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REPORT ON STATE TAXATION FOR PEER-TO-PEER CARSHARING COMPANIES IN MARYLAND

This report was prepared by the Office of the Comptroller of Maryland for the Senate Finance Committee and the House Economic Matters Committee in accordance with § 2-1257 of the State Government Article.

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December 31, 2019

The Honorable Delores G. Kelly
3 East Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

The Honorable Dereck E. Davis
231 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Report on Peer-To-Peer (P2P) Car Sharing

Dear Chairwoman Kelly and Chairman Davis:

Pursuant to the requirements in accordance with § 2-1246 [now § 2-1257] of the State Government Article, the Office of the Comptroller submits this report on:

"…information that could assist the General Assembly in determining a fair and equitable State taxation on sales and charges made in connection with a shared motor vehicle used for peer–to–peer car sharing and made available on a peer–to–peer car sharing program…"

I hope that you find that the enclosed report is responsive to your request. If you have any questions regarding the report, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,

Sharonne R. Bonardi, Esq.
Deputy Comptroller

TABLE OF CONTENTS

Executive Summary 1

What is P2P Carsharing? 2

Taxation of P2P Carsharing Companies in Maryland 5

Taxation of the P2P transportation rental services in the United States 6

Exemption of Rental Services 7

Taxes or Broad-Based Sales Taxes for Rental Services 7

Experiences from other State Governments 8

Income Tax Reporting Requirements for P2P Owners 11

Growth of P2P 11

Economics of P2P Transportation Rental Services 12

Physical Assets versus Virtual assets 14

Fleet-size 14

Conclusion 15

EXECUTIVE SUMMARY

Car sharing, or consumer peer-to-peer (P2P) car sharing transportation services, is not a recent phenomenon worldwide. While P2P companies have existed in the U.S. market for approximately 10 years, consumers in Europe and Canada have been utilizing shared vehicles for far longer. As technological advances continue to pave lanes for new companies that disrupt the traditional companies (e.g., AirBnb, Uber and Lyft, etc.), policymakers at the local, state, and federal levels of government are tasked with crafting laws and regulations to govern these rapidly-growing and new industries.

This report endeavors to provide Maryland lawmakers with an overview of P2P companies, what legislative steps Maryland and other states have taken, and the regulatory and statutory "unknowns" that currently exist for this industry. Specifically, the General Assembly tasked the Office of the Comptroller with studying Maryland's taxation model and that of other states that have taken legislative action concerning this industry.

In 2018, the Maryland General Assembly enacted Senate Bill 743, which established a regulatory framework for P2P entities to operate in Maryland. The legislation included insurance requirements, an 8% Sales and Use Tax for sales and charges related to P2P entities, among other requirements. The law is set to expire in 2020.

P2P car sharing is a process where businesses or consumers rent their vehicles to other consumers, usually for short-term periods, for profit and to make better utilization of dormant resources. P2P car sharing companies are similar to AirBnb and VRBO, companies that allow businesses or consumers to rent real estate property to customers for a short period of time.

Just like AirBnb and VRBO, as well as other similar companies have disrupted the hotel market, P2P entities have disrupted the multi-billion-dollar car rental industry. Among the questions policymakers nationwide have to address is whether or not to impose a tax on the utilization of P2P entities, and if so, at what rate. Additionally, should P2P entities be subject to the fees and rules imposed by airport authorities that traditional car rental companies like Avis or Hertz are required to follow?

These questions are complicated, and rightly so. These economic disruptors are foreign territory, especially with respect to taxation. P2P car companies, for example, have argued that they should not be subjected to taxation since they provide a service – not a permanent, tangible product, in the same way that accountants provide tax preparation services, or lawyers provide legal counsel. Consumers aren't "buying" anything from P2Ps, and they, therefore, would argue that the imposition of a Sales and Use tax should not be applicable.
What's more, traditional car companies were provided several exemptions from both the sales and income taxes on the procurement, use, and disposition of their rental fleets. These were chiefly provided due to the long-standing business intermediate exemption used in

manufacturing goods or the business investment exemption from sales taxes. In short, these fleets were products necessary for the business to provide the service.

Should P2P companies, if they were to be treated like their traditional car rental company counterparts, be afforded tax exemptions, as well? This report delves in further into the significant differences between a P2P carsharing company and a traditional car rental company, which makes the preceding question difficult to answer.

