

CHAPTER 40
DOMESTIC SECURITY FEE

Authority

N.J.S.A. App. A:9

Source and Effective Date

R.2003 d.339, effective August 18, 2003.
See: 35 N.J.R. 1493(a), 35 N.J.R. 3853(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 40, Domestic Security Fee, expires on February 14, 2009. See: 40 N.J.R. 2226(a).

Chapter Historical Note

Chapter 40, Domestic Security Fee, was adopted as new rules by R.2003 d.339, effective August 18, 2003. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PROVISIONS

18:40-1.1	Scope
18:40-1.2	Definitions
18:40-1.3	General application; rental time periods
18:40-1.4	Rentals to government and tax exempt entities not exempt
18:40-1.5	Complimentary rentals
18:40-1.6	Motor vehicle dealer situations
18:40-1.7	Transportation of commercial freight; organized commuter vanpools
18:40-1.8	Inter-company rentals
18:40-1.9	Out-of-State rental
18:40-1.10	Quarterly reporting and method of payment
18:40-1.11	Separate from sales or use tax
18:40-1.12	Refunds

SUBCHAPTER 1. PROVISIONS

18:40-1.1 Scope

This subchapter shall apply to the administration and implementation of P.L. 2002, c.34, § 54, signed into law July 1, 2002, which provides for a new statutory assessment of \$2.00 per day to be paid to the Division of Taxation by businesses which engage in motor vehicle rentals for each day or part thereof, not exceeding 28 days in length, that a motor vehicle is rented under a rental agreement. This fee applies with respect to rental agreements in New Jersey entered into on or after August 1, 2002. The statute authorizes the Director of the Division of Taxation to make rules, pursuant to the rulemaking authority granted pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and P.L. 1966, c.30 (N.J.S.A. 54:32B-1), to implement the statute's provisions. The fee is separate from, and in addition to, any sales tax imposed on the cost of the rental transaction and is not to be included in the receipts subject to sales tax liability imposed pursuant to the Sales and Use Tax Act, P.L.

1966, c.30 (N.J.S.A. 54:32B-1 et seq.). The fee is to be designated as the "Domestic Security Fee" in the rental agreement and paid to the Division of Taxation for deposit in the General Fund of the New Jersey Domestic Security Account. A rental company may require reimbursement of the Domestic Security fee from a renter or a third party. However, the fee is due from the rental company whether or not the renter or a third party pays for the rental or reimburses the rental company for the fee.

18:40-1.2 Definitions

The following words and terms, when used in this and subsequent subchapters, shall have the following meanings, unless the context clearly indicates otherwise:

"Complimentary rental" means a rental for which the renter or any person on his or her behalf pays no consideration or any charge or does not reimburse any expenses of the rental company, such as, but not limited to, insurance coverage associated with the rental.

"Lease agreement" means any agreement for a stated term of more than 28 days that requires the party leasing from a rental company, as defined in this section, to pay for State motor vehicle registration, to maintain the vehicle for ordinary wear and tear at his or her own expense, and to purchase liability and casualty insurance for the vehicle.

"Rental agreement" means any agreement or invoice for the rental of a motor vehicle.

"Rental company" means any individual, business, or other entity or person engaged in the business of renting motor vehicles, whether or not that is the sole business of the company.

"Rental day" means midnight to midnight or a 24-hour period commencing at the time of day fixed by the parties for the start of the rental period should the rental agreement specifically provide for it. A rental agreement which is for only a part of a day shall be treated as a whole day.

"Rental motor vehicle" means a passenger automobile, truck or semitrailer that is rented without a driver and designed for use in the transportation of persons or property on the public roadways, other than for transportation of commercial freight. Such vehicles include, but are not limited to:

1. Buses (not used for commuting/ridesharing purposes);
2. Dump trucks and truck cranes (if these vehicles have to be registered/license-plated under State motor vehicle laws in order to be operated and driven on the open highway);
3. Hearses;

4. Ice cream trucks (where the product is sold directly off the truck to the ultimate consumer);
5. Limousines;
6. Loaner vehicles from a car dealership, whether a cost is paid by the renter or dealership (except where the rental is strictly complimentary, that is, where a vehicle is lent from a car dealership at no cost, whatsoever);
7. Recreational vehicles, whether self-powered, trailered or towed;
8. Semitrailers, including utility trailers and every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. This also includes the rental of a trailer used for storage if it is designed for carrying persons or property, drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle;
9. Trucks, including those used for the transportation of non-business property, but not those rented for the transportation of commercial freight, whether the renter is transporting its own goods or the goods of a third party; and
10. Vans (except those rented for organized commuter vanpools of seven to 15 passengers, one of whom is the driver).

“Renter” means an individual, business, or any other entity that enters into a rental agreement to rent a motor vehicle from a rental company.

