



VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

December 1, 2021

Honorable John W. Fonfara, Co-Chair (John.Fonfara@cga.ct.gov)
Finance, Revenue, and Bonding Committee
Legislative Office Building
State Capitol
300 Capitol Avenue
Hartford, Connecticut 06106

Honorable Sean Scanlon, Co-Chair (Sean.Scanlon@ct.gov)
Finance, Revenue, and Bonding Committee
Legislative Office Building
State Capitol
300 Capitol Avenue
Hartford, Connecticut 06106

RE: 2021 Conn. Pub. Acts 106, § 65 - “Peer-to-peer car sharing”

Dear Senator Fonfara and Representative Scanlon:

The Department of Revenue Services (“Department”) hereby complies with the legislative mandate set forth in Section 65 of 2021 Conn. Pub. Acts 106 and does so by providing the following guidance as to the application of the taxes imposed under Chapter 219 of the General Statutes to “peer-to-peer car sharing,” as said term is defined in Section 52 of 2021 Conn. Pub. Acts 106.¹

As set forth above, Section 65 of 2021 Conn. Pub. Acts 106 imposes a legislative mandate on the Department. More specifically, said section directs the Department as follows:

Not later than December 1, 2021, the Commissioner of Revenue Services shall issue guidance regarding the applicability of the sales and use tax under chapter 219 of the general statutes to peer-to-peer car sharing, as defined in section 52 of this act.

¹ Given that the legislative mandate set forth in Section 65 of 2021 Conn. Pub. Acts 106 pertains to taxation, the Department is of the position that the guidance provided herein is properly issued to the Finance, Revenue, and Bonding Committee as it is the Committee that has cognizance over such matters.

The above-quoted language expressly requires the Department to issue guidance as to the application of the taxes imposed under Chapter 219 of the General Statutes to “peer-to-peer car sharing.” In order to meet this legislative charge, the Department must first examine the definition of “peer-to-peer car sharing” contained in Section 52 of 2021 Conn. Pub. Acts 106.

To this end, the General Assembly defined the term “peer-to-peer car sharing” in Section 52² of 2021 Conn. Pub. Acts 106 to mean:

the authorized use of a shared vehicle for a consideration by a person other than the shared vehicle³ owner through a car sharing platform.⁴

Section 65 of 2021 Conn. Pub. Acts 106 requires that the Department issue guidance as to the application of the taxes imposed under Chapter 219 of the General Statutes to “peer-to-peer car sharing.” Chapter 219 governs Connecticut’s sales and use taxes. Thus, the General Assembly is asking the Department to opine as to whether “peer-to-peer car sharing” is subject to sales and use taxes.

By way of brief background and explanation, and as will be explained more fully herein, the Connecticut sales tax is imposed on retailers of tangible personal property or enumerated services for the privilege of making taxable sales in Connecticut. See Conn. Gen. Stat. § 12-408(1). The sales tax is commonly referred to as a transactional tax. This is so because the “taxable moment” of the sales tax on sales of tangible personal property occurs when title to the property passes from seller to purchaser and, therefore, can be fixed in both time and space on that basis. Thus, in order to meet the legislature’s mandate, the Department must analyze the transaction that underlies “peer-to-peer car sharing” in order to determine whether the taxes imposed under Chapter 219 apply to said transactions.⁵

² Section 52 of 2021 Conn. Pub. Acts 106 is effective January 1, 2022.

³ The General Assembly defined the term “shared vehicle” in Section 52 of 2021 Conn. Pub. Acts 106 as follows:

“Shared vehicle” means a vehicle that is available for sharing on a car sharing platform. “Shared vehicle” does not include a passenger motor vehicle used for rental purposes by any person licensed pursuant to section 14-15 of the general statutes.

⁴ The General Assembly defined the term “car sharing platform” in Section 52 of 2021 Conn. Pub. Acts 106 as follows:

“Car sharing platform” means a physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated software application that allows a shared vehicle owner to make a shared vehicle available for peer-to-peer car sharing and connect a shared vehicle owner with a shared vehicle driver.