Several other states – Arizona, California, Colorado, Georgia, Hawaii, Indiana, Iowa, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Washington, and West Virginia – have passed, or are currently considering, legislation to govern the P2P car sharing industry. California, Oregon, and Washington were ahead of the curve by passing laws to govern this industry before its rapid growth. One state, the State of New York, has specifically banned Turo, the country's largest P2P car sharing company, from operating within its borders. Otherwise, P2P carsharing companies are currently permitted to operate in every state, except New York, despite the fact that only 17 of the 50 states have enacted or are currently considering legislation to regulate this industry.[1]

P2P carsharing companies are expected to continue its rapid ascent in the years ahead. Global Market Insight, Inc., a global market research and business intelligence and insight group, projects that the P2P industry will grow about 35% and will become a $16 billion industry by 2024 – just four years away. Maryland lawmakers will be tasked with figuring out if the current laws in place should be extended, or what – if any – rules of the road be enacted moving forward to govern this industry.

Just like any other economically-disruptive company that has entered the U.S. marketplace in recent years, there is no tested-and-proven legal and statutory framework that exists with respect to P2P carsharing entities. The companies themselves continue to evolve and adapt, thereby making it all the more challenging to determine the best, and most fair way, to regulate them.

What is certain is the fact that these companies will continue to grow and continue to attract a significant percentage of consumers in the years ahead. How, and if, they should exist in the car rental eco-system – and for our purposes, how and if they should be taxed – will be determined by policymakers here in Maryland, and in every state in the country.

WHAT IS P2P CARSHARING?

Technological advancements have made it possible for consumers to connect and provide traditional rental services online or mobile applications, thereby eliminating the need for

[1] https://taxfoundation.org/reforming-rental-car-excise-taxes/

traditional business arrangements. With the surge of this new and disruptive industry, policymakers are tasked with determining how and if these services should be taxed and regulated.

Traditional rental car companies and P2P entities disagree on what constitutes a car rental service. The P2P industry argues that they are not structured as a traditional car rental business (e.g. no retail locations, no direct ownership of fleet of rental vehicles). Instead, P2P companies simply provide the platform in which car owners can rent their vehicles to other consumers for profit. But the fact underlying this technicality is that they are providing rental services that are not economically different than how the traditional car rental services operate.

P2P automobile rentals began in Europe and have been utilized in the United States for about 10 years. Even before the rise of the largest P2P services like Turo, Getaround, and Maven, car sharing services like Zipcar have existed. Zipcar was purchased by Avis in 2013. Similarly, Enterprise operates a car-sharing service known as Enterprise Carshare. Avis and Hertz both have car-sharing programs and there are other entities like Car2Go. There have been a variety of services that have started, and most have remained as smaller, regional services.

The San Francisco-based Turo and Getaround have attracted more users than other industry peers due to a combination of technological savvy, customer assistance, and a sharp focus on providing the user experience and convenience necessary to retain consumers. Many customers and industry analysts will point that the P2P model relies heavily on convenience and the user experience rather than a laser focus on the price.

As with many of the newer shared service models, the P2P car sharing model has disrupted the functioning economy to some degree and shows the potential to radically alter the current landscape. From a public policy perspective, it has not been clear how these companies should be taxed and regulated, and many states across the country have not prescribed a solution to P2P carsharing companies, and other P2P entities. Because they operate a non-traditional model of linking customers (both consumer and business customers) to private car owners with underutilized vehicles, they do not follow a customary role in a manufacturing chain.

An initial problem faced when confronting this issue is the definition of what constitutes a P2P rental activity. In looking at Maryland Senate Bill 743 (2018), P2P rentals are described as a "platform that is in the business of connecting vehicle owners with drivers to enable the sharing of motor vehicles for financial consideration." Furthermore, the legislation creates a separate regulatory and tax category for P2P carsharing entities that distinct from traditional car rental companies.

The basic function that both P2P carsharing services and traditional car rental services perform is extremely similar. The core differences between a P2P carsharing company and traditional car rental company is the latter's costs investments in car fleets and in land usage; whereas, the former relies more heavily on technological platforms and customer experience.

The definition of a P2P shared service gets even more complicated when you consider that the largest P2P service, Turo, advertises itself a Business-To-Consumer (B2C) model on its own website, where it solicits businesses to register their vehicles with Turo. In other words, Turo is asking Hertz or Avis to list their rental fleet cars with Turo in order to use the P2P service. It is not clear if this is a violation of Maryland law, but it is also unclear if this business scenario is something that Maryland legislators factored when drafting the 2018 legislation.

The P2P service models underlie something known as the "gig economy." The gig economy is a term used to designate the loss of traditionally long-lasting careers, and instead a focus on more temporary work focused along individualized projects. Various segments of the gig economy continue to evolve and has been discussed in various forms for the past twenty or more years. As the business world adapts with new technologies that allow for more flexible arrangements, this gig economy is believed to grow as companies attempt to manage costs more efficiently. Ride-sharing platforms like Uber and Lyft, and car-sharing services like Turo and Getaround, the office sharing company WeWork, and home rental company AirBnb have all participated and generated significant profits in the gig economy.