“Third party” means, other than the renter, an individual, business or any other entity, including a manufacturer, who pays for the rental or reimburses the rental company for the fee.

18:40-1.3 General application; rental time periods

(a) The \$2.00 per day rental fee applies to the first 28 days of a rental agreement for a rental motor vehicle with the same renter; thus, the maximum rental fee in the aggregate is \$56.00 even if the actual rental extends beyond 28 days. The rental fee does not apply to any period of a lease agreement.

Example 1: A rental company rents a motor vehicle to a renter for 30 days. A rental fee for 28 days is owed by the rental company.

Example 2: A rental company rents a motor vehicle to a renter for 20 days. The renter returns the vehicle on the 15th day of the rental agreement and is not charged by the rental company for the remaining five days. The rental company owes a rental fee for 15 days. The agreement was modified by the parties to one of 15 days duration. If the rental company

charged the renter for the full 20-day period, then a rental fee of 20 days, however, would be owed by the rental company.

Example 3: A rental company rents a motor vehicle to a renter for 60 days but breaks up the rental period into two 30-day intervals. If there are separate rental agreements entered for each 30-day period with any terms different (other than for duration), then 28 days of fees must be paid by the rental company on each agreement. If just one agreement covers the 60-day period, then the \$2.00 per day fee covers only the first 28 days.

Example 4: A rental company provides a rental agreement that includes an option to renew. The original agreement requires that either or both of the parties to the agreement exercise the right of renewal before it can go into effect. The new renewal agreement is considered an agreement that was entered into as a result of an option to renew a previous agreement as well as an original agreement in and of itself. Both situations are treated the same for the purposes of the Domestic Security Fee law. The 28-day time period commences from the beginning date of each rental agreement, renewal or otherwise. If, however, the option is automatically renewable (for example, the agreement renews without the need for either party to take any action to put the renewal into effect, whether or not any terms change), then the fee would only be owed for up to the first 28 days of the original agreement.

Example 5: A rental company rents a vehicle to a customer which is returned before or at the end of the rental period, at the rental company's request, because the renter needs extended use of the vehicle. The rental company requires the return of the vehicle so that it can physically inspect the vehicle to ensure that it is in good condition; it prefers to collect payment up to that point in time, and because of computer system restraints and the rules surrounding the taking of authorizations and the recording of sale by a credit card company. In order to process payment, the company must close the rental agreement. Once the vehicle is inspected and payment processed, the rental agreement is then renewed/extended under the same terms (although not necessarily the same time period) as the original agreement. Here, the renewed/extended rental agreement is merely a part of the original agreement. Where a motor vehicle rental agreement contains an option to renew/extend automatically during or at the end of the rental period, or where a renewal/extension agreement merely continues the terms of the original agreement without any time interruption from the end of the original agreement, then the fee would only be due and owing for up to the first 28 days of the rental, whether the rental period falls entirely within the time period of the original agreement or the original agreement plus some additional time under the renewal/extension agreement for a total of 28 days. If, however, the parties to the original agreement enter into a new agreement with different terms (other than for duration), a new 28-day period starts to run.

Example 6: A rental motor vehicle company replaces a rented motor vehicle with another. If the replacement vehicle is covered by the original agreement, there is no additional fee due other than what would have been required under that agreement. However, if a new agreement is entered into to cover the rental of the replacement vehicle, then the 28-day period would run anew from the beginning of the new agreement term for that vehicle.

(b) The rental fee is due for every rental day or part thereof. Any extension of rental time into a part of a day, whether due to an agreement or unilateral extension by either party, as long as billed by the rental company, shall result in an additional one day's fee being due from the rental company, up to 28 days of total rental.

Example 1: A rental agreement provides for a motor vehicle rental of only five hours. A \$2.00 fee is due on the rental agreement.

Example 2: A rental agreement provides for a five-day rental period with a penalty for late return. The renter does not return the vehicle until two hours into a sixth day and pays a penalty to the rental company. The rental company owes six days of the rental fee.

Example 3: Same as Example 2 but the rental company waives the penalty. Only five days of the rental fee are owed by the rental company.

Example 4: A rental agreement provides for a motor vehicle rental of one day and one hour. A \$4.00 fee is due on the rental agreement.

18:40-1.4 Rentals to government and tax exempt entities not exempt

Payment of the rental fee is required for rentals to Federal, State, county, municipal or other governmental entities, or non-governmental organizations that are tax exempt under any Federal or State laws.

Example 1: A rental company rents a motor vehicle to the County Regional High School District Board of Education, a governmental entity, for use by the Board to attend a two day State sponsored seminar on school district administration in Atlantic City. The rental company must pay the rental fee for the rental period.

18:40-1.5 Complimentary rentals

No rental fee is due and owing for any complimentary rentals. Such an agreement does not require the customer to pay a charge directly related to the use of the vehicle. A complimentary rental is done strictly as a courtesy to the customer. Discounted rentals, however, are not complimentary.