⁵ As explained in **Ruling No. 2002-3** and set forth more fully in this footnote, the corollary to the sales tax is the use tax. As such, to analyze one is to analyze the other. Accordingly, this memorandum will focus on the analysis of the sales tax.

The use tax is imposed “on the storage, acceptance, consumption or any other use in this state of tangible personal property purchased from any retailer for storage, acceptance, consumption or any other use in this state” Conn. Gen. Stat. § 12-411(1). As **Ruling No. 2002-3** further explains, although the sales and use taxes are closely related, the use tax exists apart from the sales tax. Hartford Parkview Associates Limited Partnership v. Groppo, 211 Conn. 246, 255-6, 558 A.2d 993 (1989); see also William Raveis Real Estate, Inc. v. Commissioner, Conn. Super. Ct. Tax Sess.

As noted above, the Sales and Use Taxes Act, Conn. Gen. Stat. §12-406 et seq., imposes sales tax on all retail sales of tangible personal property that take place within Connecticut, unless the General Assembly has specifically exempted such sales from tax.⁶ In contrast, the Sales and Use Taxes Act imposes sales tax only on certain enumerated services. In other words, sales of services are not subject to sales tax unless specifically enumerated as taxable.

“Peer-to-peer car sharing” is not an enumerated service subject to Connecticut’s sales and use taxes.

With regard to services, Conn. Gen. Stat. § 12-407 provides in pertinent part that “[s]ale’ and ‘selling’ mean and include: . . . (I) The rendering of certain services, as defined in subdivision (37), for a consideration, exclusive of such services rendered by an employee for the employer.” Based on the Department’s review of Section 52 of 2021 Conn. Pub. Acts 106, said section⁷ did not amend or otherwise add “peer-to-peer car sharing” to the list of enumerated services in Conn. Gen. Stat. § 12-407(a)(37). Therefore, as the General Assembly did not specifically enumerate “peer-to-peer car sharing” as a service within the meaning of Conn. Gen. Stat. § 12-407(a)(37) or otherwise indicate in 2021 Conn. Pub. Acts 106 an intention to treat it as a service, the provision or performance of “peer-to-peer car sharing” in Connecticut would not constitute the sale of a taxable service for purposes of Chapter 219.

“Peer-to-peer car sharing” may constitute the sale of tangible personal property subject to Connecticut’s sales and use taxes.

In contrast to services, the Sales and Use Taxes Act imposes sales and use taxes on all retail sales of tangible personal property that take place within Connecticut, unless the General Assembly has specifically exempted such sales from tax. Consistent therewith, and relevant to the Department’s analysis of Section 52 of 2021 Conn. Pub. Acts 106, Conn. Gen. Stat. § 12-407 provides that “[s]ale’ and ‘selling’ mean and include: . . . “[t]he leasing or rental of tangible personal property of any kind whatsoever, including, but not limited to, motor vehicles. . . .”⁸ Conn. Gen. Stat. § 12-407(a)(2)(J). Recognizing the similarity between “peer-to-peer car sharing” and the leasing or rental of a motor

(Shea, STR), No. CV-91-0387235-S (January 5, 1995). The two taxes “are different in conception . . . [and] are assessments upon different transactions . . .” International Business Machines Corp. v. Brown, 167 Conn. 123, 129, 355 A.2d 236 (1974). As noted above, the sales tax is imposed on a retailer “for the privilege of making any sale” in Connecticut and may therefore only be imposed on sales made in this state. By comparison, the use tax is imposed on the use of an item when it is “purchased . . . for use” in Connecticut and is actually so used, and may be imposed on items purchased anywhere. Thus, the imposition of the use tax involves a purchase, wherever made, together with an element of intent to use the property in Connecticut by the purchaser, followed by action upon that intent by the purchaser. Magic II, Inc. v. Dubno, 206 Conn. 253, 537 A.2d 998 (1988); Stetson v. Sullivan, 152 Conn. 649, 211 A.2d 685 (1965)

⁶ With regard to sales of tangible personal property, Conn. Gen. Stat. § 12-407 provides that “[s]ale’ and ‘selling’ mean and include: . . . [a]ny transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.”