The gig economy has been disruptive and continues to challenge existing notions. They can be outright devastating to some industries as any taxicab driver can attest with the recent entrance of Uber and Lyft into the marketplace. They often lead to leakages in the finance system of economies through the reformation of jobs, funding, and can lead to unintended consequences. Frost and Sullivan, an automotive and transportation consulting firm, has forecasted that the global car-sharing market would grow from 7 million users in 2016 to 36 million users by 2025, and that the number of car-sharing participants would grow by 4 times within the same time frame. Global Markets Insight Inc., a global market research and business intelligence and insight group, expects the car-sharing market to record massive growth of about 35% and projects gross revenue to exceed $16 billion by 2024.

Failing to address the core issues behind the gig economy may bear a heavy burden. If, in this case, P2P services offer a significant advantage to newer companies, then the existing businesses may decide to cease operating as traditional rental companies. They might convert their operations to P2P models or just close their businesses.

At the core of this concern is the fact that the traditional sales tax model is based on industrial era policies that are not relevant to how society operates today. Rethinking this system becomes more and more important as 1) non-traditional services continue to increase its share of the economy; 2) as technological advancements continue to dramatically alter the way we live, work, and play; and 3) as society changes behavior and priorities based on the two preceding factors. Failing to address these definitional issues should eventually lead to significant and enduring problems.

TAXATION OF P2P CARSHARING COMPANIES IN MARYLAND

In 2018, the Maryland General Assembly passed Senate Bill 743, which established a regulatory framework for P2P entities to operate in the State of Maryland. The bill included insurance requirements, as well as a Sales and Use Tax rate of 8% for sales and charges related to P2P carsharing for a period of two years. The designated tax rate for P2P entities is set to expire in Fiscal Year 2020.

Senate Bill 743 provides the following definition for P2P:

> *"Peer-to-peer car sharing as an authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program. A "peer-to-peer car sharing program" means a platform that is in the business of connecting vehicle owners with drivers to enable the sharing of motor vehicles for financial consideration.* -DLS Fiscal Note, SB 743 (2018)

Prior to the passage of the bill, P2P entities operated in Maryland without a taxation or regulatory framework. Today, the Sales and Use Tax rate imposed on P2P services (8%) is lower than the 11.5% car rental rate. Maryland has the highest tax rate for rental cars in the nation, at 11.5%

The 11.5% tax rate is imposed on short-term passenger car and recreational vehicle rentals and an 8% rate is applied to certain short-term truck rentals. Of this revenue, 45% accrues to TTF, while the remaining 55% accrues to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.

One area that remains unresolved is the fees collected by the Maryland Aviation Administration for P2P entities to operate at the Thurgood Marshall Baltimore-Washington International Airport (BWI). Most Customer Facility Charges (CFC), Passenger Facility Charges (PFC), and Transit Facility Charges (TFC) are assessed on a daily basis. Depending on the airport, some of these fees are capped after some period (e.g., after five days) but this depends on a variety of circumstances.

One of the most common places where people may need car rentals is at an airport. The rise of the P2P sharing model has impacted the car rental industry, as it did other industries, including those driving taxicabs and providing short-term accommodations. Rental car companies argue P2P car sharing programs are not on a level playing field, and the existing tax regime should equally apply to carsharing businesses, especially when it comes to operations at airports. P2P users do not typically pay anything beyond regular state sales tax, while rental car company users pay additional surcharges and taxes that fund public projects. Local airports can be miles away from a traveler's destination, and in the absence of quality public transit, car rentals have been the only option available to travelers looking for reliable transportation. Car rentals also afford travelers flexibility that public transit or taxicabs may not provide.
As a result, airports across the country have built infrastructure for car rental firms, including dedicated facilities, airport transit, and parking areas. In return, airports often have concession agreements in place and levy several fees on car rental companies wishing to do business at

airports. The revenue from these fees is typically shared by municipal and county governments. The most common types of fees are customer facility charges and airport concession fees, which help fund the expenses associated with rental car infrastructure at airports and indirect funding needs for the airport. Rental car companies typically pass these fees along to the consumer, calling them “recovery fees.” Rental car companies are regulated by state governments, which often charge these firms higher fees to register and title their vehicles, as a method of funding motor vehicle departments. The companies will in turn also pass along these costs to the consumer in the form of license and registration recovery fees.

