

CHAPTER 40
DOMESTIC SECURITY FEE

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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.