⁷ Based on the Department’s review, no provision of 2021 Conn. Pub. Acts 106 amended or otherwise modified any section contained within Chapter 219.

⁸ As the Connecticut Supreme Court has expressly recognized, “it is undisputed that . . . the leasing of motor vehicles, constitute “sale[s].” See General Statutes § 12-407(a)(2) (“[s]ale’ and ‘selling’ mean and include . . . [J] [t]he leasing or rental of tangible personal property of any kind whatsoever, including . . . motor vehicles”).” HVT, Inc. v. Law, 300 Conn. 623 (2011).

vehicle, the Department must determine if “peer-to-peer car sharing” falls within the above-quoted language of Conn. Gen. Stat. § 12-407(a)(2)(J). As such, the Department must construe the language of Conn. Gen. Stat. § 12-407(a)(2)(J).

Given the plain language of Conn. Gen. Stat. § 12-407(a)(2)(J), and although there certainly appears on its face to be an overlap or connection between “peer-to-peer car sharing” and the leasing or rental of a motor vehicle, a determination as to whether “peer-to-peer car sharing” comes within the scope of Conn. Gen. Stat. § 12-407(a)(2)(J) can only be made by construing the language of Conn. Gen. Stat. § 12-407(a)(2)(J) in accordance with principles of statutory construction. Stated simply, the issue that must be first addressed is whether “the authorized use of a shared vehicle for a consideration by a person other than the shared vehicle owner through a car sharing platform” constitutes the “leasing” or “rental” of tangible personal property. Upon review of Conn. Gen. Stat. § 12-407(a)(2)(J), said provision does not contain a definition of either the term “leasing” or the term “rental.”⁹ In fact, Chapter 219 does not contain a definition of either term that is relevant for purposes of construing Conn. Gen. Stat. § 12-407(a)(2)(J).¹⁰

According to the Connecticut Supreme Court, “[w]here a statute . . . does not define a term, it is appropriate to focus upon its common understanding as expressed in the law and upon its dictionary meaning.” *AirKaman, Inc., et al. v. Groppo*, 221 Conn. 751, 756-757, 607 A.2d 410 (1992). Consequently, in accordance with this principle of statutory construction, the Department must “turn to the dictionary definition of the operative word . . . to find its commonly approved meaning.” *Id.* at 757.

According to Merriam-Webster, the term “leasing” means “to grant by lease” or “to hold under a lease.” <https://www.merriam-webster.com/dictionary/lease>. Based on the definition of “leasing,” it is clear that the Department must also define the term “lease.” To this end, Merriam-Webster defines the term “lease” to mean “a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent.” *Id.* Based on the dictionary definition, the elements of a lease are (1) authorization to use tangible personal property or real property, (2) in exchange for a consideration. Thus, in order for “peer-to-peer car sharing” to constitute a lease for purposes of Conn. Gen. Stat. § 12-407(a)(2)(J), the Department must determine whether the elements of a lease are present in such definition.

As previously explained, the General Assembly defined the term “peer-to-peer car sharing” in Section 52 of 2021 Conn. Pub. Acts 106 to mean:

⁹ The Commissioner notes that the General Assembly promulgated a regulation specifically related to the leasing or rental and leasing of tangible personal property. See Conn. Agencies Regs. § 12-426-25. However, upon review, Conn. Agencies Regs. § 12-426-25 does not contain a definition to either the term “leasing” or the term “rental.”