Recently, rental car companies have been arguing that P2P car sharing programs should pay the same fees they are paying, particularly if they are going to be operating at the airports. Many states have begun to establish a policy governing the operations of peer-to-peer and similar vehicle sharing airports. In Maryland, a P2P sharing program must have a concession fee agreement with the Maryland Aviation Administration to operate at an airport in the state. These fees, in theory, should also apply to P2P companies under the Maryland law, but P2P services have options for avoiding many of these fees, because they are not physically confined to the airport.

TAXATION OF THE P2P TRANSPORTATION RENTAL SERVICES IN THE UNITED STATES

Rental services are taxed widely and consistently across the United States. In most states, forty-four states to be exact, taxes are levied as an excise tax as opposed to being levied on the sales of rental services under the broad-based sales tax regime. Some of these states also levy a tax under the broad-based sales tax but it is not common. Local taxes may also apply.[2]

In addition, rental companies may include special fees and administrative costs that are charged to the customer as part of the rental agreement. These special fees are often earmarked for specific infrastructure projects with airport maintenance and functioning being the most commonly levied fees. But they are also used to pay for stadiums, special roadway projects, and other public infrastructure projects.

It is estimated that taxes and fees add up to another 30% of the costs associated with renting a vehicle. The primary area of focus might lie with the associated fees and administrative taxes as opposed to the broader excise or sales taxes, but that decision will depend on the amount of infrastructure projects at risk during a period of adjustment versus the revenue yield from the base rental services.

A secondary area of concern with P2P carsharing is the taxation of the income earned from P2P services performed. Reporting requirements, particularly for smaller owners, need to be

[2] https://taxfoundation.org/reforming-rental-car-excise-taxes/

established in order to let the taxation departments for both the counties and the State know the economic activity is occurring, and that all income is properly accounted.

P2P services are likely to shift the tax burden of rental services from non-residents to residents. Car owners could alleviate this burden by passing the tax to the consumer, but car-sharing is likely to encourage more residents to purchase these services. Non-residents on travel would continue to utilize these services, but the overall burden is expected to shift more to residential consumers.

EXEMPTION OF RENTAL SERVICES

Another issue that deserves discussion is the current level of exemptions provided to the traditional car rental industry.

Traditional car companies were provided several exemptions from both the sales and income taxes on the procurement, use, and disposition of their rental fleets. These were chiefly provided due to the long-standing business intermediate exemption used in manufacturing goods or the business investment exemption from sales taxes. In short, these fleets were products necessary for the business to provide the service.

Also of note is an idea that has sprouted up in other states---to allow for an income tax credit to owners that utilize their vehicles for renting. Again, mandatory reporting requirements would be necessary to offer this type of tax incentive.

Some tax policy analysts suggest that a simplified tax structure could level the playing field and eliminate the need for the existing exemptions provided to the rental car industry. In doing so, to the contrary, there may be an increased burden on the traditional rental car companies.

TAXES OR BROAD-BASED SALES TAXES FOR RENTAL SERVICES

Turo argues that it should be exempt from sales and use taxes, because the car owners have paid the tax on their vehicles previously. This position is supported by The Tax Foundation, an tax policy group that has been involved in assessing the taxes on rental services with specific regards to the P2P companies and the traditional rental car services. In its review of the policy issue in Ohio, Florida, and Illinois, they have repeatedly and consistently argued against the use of excise taxes as currently levied.

Some argue the excise taxes currently applied to rental cars contradict long-held views on good taxation policy on several levels. First, it narrowly applies the tax base to a select group of consumers, particularly non-residents, and this violates the notion of horizontal equity wherein all consumers impacted by the tax face the same burdens. Second, the associated fees and administrative costs added to the rental service, estimated by the Tax Foundation to provide

effective tax rates of 30% or more on rental services, are not transparent and known to the consumer and therefore also violate sound tax policy.

When considering the introduction of P2P services that might provide services, current excise tax policy is mixed, but most states do not currently tax P2P rentals. The excise tax system could be replaced by a broad-based sales tax levied on rental services. Ideally, the system of fees and administrative costs would also be replaced, but this concept requires additional consideration due to its direct involvement in funding several special infrastructure projects. A broad-based sales tax would be applied to all consumers equally, would apply to all industries equally, and would be transparent and known to consumers. This is exactly the system that the Tax Foundation argues for and this concept has been introduced via legislation that has been adopted or introduced in Ohio, Florida, and Illinois.

The position of The Tax Foundation contradicts the state's long-standing authority to impose a sales tax on the rental of tangible personal property. A change in this tax policy could have a large revenue impact that would require examination.

