Revenue Estimate peg the State's receipts from the 11.5% sales tax on rental car transactions at approximately $30 Million. Far from being "revenue neutral", what the rental car industry actually accomplished was to push the state into giving profitable out-of-state multi-billion dollar corporations a net tax subsidy that currently results in a net loss of roughly **$50 MILLION PER YEAR**.

"Justification" for Corporate Tax Giveaway - Sale for Resale

The typical justification that big rental car companies offer for not having to pay taxes when purchasing cars for their rental fleets is that they are entitled to a "sale for resale" exemption. But as I will discuss below, extending the "sale-for-resale" exemption to benefit rental companies purchasing motor vehicles for rental fleets stretches the logical and legal boundaries of the exemption so much as to render it unrecognizable.

Some context is appropriate. The sale for resale exemption is a common feature of state sales and use tax statutes. The basic rationale for exemption is to deal with the situation in which a traditional retailer is making a purchase of inventory for their retail outlet from a wholesaler that is strictly for the purpose of resale. The sales tax will be collected by the retailer at the time of the retail sale. By exempting the wholesale transaction from the sales tax, a state avoids the "pyramid" effect of double taxation - once at the time of acquisition from the wholesaler and again at the time of retail sale. The economic rationale is that the sale for resale exemption mitigates the price impact to the consumer. The policy justification is that the retailer, in this example, is purchasing tangible personal property not for the retailer's own use or enjoyment but merely for the purpose of stocking store shelves so that the items can be resold to customers.

The Emerging Trend Among States

In recent years, lawmakers in State capitols across America have become increasingly aware of the devastating impact that massively subsidizing the rental car industry through exemptions from taxes normally due at the time of vehicle purchase has on State budgets.

Maryland is not the only state in righting this wrong. States around the country are looking into closing this loophole. Most recently a bill in Massachusetts, Rep. Lawn has gone after this historic error in legislative judgement by introducing H 2530 last year and passing it through the House chamber.

In an August 12, 2020 decision in the case of *EAN Holdings v. Oregon Department of Revenue*, TC 5337 (2020), the Oregon state appellate court for taxation denied Enterprise Rent-A-Car's claim to be exempt from taxes on the purchase of vehicles.

In its decision, the court rejected Enterprise's claim that its purchases of vehicles for its rental fleet should be considered exempt non-retail sales for resale because Enterprise purchases the cars in order to rent them to third parties. The court highlighted a key factual concession from Enterprise, which is also relevant here in Maryland: "Taxpayer '**does not acquire vehicles for the purpose of engaging in transactions in which it transfers title to the vehicles to a customer**.'" [emphasis added]. In other words, EAN did not acquire title to the vehicles at issue in order to turn around and immediately transfer title to another purchaser like the prototypical retailer. EAN, obviously, retained title to the vehicle as a revenue-generating asset.

In its analysis, the court highlighted a startling admission from Enterprise that is also highly relevant to this body's deliberations:

> Taxpayer also asserts that, even under a definition of "at retail" that disregards the quantity of goods sold, Taxpayer is not the "ultimate consumer" of the vehicles it purchased. **Taxpayer does not seriously contend that it is not a "consumer" of the vehicles, a term that it acknowledges means one who "utilizes" or "uses" something.** (See id. at 3-4 (quoting Webster's definition of "consume" as to "utilize (an economic good) in satisfaction of wants or the process of production") (internal quotations omitted))." [emphasis added]

In this case, Enterprise has admitted that in acquiring vehicles for its fleet, it is engaged in the "use" of the vehicle and that, as such, it is a consumer of the vehicle. **This concession negates any rationale for Enterprise to be exempt from the tax upon the purchase of the vehicle.**

In the Oregon case, Enterprise introduced a extra-legal construct as part of a last-ditch effort to save its case, attempting to impose a self-serving and artificial legal distinction on the clear text of law to differentiate between a "consumer" and an "ultimate consumer." However, the court did not find such an approach to be even minimally plausible, much less persuasive:

> "Rather, Taxpayer contends that it is not the "ultimate" consumer because it buys the vehicles for the purpose of allowing others to use them. However, the legislature did not use the word "ultimate"; that word appears only in the dictionary definitions. In the same sentence as the phrase "at retail," the legislature used the words "consumption" and "use" without the modifier "ultimate." See ORS 320.410(1). The court has concluded above that the legislature's intent in using the term "at retail" was to distinguish purchases "for resale." The court sees no need to determine the "ultimate" user or consumer of the vehicles, as among Taxpayer as licensor to customers, the rental customers as drivers, the secondary purchasers once Taxpayer decides to replace them, or the steel recycler at the end of their life. **It is sufficient that Taxpayer uses**

the vehicles and does not buy them for resale in the ordinary course of its business." [emphasis added]

The court's conclusion aptly notes that even if one accepts Enterprise's claim to be a "consumer" but not an "ultimate consumer", this is a distinction without any legal difference whatsoever. Establishing that Enterprise is a consumer who makes use of the vehicle they purchase is dispositive of the question. Enterprise's desire to characterize a rental car customer as opposed to itself as the "ultimate consumer" of a vehicle that they purchase is irrelevant to the legal issue of their obligation to pay taxes at the time of purchase.

As Enterprise Rent-A-Car complains that peer-to-peer carsharing hosts are only charging 8% sales tax instead of their 11.5% they omit the tradeoff that they made in 1993-

Peer-to-peer carsharing hosts can not take the loophole for their car purchases thus putting them at a huge economic disadvantage compared to traditional rental. Enterprise wants to pass on all the burdens of traditional rental car without affording Maryland citizens sharing their cars the benefits.

Background on P2P Carsharing in Maryland

In 2018, the Maryland legislature enacted SB743, a ground-breaking piece of legislation that marked the first comprehensive and modern peer-to-peer car sharing regulatory framework in the country. The legislation established the ground rules for operating peer-to-peer car sharing platforms in Maryland. The legislation represented an equitable balancing of a number of important considerations: properly protecting the interests and outlining obligations of car owner customers (known also as "hosts"), driving customers (also known as "guests"), the insurance industry and the peer-to-peer car sharing platform providers.

Since enactment of SB743 in 2018, the peer-to-peer car sharing industry collaborated with the American Property and Casualty Insurers Association (APCIA) to draft model legislation that carefully and thoroughly creates a balanced approach to regulating peer-to-peer car sharing. Maryland's groundbreaking legislation was the inspiration for many of the core elements of the national peer-to-peer car sharing model legislation. Indiana enacted comprehensive peer-to-peer legislation based upon the model in mid-2019. Subsequently, in December 2019, the Council of State Governments included the model in its Suggested State Legislation docket, further validating it as the default, consensus approach for regulating peer-to-peer at a state level." In addition the National Council of Insurance Legislators (NCOIL) also adopted the negotiated model bill as the NCOIL model of proper regulation of the peer-to-peer car sharing industry. The broad adoption and endorsement of the model legislation as the preferred consensus regulatory framework represents a dramatic shift in the legislative landscape over the past two years. The hallmarks of that shift include (1) broad agreement that any legislative effort must clearly distinguish peer-to-peer from car rental; (2) peer-to-peer and car rental represent different business models and are therefore separate industry sectors; (3) any

consideration of tax policy in this arena must first acknowledge and take into account the enormous tax subsidies already accorded to the traditional brick-and-mortar rental car companies at the federal, state and local level, most prominently the exemption from sales (Titling) tax on the purchase of a vehicle - a tax subsidy that no peer-to-peer host enjoys.

Debate in Maryland in 2018 on the key issues flowed primarily from the rental car industry who supported competing legislation to regulate peer-to-peer car sharing as if it was rental car. It is important to note that in 2018 and to date, no traditional rental car company owns or operates a peer-to-peer car sharing business of any kind. A few operate fleet-owned car sharing, which is essentially a rental car business where the customer does not access the car at a rental car company-owned facility, but instead accesses the car from a corporate-managed parking space.

The peer-to-peer business model is fundamentally different than the rental car company model. Peer-to-peer car sharing is conducted between a car owner and a guest customer who meet on an online platform and make arrangements to share a car. The platform does not own any cars, and the host makes all the decisions about what car to share, how the key exchange will work, how many miles the guest can drive, pricing, delivery and any extras. The platform charges a percentage of the transaction, often around 25%, and provides the insurance protections required by the law.