¹⁰ The term “leasing” is not defined in Chapter 219. Chapter 219, however, does contain a definition of the term “rent.” See Conn. Gen. Stat. § 12-407(a)(21). Conn. Gen. Stat. § 12-407(a)(21) defines “rent” to mean “the consideration received for occupancy and any meals included with such occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.” Upon review, it is clear that said definition applies in the context of the room occupancy tax. As such, said definition is of no application for purposes of construing Conn. Gen. Stat. § 12-407(a)(2)(J).

the authorized use of a shared vehicle for a consideration by a person other than the shared vehicle owner through a car sharing platform

According to the above language, “peer-to-peer car sharing” involves a person receiving authorization from a “shared vehicle owner” to use a “shared vehicle.”¹¹ It further appears that said authorization is contingent on the person paying consideration for the use of the vehicle.¹² Thus, comparing the definition of “peer-to-peer car sharing” set forth in Section 52 of 2021 Conn. Pub. Acts 106 to the definition of lease, it appears that all of the elements of a lease are present in said definition. As such, and consistent with principles of statutory construction, “peer-to-peer car sharing” constitutes a lease within the meaning of said term as used in Conn. Gen. Stat. § 12-407(a)(2)(J). That said, in order for “peer-to-peer car sharing” to be subject to the sales tax, any such sales must be made by a retailer.

Whether “peer-to-peer car sharing” constitutes a taxable sale is dependent upon whether the person leasing the “shared vehicles” is a “retailer.”

To this end, and as noted above, Conn. Gen. Stat. § 12-408(1) imposes sales tax on the “gross receipts” of “retailers.” Under Conn. Gen. Stat. § 12-407(a)(9), “gross receipts” are “the total amount of payment or periodic payments received for leasing or rental of tangible personal property for the term of any such lease or rental”¹³

Under Conn. Agencies Regs. § 12-426-25(a), a “lessor is a retailer who must . . . collect the tax.” Conn. Gen. Stat. § 12-408(2) provides that “[r]eimbursement for the tax hereby imposed shall be collected by the retailer from the consumer” Accordingly, it is well-settled that a lessor as a retailer is responsible for the collection and remittance of sales tax on all amounts received by it in connection with a lease. Thus, the person who is making the “shared vehicle” available for use must be a “retailer” in order for the transaction that underlies “peer-to-peer car sharing” to be subject to tax under Chapter 219.

Given the above, if the person leasing the “shared vehicles” is a “retailer” within the meaning of said term as defined in Conn. Gen. Stat. § 12-407(a)(12), such person would be required by law to collect sales tax on such transactions.¹⁴ If, however, a person makes a “shared vehicle” available for lease

¹¹ As to this component, the Department notes that Section 52 of 2021 Conn. Pub. Acts 106 also contains a definition of the term “car sharing agreement.” Said term is specifically defined as follows:

“Car sharing agreement” means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle.

As such, the “car sharing agreement” appears to be a contract between the parties to the transaction, thereby meeting the component of the term “lease” that requires there be a contract.

¹² The legislation also provides that the authorization to use the “shared vehicle” must be obtained through a “car sharing platform.” The Department addresses this term later in this document.

¹³ Conn. Agencies Regs. § 12-426-25(c) also provides that “[g]ross receipts” shall include the total amount of payment, royalties or periodic payments received for the leasing or rental of tangible personal property.”

¹⁴ With respect to the rental or leasing of a passenger motor vehicle for a period of thirty consecutive calendar days or less, Conn. Gen. Stat. § 12-408(1)(G) provides that said sales are taxable “at a rate of nine and thirty-five-hundredths per cent.”

on a casual or isolated basis, it would be the opinion of the Department that said person would not be required to collect tax on such sales. See Conn. Gen. Stat. § 12-431 and Conn. Agencies Regs. § 12-426-17.¹⁵ Please be advised that the Commissioner’s opinion constitutes general guidance. The application of the taxes imposed under Chapter 219 to “peer-to-peer car sharing” will ultimately turn on the specific facts and circumstances surrounding each “peer-to-peer car sharing” transaction.

A “peer-to-peer car sharing company” that operates a “car sharing platform” may meet the requirements of a “marketplace facilitator” set forth in Conn. Gen. Stat. § 12-408e.