EXPERIENCES FROM OTHER STATE GOVERNMENTS

As P2P continues to grow as a mobility option, it is likely that states and localities will continue to consider further measures to formally incorporate car sharing into their overall transportation system needs. State governments are continuing to look at ways to regulate the industry, similar to how disruptive companies like Airbnb and Uber have seen increased regulation. Most of the focus has been on Turo and the traditional car rental companies and their lobbying organization, the American Car Rental Association (ACRA).

Legislation has been introduced in over thirty states, including Maryland, which passed the first comprehensive state law to require peer-to-peer car rental companies to comply with state tax, insurance, and safety laws and regulations. While many legislatures are continuing to see legislation regarding the regulation of the P2P industry, there has not been a lot of progress in passing laws. Safety, insurance and taxation laws continue to be the core topics of discussion when state governments are considering policies to regulate the P2P industry. Traditional rental car companies argue that if a P2P is in the car rental space, then it must abide by the safety, insurance and tax laws that federal and state legislators and regulators have adopted to regulate car rental companies.

As of June 2019, the following states have pending, or have passed, peer-to-peer car sharing/car rental (or personal motor vehicle sharing) legislation: Arizona, California, Colorado, Georgia, Hawaii, Indiana, Iowa, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Washington, and West Virginia. Arizona H.B. 2559 (Ariz. 2019) and S.B. 1305 (Ariz. 2019); A.B. 1263 (Cal. 2019); S.B. 090 (Colo. 2019); H.B. 378 (Ga. 2019); H.B. 241 HD2 SD 1 (Haw. 2019) and S.B. 662 SD2 (Haw. 2019); Pub. L. No. 253 (Ind. 2019) (to be codified at Ind. Code § 9-25-6-3); H.F. 779 (Ia. 2019); H.D. 4139 (Mass. 2019); L.B. 349 (Neb. 2019); S.B. 478 (Nev.

2019); H.B. 274 (N.H. 2019); A.B. 5092 (N.J. 2019); S.B. 556 (N.M. 2019); S.B. 5995 (N.Y. 2019); H.B. 2071 (Wash. 2019); H.B. 2762 (W. Va. 2019). The scope of the bills range from extension of rental tax obligations to peer-to peer rentals to more comprehensive schemes similar to that passed in Maryland in 2018.[3]

Laws have existed in California, Oregon, and Washington prior to the industry taking off. Peer-to-peer carsharing services like Turo and Getaround are allowed to operate in every state except New York, which has explicitly banned Turo from operating in the state.

Other states have produced varying degrees of legislation aimed at car sharing for the public and for state employees. Many of these differ from P2P services because they are not aimed at profit making ventures. Some states view P2P as advantageous because it cuts traffic congestion and improves environmental pollution. Washington, Oregon, Wisconsin, and California have all passed measures intended to stimulate car sharing, although California's recent Assembly Bill 5 may curtail some aspects of car sharing. Some of these measures included tax credits for sharing personal vehicles and allowed for designated parking in limited-time zones. The California, Oregon, and Washington laws share much in common with each other. Each requires owners to be part of a car-sharing program that facilitates sharing for noncommercial use. Each state requires insurance coverage to be at least three times the minimum required for private vehicles. The laws also limit the amount of income that can be earned through car-sharing to the costs associated with ownership maintenance to limit excessive profit.

Massachusetts instituted a pilot program with Zipcar in 2016 to allow for state employees to utilize car sharing of state vehicles using Zipcar technology or to use Zipcar vehicles when state-owned vehicles are not available.

The State of Hawaii designated a lower tax for rentals of less than six hours to address concerns about different levels of car sharing usage while instituting a parity tax for longer term rentals with the traditional rental car industry. Florida provided for similar lower tax rates for rentals of less than 24 hours. Some states have considered certain car-sharing activities are exempt from taxation. Minnesota exempts some non-profit use of car sharing. In 2017, New Jersey has considered exempting the car rental tax or to pro-rate the tax based on half-hour increments.

Colorado recently passed HB19-090: Peer-to-peer motor vehicle sharing program which establishes regulations for peer-to-peer car sharing programs. The legislation requires record keeping for transactions in these programs, emergency numbers for roadside assistance and insurance coverage. The bill did not include any requirements about taxation, although it does say car-sharing companies have to negotiate fees with the airport.

In 2019, the Texas legislature had a bill that would require peer-to-peer car-sharing firms—labeled "marketplace car rental providers" in the bill—to collect and remit the Texas excise tax

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[3] https://futurist.law.umich.edu/vehicle-rental-laws-road-blocks-to-evolving-mobility-models/

on car rentals on behalf of private car owners. Car owners may also elect to remit the tax themselves if they notify the marketplace rental provider and the tax authority. In that case, the peer-to-peer car-sharing firm would send the collected tax to the car owner, who remits it to the tax authority. The bill passed the House, but failed to receive a vote in the Senate.