The rental car company sets the price of every car they rent to the public, while peer-to-peer car sharing platforms do not. It is the car owner host customer who determines the best price for their personal car and sets that price themselves in the listing.

The rental car industry owns millions of cars obtained at discounted wholesale rates. In Maryland, the rental car industry does not pay state excise tax on the purchase of those cars – a tax exemption benefit worth over $84 million a year to the rental car industry.

Maryland residents who share cars on peer-to-peer car sharing platforms do not enjoy any of those remarkable financial benefits, because every single one has paid state excise tax on the purchase of the car and paid to title and register the car in the State of Maryland.

Despite these massive benefits, the rental car companies would have you believe that their very existence is in jeopardy unless the peer-to-peer car sharing industry is brought to "parity." A brief review of the facts tells a very different story. Car rental companies are well on their way to a full economic recovery and they reported to the Wall Street Journal an uptick in leisure travel, an increase in the volume of bookings and plans to resume buying vehicles to update their fleets. Additionally, in 2020, the toughest year financially for nearly every industry, car rental companies ended the year with an estimated revenue of $23.2 billion with the Avis Budget Group making a net profit of $45 million in the third quarter, Enterprise Holdings buying vacant land next door to the headquarters for $13.1 million and Hertz paying out $16 million in retention bonuses to their CEO and senior managers.

Another difference between the two industries can be found in the costs of the consumer protections and liabilities and insurance obligations associated with the two different businesses. Insurance purchased by the peer-to-peer car sharing platform for their customers can cost as much as 60% of the final car sharing price. Contrast this with the car rental industry who only maintains a minimum amount of insurance and nearly no liability. In fact, in 2019 the State of Maryland enacted SB436/HB1003 that in a dramatic change in policy eliminated the mandate that the rental companies provide the primary coverage during the rental period. In so doing, the legislature dramatically reduced the rental industry's cost of operating and brought Maryland in line with most of the rest of the country in allowing the rental industry to rent out vehicles without any assurance that the driver of the rental vehicle carries even minimum state liability coverage should the driver cause an accident. This privilege is not extended to peer-to-peer car sharing industry.These costs of doing business are starkly different – and should factor into how the State of Maryland proceeds with respect to the transaction tax.

The one area left open for future discussion, however, had to do with the transaction tax on peer-to-peer car sharing. Lawmakers on the Senate Finance Committee in 2018 may recall the contentious debate about how to tax peer-to-peer transactions – with the rental car industry pushing for "parity" on the tax and claiming peer-to-peer car sharing taxes must be taxed identically to rental car at 11.5%. The peer-to-peer car sharing industry, pointing out the millions of dollars in sales tax exemptions that are not extended to their customers, claimed it was inappropriate to tax identically and offered to facilitate the collection and payment of the state standard sales tax of 6%.

Unfortunately, the rental car industry continued to oppose this sensible plan until they demanded and secured an 8% tax to be placed on their competitors. There was no substance to that figure, no data to back it up, no explanation about how it arrived at that rate. The committee was tired of the argument and took the path of least resistance – granting the rental car industry what they wanted.

Transaction Tax

This 8% rate is scheduled to sunset in June 2020. It was extended again last year until June 2021. It was the expectation of the bill sponsor, Sen. Mack Middleton, and other bill supporters, that after the sunset, and the information gleaned from the Comptroller and MVA reports, a case could be made to revert the rate to the state standard sales tax rate of 6%.

Where does that leave us today? Turo has properly collected and remitted the sales tax to the State of Maryland for transactions conducted on the platform. Our internal numbers clearly show that people (Maryland citizens) will not share their cars as frequently when they are put at the huge economic disadvantage of carrying the burden of traditional rental without being afforded the massive benefit they get by evading payment of tax on the purchase of the car. Enterprise Rent-A-Car knows this and that is why they are so aggressively trying to force these inappropriate taxes on to Maryland citizens. The easiest way to ensure parity is to end the practice of exempting rental car companies from having to pay a tax everyone else pays.

Sincerely,
Lou Bertuca
Sr. Director & Head of Government Relations

CC: Senate Budget and Taxation Committee Members