As previously noted, the definition of “peer-to-peer car sharing” also provides that the transactions that underlie “peer-to-peer car sharing” must take place or be coordinated through a “car sharing platform.” As set forth in footnote 4 hereof, the General Assembly defined the term “car sharing platform” in Section 52 of 2021 Conn. Pub. Acts 106 as follows:

“Car sharing platform” means a physical or electronic place, including, but not limited to, a store, a booth, an Internet web site, a catalog or a dedicated software application that allows a shared vehicle owner to make a shared vehicle available for peer-to-peer car sharing and connect a shared vehicle owner with a shared vehicle driver.

Section 52 of 2021 Conn. Pub. Acts 106 also contains a definition of the term “peer-to-peer car sharing company.” The General Assembly defined said term as follows:

“Peer-to-peer car sharing company” or “company” means any person, corporation, limited partnership or other legal entity that is engaged in the business of operating a car sharing platform to enable peer-to-peer car sharing in this state.

As explained below, the definitions of “car sharing platform” and “peer-to-peer car sharing company” appear to be comparable to the definitions of “forum” and “marketplace facilitator,” respectively, that are found in Chapter 219 in Conn. Gen. Stat. § 12-408e.

Through the enactment of Conn. Gen. Stat. § 12-408e, the General Assembly expanded the definition of “retailer” for purposes of Chapter 219 to include “marketplace facilitators.”¹⁶ In so doing, the

¹⁵ Conn. Agencies Regs. § 12-426-17, in pertinent part, provides as follows:

Since the [sales] tax [imposed under Chapter 219] is predicated upon a sale made by a person engaged in the business of making sales at retail, certain sales which are not sufficient in number, scope and character to constitute an activity requiring a seller’s permit are described as casual or isolated sales. Such sales are exempt from the tax except, however, as they involve boats, airplanes, snowmobiles and motor vehicles as hereinafter illustrated.

Conn. Agencies Regs. § 12-426-17 further provide that:

Casual sales are: (1) Infrequent sales of a nonrecurring nature made by a person not engaged in the business of selling tangible personal property; (2) Sales of articles of tangible personal property acquired for use or consumption by a seller and not sold in the regular course of business engaged in by such seller.

¹⁶ As set forth in Conn. Gen. Stat. § 12-408e, a “marketplace facilitator” is any person who:

General Assembly imposed on “marketplace facilitators” the obligations of a retailer for each sale the facilitator facilitates on its forum for a “marketplace seller.” Upon review, it appears that a “peer-to-peer car sharing company” is responsible for operating a “car sharing platform” much in the same way that a “marketplace facilitator” is responsible for operating a “forum.” Stated simply, it appears that a “peer-to-peer car sharing company” is the equivalent of a “marketplace facilitator.” Moreover, and as set forth below, a “car sharing platform” similarly appears to be the equivalent of a “forum.”

To this end, Conn. Gen. Stat. § 12-408e defines “forum” as “a physical or electronic place, including a store, a booth, an Internet website, a catalog or a dedicated sales software application where taxable tangible personal property or taxable services are offered for sale.” The parallels between this definition and the definition of “car sharing platform” are obvious. As such, there can be no realistic dispute that these terms are addressing similar concepts.

Although the definitions of the terms “car sharing platform” and “peer-to-peer car sharing company” set forth in Section 52 of 2021 Conn. Pub. Acts 106 appear similar in concept and language to the definitions of the terms “forum” and “marketplace facilitator” that are found in Conn. Gen. Stat. § 12-408e, in order for a “peer-to-peer car sharing company” to be required to collect and remit tax on sales that take place on its platform, said company must meet the specific requirements of a “marketplace facilitator” that are set forth in Conn. Gen. Stat. § 12-408e.

Based on the above, and given that “peer-to-peer car sharing” constitutes a lease within the meaning of said term as used in Conn. Gen. Stat. § 12-407(a)(2)(J), a “peer-to-peer car sharing company” that satisfies the requirements of a “marketplace facilitator” prescribed in Conn. Gen. Stat. § 12-408e would be required under the law to collect and remit tax on sales that take place on its platform. In other words, any “peer-to-peer car sharing company” that (i) facilitates retail sales of at least \$250,000 (both to Connecticut and elsewhere) during the prior twelve-month period by marketplace sellers by providing a forum that lists or advertises taxable tangible personal property (i.e., “shared vehicles”) for sale by marketplace sellers (“shared vehicle owner”¹⁷), (ii) directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and

-
1. Facilitated retail sales of at least \$250,000 during the prior twelve-month period by marketplace sellers by providing a forum that lists or advertises tangible personal property subject to sales and use taxes or taxable services, including digital goods, for sale by such marketplace sellers;
 2. Directly or indirectly through agreements or arrangements with third parties, collects receipts from the customer and remits payments to the marketplace sellers; and
 3. Receives compensation or other consideration for its services.