Turo claims that existing Federal law protects Internet-based companies from the actions of their users. Nonetheless, they have faced sanctions from New York for their conduct in an insurance dispute. ACRA has pointed out that the original California bill allowing for P2P services says nothing about taxation but is instead focused on insurance regulations.

And that bill, California Assembly Bill (AB) 1851, amended the insurance code to state that owners of private vehicles utilized in sharing programs would not have their insurance invalidated. The bill also stated that revenue associated with car sharing must not exceed the annual expenses of owning and operating the vehicle.

A 2018 bill introduced in the Illinois legislature that voided damage waivers for car insurance changed the definition of renting to a transaction that results in someone other than the owner driving the car. This definitional change would have subjected the P2P services to the existing tax policy faced by rental companies and presumably to the same or similar regulatory burdens. The Governor vetoed that bill and the issue is still under consideration.

Turo has been sued in their own home city of San Francisco by the local airport for avoiding permitting requirements. Turo countersued indicating that they are not a rental company. They are also in a lawsuit with Los Angeles for similar concerns, have been censured by MDOT at Baltimore-Washington International Airport and a letter provided to ACRA from Chicago taxing authorities indicates that P2P companies should be treated as other rental companies. The Massachusetts Port Authority is also involved in disputes with Turo over their usage of airport facilities without remitting the various fees and surcharges. A recent legislative provision in Ohio that would have treated P2P companies as traditional rental companies occurred just as the Columbus Airport Authority broke ground on a $140 M rental space garage. That provision was dropped from the final bill but legislators had suggested that a standalone bill would be forthcoming.

Recently, Arizona produced two different bills during the 2019 session. One exempted the P2P companies entirely and the other would have them taxed as an existing rental company. Arizona has several sports stadiums that are funded/supported by rental revenue and associated fees.

While Maryland passed the first comprehensive bill to address P2P car sharing, policy discussions are beginning to ramp up nationwide and will continue to be a contentious issue amongst the states with significant outcomes at stake and every move will be closely watched.

INCOME TAX REPORTING REQUIREMENTS FOR P2P OWNERS

A secondary effect of the P2P marketplace is that a relatively large number of car owners will be earning generally smaller amounts of income on their vehicles. Federal law requires the P2P car-sharing companies to remit income statements to tax authorities at the States if at least 200 transactions and $20,000 of gross income is paid to the owner of the vehicle in a calendar year. It is estimated that the vast majority of current P2P owners will fall significantly short of these income reporting thresholds and under current law will not have this income tracked appropriately.

The State of Vermont and the Commonwealth of Massachusetts have both addressed this concern. Both states have issued legal guidance to P2P companies that require the "third party settlement organization" transactions to be reported to the states following the lower thresholds of $600 in total transactions. This follows Federal legal requirements for issuances of 1099 forms. Other states may have followed suit in this endeavor.

Provided Maryland adopts similar legislation, they should be able to capture a significant amount of the income earned by P2P owners.

Other possible options to explore include randomized audits at the airports or similar transportation hotspots for the vehicles used in the service and their owners to be registered by the State. Subsequent follow-up will be needed but the State should carefully consider enforcement and compliance actions particularly at airports for both the secondary activity of income earned by owners, but also for the much larger fees incurred and due the airport for the primary activity of rental services provided.

GROWTH OF P2P

Turo is the most established and active P2P company and began as a $250 M startup and has attracted over $1 B in investment funding. Turo has over 5 million registered car owners in their service and is currently valued at over $700 M. Turo maintains operations in 49 U.S. states (all but New York), over 5,500 cities, has 220,000 registered users throughout Canada, and has recently expanded into Europe. Daimler has invested and partnered with Turo to be involved in their European expansion efforts.

Getaround is another of the larger P2P operations. Getaround is headquartered in San Francisco and began operations in 2009. Getaround employs 200 people and as of 2018 had raised over $300 M in investment financing. Getaround has a smaller footprint with about 500,000 registered cars in their service operating out of 14 major U.S. cities.

Insurance was noted earlier as the single biggest hurdle to entering this market. And new players continue to experiment in this space. Three smaller entrants into the P2P market include

HyreCar, DriveShare, and FlightShare. Given the brief history of this industry and the opportunities available one should expect changes to occur in this space that should continue to disrupt the current market offerings.

HyreCar is a relatively new service and appears to be offering a self-described “simpler” insurance model than Turo. Otherwise, iT appears to operate in a similar manner as Turo and Getaround, but is much smaller in size. DriveShare is a specialty P2P service centered on classic cars. DriveShare is notable for its ownership group is the insurance company Hagerty, which specializes in the classic car insurance market. Other insurance providers might be watching DriveShare closely that might be tempted to enter the P2P market if they sense an opportunity. It is worth noting that insurers are very active in the non-traditional financial markets and the so-called “shadow” banking industry.