Example 1: A rental company rents out a motor vehicle under a rental agreement providing for several additional

“free” days of rental. The free days are considered a discount, and a rental fee is due for those days as well as for the days that are charged by the rental company.

18:40-1.6 Motor vehicle dealer situations

Motor vehicles loaned by a motor vehicle dealer to customers under a warranty, service or similar agreement or contract, for any kind of consideration, whether or not through a third party, and regardless of which party pays the consideration, are considered motor vehicles for rental and, as such, are subject to the fee imposed by the Domestic Security Fee law.

Example 1: A motor vehicle dealer provides a loaner vehicle at “no cost” to a customer, but the agreement between the dealer and the customer requires payment for mileage and provides an option for the purchase of insurance by the customer. Charges for mileage, insurance waiver/damage liability all are common elements of a rental agreement. Accordingly, where such items are charged, the agreement is rental in nature, and the dealership would be responsible for the \$2.00 per day fee. Multiple day usage under the same agreement terms would result in a multiple day liability for the fee.

Example 2: A motor vehicle dealer gives a loaner vehicle to a customer under a warranty agreement. There is no cost to the customer, but the vehicle manufacturer pays dealer a reimbursement cost for lending the loaner vehicle to the customer pursuant to the side agreement/warranty agreement. The dealer pays the \$2.00 per day fee because there is a cost paid in return for the vehicle being loaned out (it does not matter which party is paying the cost). However, if the manufacturer only pays a periodic allowance to the dealer for a pool of vehicles to be given without charge to customers, regardless of whether any of the vehicles actually get loaned out, there is no rental agreement created. In this situation, the manufacturer is merely providing a flat allowance to a dealer to keep available a vehicle or pool of vehicles for possible loaner use. Any vehicles actually lent to customers would be considered complimentary rentals (unless the customer must pay for gas used or insurance coverage on the use of a particular vehicle—then the dealership has created a “rental” situation).

Example 3: A vehicle manufacturer provides a pool of vehicles to a dealer for use by warranty/service customers, for which the dealer pays a charge to the manufacturer, but only if a particular vehicle is actually lent out. The dealer's customers who have left their vehicles with the dealer for warranty or other service, pay no charge for the loaner vehicles. A rental agreement exists between the dealer and the manufacturer who must pay the \$2.00 per day fee.

Example 4: A motor vehicle dealer's department A lends a vehicle to department B for use as a loaner vehicle to a customer for department B. Department A charges department B for the specified use of the loaner vehicle. As there

is a cost charged for the use of the loaner vehicle, a \$2.00 per day fee is owed.

Example 5: A motor vehicle dealer obtains motor vehicles from another company engaged in motor vehicle rentals to which the dealer pays all rental costs. The motor vehicles are available for customer use under warranty agreements with no cost to the customers. Rental agreements exist between the company and the dealer or between the company and the customers depending on which entity is named in the agreements as being the entity from which the vehicles are being rented. That entity must pay the \$2.00 per day rental fee whether or not the vehicles are actually loaned to customers.

Example 6: A motor vehicle dealer has an agreement with another company engaged in motor vehicle rentals for the latter to supply "loaner" vehicles directly to the dealer's customers. The dealer refers its warranty customers to the other company which then uses its rental agreement forms to arrange for vehicle rentals. The customer is not charged for use of the vehicle. The dealer, however, pays a rental charge to the company and, in turn, receives from the automobile manufacturer reimbursement for the rental charge. In this situation, the company which actually supplies the vehicle, not the dealer, would be liable for payment of the \$2.00 per day fee because the dealer is only acting in an agency capacity for the company.

Example 7: A company engaged in the rental of motor vehicles enters into an agreement to rent a vehicle to a dealer. The dealer then enters into a separate agreement with its customer at an identical rental price. In this situation, there are two separate agreements. Accordingly, the rental company must pay the \$2.00 per day fee for the duration of the rental agreement with the dealer, and the dealer must pay the \$2.00 per day fee for the duration of the rental agreement with the customer.

18:40-1.7 Transportation of commercial freight; organized commuter vanpools

(a) Commercial freight rentals are not subject to the Domestic Security fee.

Example 1: Rental company A rents a motor vehicle to company B for the transportation by company B of tangible personal property sold by company B. Company A does not pay any rental fee because the rental is for the transportation of commercial freight by its vendor.

Example 2: Rental company A rents a motor vehicle to company B for the transportation by company B of tangible personal property owned by others. Company B is in the business of transporting such property. Company A does not pay any rental fee because the rental is for the transportation of commercial freight as a carrier for hire.

Example 3: Rental company A rents a motor vehicle to a non-business entity for the transportation of tangible personal property. Company A pays a rental fee because the rental is not for the transportation of commercial freight.