For more information regarding the scope and application of Conn. Gen. Stat. § 12-408e, please **OCG-8**, *Regarding Marketplace Facilitators and Marketplace Sellers*. **OGG-8** is available on the Department’s website at <https://portal.ct.gov/-/media/DRS/Publications/OCG/OCG-8.pdf>.

¹⁷ Section 52 of 2021 Conn. Pub. Acts 106 also contains a definition of the term “shared vehicle owner.” Said term is specifically defined as follows:

“Shared vehicle owner” means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available on a car sharing platform.

Although not expressly stated, given that the “shared vehicle owner” is the person who is making the “shared vehicle” available on the “car sharing platform,” such person is the equivalent of a “marketplace seller” as said term is defined in Conn. Gen. Stat. § 12-408e.

remit payments to the marketplace sellers ("shared vehicle owner"), and (iii) receives compensation or other consideration for such services, would constitute a "marketplace facilitator" for purposes of Conn. Gen. Stat. § 12-408e and, therefore, would be required to collect and remit tax on sales that take place on its platform. That said, and consistent with previous comments, the guidance contained herein is general guidance. Consequently, the application of the provisions of Conn. Gen. Stat. § 12-408e will ultimately turn on the specific facts and circumstances surrounding each "peer-to-peer car sharing company" and the "car sharing platform" it operates.

As directed by Section 65 of 2021 Conn. Pub. Acts 106, the Department specifically addresses herein the application of the taxes imposed under Chapter 219 of the General Statutes to "peer-to-peer car sharing," as said term is defined in Section 52 of 2021 Conn. Pub. Acts 106. As set forth above, the Department is of the opinion that "peer-to-peer car sharing" is not an enumerated service subject to Connecticut's sales and use taxes. Consequently, if it is the intention of the General Assembly to tax "peer-to-peer car sharing" as a service, legislative amendments would be required.

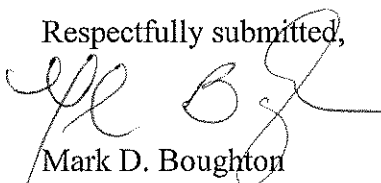
As also set forth above, and based on its analysis of current statutory language, the Department is of the opinion that "peer-to-peer car sharing" may constitute the sale of tangible personal property subject to Connecticut's sales and use taxes, provided that such sales are made by "retailers." If the Commissioner's opinion is consistent with the intention of the General Assembly in enacting Section 52 of 2021 Conn. Pub. Acts 106, then no legislative amendments are required.

Finally, given the Commissioner's opinion that "peer-to-peer car sharing" constitutes a lease within the meaning of said term as used in Conn. Gen. Stat. § 12-407(a)(2)(J), the Commissioner also notes that a "peer-to-peer car sharing company" that operates a "car sharing platform" may meet the requirements of a "marketplace facilitator" set forth in Conn. Gen. Stat. § 12-408e. As explained herein, if such requirements are satisfied, each "peer-to-peer car sharing company" that meets such requirements would be obligated under the law to collect and remit tax on sales that take place on its platform.

Based on the foregoing, the Department is of the position that it has complied with the legislative mandate set forth in Section 65 of 2021 Conn. Pub. Acts 106.

Please do not hesitate to contact me should you have any questions regarding the guidance set forth herein.

Respectfully submitted,



Mark D. Boughton
Commissioner

Department of Revenue Services

cc:/ Honorable Ranking Members of the Finance, Revenue, and Bonding Committee (*via electronic email*)