The last company mentioned was FlightShare that serves as an interesting view into problems associated with how rapidly the P2P market is evolving. FlightShare was a P2P car sharing service centered less on sharing cars and more on alleviating the burden of parking costs. The service was located primarily within airport parking garages and was marketed as a method of renting out a car while it was sitting in an airport garage. FlightShare was recently sold to Mercedes-Benz as it failed to garner much traction and had significant costs that exceeded its revenue. The model began in 2017 and is technically still an option, but will likely need to be reformed in order to survive longer term.

The rapidly evolving nature of the P2P world means that new players will enter into the field and may cause additional adaptations to existing P2P models, as well as further disrupting the traditional rental car market. Common traits that appear to be part of the successful P2P players involve ensuring that the end user experience is convenient and pleasant to use. Other notable aspects of the successful P2P business is continuous end user support on a 24-hour, 7-days a week basis. Finally, the market must consider what competitive advantages new entrants will provide. As insurance is a primary barrier to entry, a company that can provide a more seamless and less burdensome insurance solution will have a significant market advantage over even the current market leaders.

ECONOMICS OF P2P TRANSPORTATION RENTAL SERVICES

P2P companies rely on a technological-based model for providing car rental services to its customers. As this analysis will explain, that model is streamlined and attempts to capitalize on a lower economic cost basis to outperform the traditional rental companies. It also seems to provide advantages to many of its market participants. There is a lot to admire about the business model that the P2P companies have established.

The market size of the P2P companies is self-reported in the millions of registered car users. Turo, the largest service, self-reports that there are 5 million registered cars available through their service. Industry analyst Alexandre Marian from AlixPartners suggests that only two to three

million of these cars should be considered as "active" participants in the service within the United States.

A 2019 *Associated Press* article from the *San Francisco Gate* newspaper indicates that Turo has 197,000 hosts with 350,000 registered cars in the area. Of these, 95% of the hosts own three or fewer cars. But some of these hosts do own micro-fleets consisting of more than three cars.

In order to gain customers, Zipcar estimates that it costs them about $70 to obtain a new customer. This article was unable to find similar estimates for Turo or Getaround.

Turo self-markets itself as being 30-35% less expensive than a traditional rental car company. IHS Markit estimates that the P2P models could be as much as 50% less expensive than a traditional rental company. In the P2P model the owner is provided with suitable incentive to use the P2P service. Owners utilizing Turo's service receive an estimated 65% to 90% of the revenue associated with the rental.

This percentage is based on the choice of insurance that the owner opts for when setting up their car for use. Maven allows the driver to keep 60% of the revenue from the rental; Maven receives the remaining 40% of the revenue. Getaround does not publish similar statistics; although, it does claim that driver's using their services can make up to $10,000 per year.

That claim is 67% larger than the estimated $500 per month that the average user of Turo and/or Getaround claims, although it is a marketing tactic that should represent the upper end of the income available from using the service.

With regards to the customers of the rental services, they are tempted by lower costs, ease of use and general convenience factors, and may be influenced by other factors such as environmental concerns and reduction of polluting vehicles in use. Turo's own customer satisfaction data indicates that the end user experience is a significant benefit to the drivers and that they do perform a solid job of making the experience easier to use. The average Turo user pays about $45 per day to rent a car. They can rent on a daily or an hourly basis. The average owner rents for ten days of use in a month and earns about $550 per month.

The largest and most expensive barrier to entry in the P2P market is obtaining insurance to cover the use of the rental car. Specific figures on the insurance costs are not available and do vary according to state law and type of coverage available. Turo cannot operate in the State of New York due to their inability to indemnify owners' policies even with additional insurance coverage. In British Columbia where the government provides automobile insurance Turo, has had to work with smaller regional businesses to provide commercial insurance to its drivers.

As noted earlier, the largest economic concern for the traditional rental markets are the fleet management. P2P companies do not have to concern themselves with anything like this economic and structural arrangement. Because their pool of automobile rentals is larger and

more varied and can be adjusted much more rapidly than a pre-existing fleet of cars, the P2P companies are much more flexible than a traditional rental company.

PHYSICAL ASSETS VERSUS VIRTUAL ASSETS

The most basic difference between these competing business models is the requirement of physical goods versus the virtual world space. The major benefit of the traditional model and the biggest administrative barrier is the fleet of cars owned by a rental car company.