Example 4: Rental company A rents a motor vehicle to a business entity to be used to carry tangible personal property to be sold directly out of the vehicle. Company A pays a rental fee because the rental is not for the transportation of commercial freight but for the purpose of using the vehicle as a platform for the sale of tangible personal property.

Example 5: A company rents a truck from a truck rental company to back-haul, that is, move a third party's commercial goods on the return trip. The renter would be considered taking freight transported for others in the carrier's regular course of business. In that situation, if the rental was exclusively for back-hauling, no Domestic Security fee would be due.

(b) Vanpool rentals are not subject to the Domestic Security fee.

1. A vanpool rental is not a rental of a motor vehicle for the purposes of the Domestic Security Fee law if:

i. It is part of a voluntary commuter ride-sharing arrangement;

ii. It involves the use of a van, for a term of any duration, with a seating capacity of between seven and 15 adults, including the driver;

iii. It involves serving a group of members, one of whom is the driver, that are definite at any point in time;

iv. It is solely for the purpose of single daily round trips for transportation of members of that group between:

(1) Places of employment of members of the group (or other group-designated drop-off or pick-up locations); and

(2) The group-members' residences (or other group-designated drop-off or pick-up locations);

v. It does not involve compensating the driver or drivers of the van beyond reimbursement for his or her share of the fee for the vanpool arrangement.

18:40-1.8 Inter-company rentals

The company from which the motor vehicle is rented owes a Domestic Security fee for the term of that rental agreement. Any subsequent rental of the same motor vehicle by the renter to another renter imposes an obligation on the first renter to pay the rental fee for the subsequent transaction as well.

Example 1: Company B rents a motor vehicle from company A for 10 days. Company B then rents the same vehicle to a third party renter for 10 days. Regardless of whether the two time periods overlap, 10 days' of fees are owed each from company A and company B (as long as the rentals are not for commercial freight). Any subsequent rental of the same motor vehicle by the second party renter/rental company B to another renter imposes an obligation to pay the rental fee on that company B for the subsequent transaction as well as on company A for the original A/B transaction.

18:40-1.9 Out-of-State rental

The Domestic Security fee applies to rentals made from business locations in New Jersey, whether or not the renter removes the vehicle from and returns it to New Jersey. It does not apply to a rental transaction where a vehicle is rented from outside New Jersey and returned by the renter to a rental company location in New Jersey.

Example 1: A rental company rents a motor vehicle to a renter for 15 days use out of State. Upon commencement of the rental period, the renter immediately removes the vehicle out of State for the balance of the rental period and returns the vehicle to an out-of-State location. The rental company owes a Domestic Security fee for 15 days. If, however, the rental company rents a vehicle from an out-of-State location and the renter returns the vehicle to a location in New Jersey, no fee is owed on the rental period. Location of the rental company from where the vehicle is rented, not location of use or the amount of time a vehicle may be used out of State, determines whether a Domestic Security fee is owed.

18:40-1.10 Quarterly reporting and method of payment

(a) All fees due from a motor vehicle rental company shall be paid on a quarterly basis and are due no later than the last day of the month following the end of the quarter. The fees shall be reported on return form DSF-100 which shall be filed using an internet based application on the Division of Taxation website www.state.nj.us/treasury/taxation.

Example 1: A 20-day rental agreement commences September 2nd and expires on September 22nd. The entire

rental agreement period falls within the quarter ending September 30th, so that the return with payment of fees must be filed by the end of the month following that quarter (that is, by October 31st).

Example 2: A 20-day rental agreement commences September 22nd and expires on October 12th. Although eight days of the rental agreement fall within the quarter ending September 30th, the return with payment of fees for the entire 20-day rental period accrues in the quarter for October 1st through December 31st, and is not required to be filed until the end of the month following that quarter (that is, by January 31st of the following year).

(b) A return should be filed regardless of whether rentals were made in any particular quarter.

(c) Payments are to be made by E-check or credit card at the Division's website or by telephonic application by calling the Division of Taxation.

18:40-1.11 Separate from sales or use tax

(a) The Domestic Security fee is separate from and in addition to any sales or use tax imposed on the cost of the rental transaction and is not to be included in the receipts subject to sales tax liability imposed pursuant to the "Sales and Use Tax Act," P.L. 1966, c.30 (N.J.S.A. 54:32B-1 et seq.).

(b) The Domestic Security fee due from the rental company shall be stated separate and apart from any other rental costs, including any amounts due for sales tax, under the terms of the rental agreement and shall be designated as the "Domestic Security Fee" in the agreement made with or any invoice given to the renter.

18:40-1.12 Refunds

Any refunds for over or incorrect payment of the Domestic Security fee may be applied for by completing and filing an A-3730 form with the Division of Taxation. All refunds, however, must be filed no later than four years from the end of the quarter of the year for which payment was due for the refund being sought.