A sizeable fleet is necessary for any car sharing service whether it is actual or virtual. In the case of an actual fleet, it occupies a significant amount of space and comes at an enormous cost. Managing that fleet is the primary concern of the traditional rental businesses. But they need those car models in order to suit consumer demand. A virtual fleet faces the same base concerns but faces a different problem. As it utilizes the owner's space for storage that comes at no additional cost to the P2P company, but they must be able to locate and furnish transportation to the customer within a reasonable time frame. Failing to do so results in a denial from the customer and no sale. And that is the primary goal of the P2P model, to be able to deliver the right car at the right time and in the right place to the customer.

It is important to note that the traditional rental business requires a significant amount of capital to purchase, maintain, and house fleets of cars. Comparatively, the virtual model has a much lower cost basis that borders on being an essentially zero net cost basis. This physically intensive asset model lends the use of sales tax exemptions as the physical fleet of cars is considered a "business investment" purchase. It also involves selective tax breaks on the sales of used business assets and similar tax breaks to help offset such costs.

Even at this fundamental level where the same goal exists, there is already a huge difference in how these companies operate and think about the business. It would be completely infeasible for a company to own, house, and maintain two million cars at any given airport. Decisions must be made about which cars to purchase, where to house them, and how best to maintain a suitable variety of car models. A P2P company, with the proper amount of time, could locate the desired vehicle and drive it across states to the consumer at a fraction of the cost. They would be pressed to locate the right car and concern themselves with the functionality of the car arriving on time and in the right condition. But the decision-making processes on both ends are significant different.

FLEET-SIZE

The fleet size of a traditional rental car company has always been significantly large to allow for a variety of uses available for rental. Rentals at airports will have economy size cars for single drivers or small families, large sedans for more people, minivans for family uses, and a few

sportier models for enthusiast drivers. Having less models or actual cars available means that fewer customers with differing needs could be accommodated.

When P2P car companies were first envisioned in California, the legislators thought about the treatments they wanted to allow. The initial California law allowed for the operation of P2P car-share companies but only to the extent that the profit made from sharing did not exceed the operating costs of the vehicle. The law as written should have kept the fleet sizes of P2P owners sharing a few cars at most, and the profits from these activities small.

But the P2P companies have demonstrated a willingness to expand on their owners' abilities to increase their fleet sizes. Overall, the entirety of the fleet available to a P2P company can be huge. Turo discloses that over five million automobiles are available for rent through its service, although industry analysts suggest that 40-60% of the owners are dormant and only two to three million are active rentals. And there are no issues with these aggregated fleet sizes with the original California law. The law targets the actual owners of the rental cars and requires that they not exceed operating and maintenance costs.

Turo itself solicits the use of businesses for their car sharing service. Turo solicits the traditional car rental companies, or any business owning a fleet of cars, to sign up and use their services via their website. When questioned about this service, Turo's own general counsel acknowledged that any car rental company that uses this service still must comply with all applicable laws and regulations regarding traditional rentals. This seems to differ from their opinions on how a P2P sharing service should be taxed and regulated.

CONCLUSION

It is difficult to predict to what extent P2P carsharing companies and their peers in other industries will continue to disrupt traditional companies and our economic marketplace. One thing is for certain: the recent trends indicate that P2P carsharing companies will continue to grow, and they have become real players in the car rental industry's eco-system.

As technology continues to evolve and clears a path for innovative advancements, more and more alternative options to traditional services and products will enter the marketplace, and policymakers will be tasked with determining a prudent course of action for these emerging industries and companies.

Determining a fair and reasonable tax rate to impose on burgeoning industries, services, or products are always a challenge. To be sure, conflict between the longtime players and the new players in the field will continue to exist as policymakers consider options and as the market continues to evolve to adapt to this new, technologically-fueled era. Equally as challenging is determining what set of rules they must abide by, and whether or not these rules create an unlevel playing field.

A multitude of unanswered policy questions remain with respect to P2P carsharing companies. Specifically to Maryland, should policymakers continue to tax and impose regulatory requirements on these companies, as it has for the last two years? Should Maryland statutorily consider P2P companies as traditional car rental companies, and subject them to the same rules and regulations that the latter are subjected to? Should P2P companies be subjected to airport fees that car rental companies like Hertz and Avis are required to collect and remit? How can government, through its act of policymaking, prevent the perception that it is picking winners and losers?

The answers to these highly-complex, multi-layered questions cannot be answered in one report, or through replication of another state's regulatory and legal framework. As have been stated on a number of occasions, P2P companies and its peers will continue to evolve as it seeks to maintain and expand its share of the economic pie. As these industries evolve, so should the laws and regulations enacted by government to ensure that all stakeholders have an equal chance to compete.