

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

February 25, 2014

1:08 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Doug Isaacson, Vice Chair
Representative Eric Feige
Representative Lynn Gattis
Representative Bob Lynn
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 314

"An Act relating to the application of the passenger vehicle rental tax; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 314

SHORT TITLE: PASSENGER VEHICLE RENTAL TAX

SPONSOR(S): REPRESENTATIVE(S) THOMPSON

02/19/14	(H)	READ THE FIRST TIME - REFERRALS
02/19/14	(H)	TRA
02/25/14	(H)	TRA AT 1:00 PM BARNES 124

WITNESS REGISTER

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the prime sponsor, presented HB 314.

JOHANNA BALES, Deputy Director
Tax Division

Anchorage Office
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 314.

JON COOK, Chief Financial Officer
Airport Equipment Rentals, Inc. (AER)
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 314.

TOM PELLEGRAM, Area Manager
Peak Oilfield Service Company
Nikiski, Alaska

POSITION STATEMENT: Testified during the discussion of HB 314.

RANDY JOHNSON, Owner
Tyler Rental (Tyler)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 314.

SAM BRICE, President
Brice, Inc.
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 314.

RYAN PETERKIN, Co-Owner
Mag Tec Alaska
Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 314.

CHRISTOPHER SLOTTEE, Attorney
Atkinson, Conway, and Gagnon
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 314.

ACTION NARRATIVE

[1:08:08 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:08 p.m. Representatives Gattis, Feige, Isaacson, Lynn, and P. Wilson were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

HB 314-PASSENGER VEHICLE RENTAL TAX

[1:08:46 PM](#)

CHAIR P. WILSON announced that the only order of business would be HOUSE BILL NO. 314, "An Act relating to the application of the passenger vehicle rental tax; and providing for an effective date."

[1:09:05 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, stated that in 2003 the legislature passed original a rental vehicle tax intended to raise revenue from tourists who used and impacted the state's road system. For the first nine years of the rental vehicle tax, the Department of Revenue (DOR) did not apply the tax to Alaskan companies engaged in the long-term leasing of heavy vehicles to other Alaskan businesses. In 2013; however, the DOR began to attempt to collect the rental vehicle tax from Alaskan businesses, who rent vehicles through long-term leases with other Alaskan businesses, mostly of heavier vehicles, but not to tourists. Moreover, instead of announcing the department's new position and applying the policy prospectively, DOR has sought to apply the rental vehicle tax retroactively to 2004. She asserted that it is unreasonable to require businesses to pay a 10 percent rental vehicle tax on all their leases for the past nine years given that fees were not collected from clients. This may bankrupt some small Alaska businesses, she said.

MS. PIERSON stated that the original bill, House Bill 271, passed in the 23rd legislature. At the time, the sponsor statement indicated that the passenger vehicle rental tax was aimed at passenger or recreational vehicles rented by tourists due to the extra wear and tear that rental vehicles put on state roads. Additionally, the tax would help to fund tourism. The sponsor statement concluded that the new passenger vehicle tax would bring in money to assist with funding road maintenance ensuring that those who benefit from state services would contribute to support those services. Unfortunately the passage of House Bill 271 had some unexpected consequences and this

section of law was amended several times to further define its intent. For example, in 2004 a bill was passed to exclude taxi cabs from the aforementioned tax; and in 2006, the statutes were amended to exempt rental trucks. At that time the bill sponsor stated that the tax applies more specifically to the intended target of visitors renting passenger vehicles and recreational vehicles.

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MS. PIERSON offered her belief this tax does not apply to the unintended target of Alaska businesses and citizens who rely on truck rentals for the continued flow of commerce and movement of household goods. This same statement can be applied to HB 314 with the long-term leasing of vehicles to businesses. In 2013, the legislature again amended the passenger vehicle rental tax to exclude motorcycles.

MS. PIERSON stated that once again, with HB 314, the intent of the passenger vehicle rental tax is back before the legislature. Specifically, HB 314 will accomplish four things. First, it would reduce the lease term exemption from 90 days to 30 days. Second, it would reduce from 8,500 to 6,500 gross vehicle weight so that Alaska businesses engaged in commercial rentals are not being taxed, noting these vehicles are typically the half-ton and three-quarter ton trucks. Third, this bill would clarify that this exemption applies to the transport of any goods, whether for commercial or private uses. Lastly, HB 314 would make these changes retroactive to 2004 to reflect the original intent of the legislature that the vehicle rental tax is limited to short-term vehicle rentals to tourists and not to Alaska businesses renting to other Alaska businesses. This bill is needed since the Department of Revenue (DOR) is attempting to collect nine years of back taxes, interest, and penalties from many Alaskan companies who were never intended to be assessed in the first place; however, due to DOR's application, these businesses are now required to pay this tax. She asked for members' support for HB 314.

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REPRESENTATIVE GATTIS acknowledged how onerous it must be to go back to 2004 to collect the tax. First, she said she was horrified that the state would do so. Secondly, she wondered if anything else pertaining to the passenger vehicle tax is outstanding.

MS. PIERSON said the sponsor shares her concern about collecting taxes back to 2004. She offered her belief this change will take the passenger vehicle rental tax back to relate only to rental cars.

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REPRESENTATIVE GATTIS asked whether the bill sponsor is aware of anything else at this time.

MR. PIERSON answered no.

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CHAIR P. WILSON asked for an explanation of the situation on the vehicle rental taxes.

JOHANNA BALES, Deputy Director, Tax Division, Anchorage Office, Department of Revenue (DOR), respectfully disagreed with the bill sponsor that this is a new interpretation by the DOR. Since the inception of the vehicle rental tax the DOR has conducted compliance activities each year since 2004. This consists of looking for companies not complying; for example, by examining business license records and telephone directories. Additionally, the DOR responds to complaints from other businesses that are paying a specific tax, but believe that their competitors are not paying the tax. She reviewed the legislative history, noting that at the time the initial bill passed the legislature acknowledged that about 20 percent of Alaskans would pay the tax. She reiterated this is not a new position by the department and any actions taken have been compliance actions. Even though some companies' activities were not discovered earlier does not mean the department has changed its policies. For instance, with other tax programs in 2006-2007, the department discovered a significant number of miners

were not paying their mining license tax and the department did a large compliance project to bring them into compliance. She indicated that the DOR will work with companies and generally don't go back a full ten years, but attempt to collect the last five years of revenue.

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CHAIR P. WILSON asked for clarification on the process taken by the department once it discovered the out of compliance businesses. She further asked whether the department had sent letters or a bill to businesses.

MS. BALES answered that the department identifies companies may be conducting taxable activity. For example, the DOR sends letters to let businesses know that basically they are "on our radar" and the DOR wants to open dialogue to discuss whether the business is subject to the tax. Once the DOR determines the business should be responsible to pay the tax, the department will work with the company to obtain the reports and collect back taxes. Additionally, the DOR will often waive penalties, as per an agreement with the attorney general's office since the main goal is to gain compliance. The DOR does not send out bills immediately and the department typically will try to contact the parties three times before other avenues are pursued, she said.

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CHAIR P. WILSON asked for further clarification on the specific actions taken on this the back taxes. She asked why the DOR is attempting to collect nine years instead of five years of back passenger vehicle rental taxes.

MS. BALES suggested that the committee might be wandering into confidential taxpayer information. She indicated that she is trying to provide an overview. Certainly, some taxpayers completely ignore the DOR; however, when complaints continue to be filed the department will consider other means to bring taxpayers into compliance.

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REPRESENTATIVE GATTIS assumed that the DOR has access to the business license and the department likely has a pretty good idea of who is renting rental cars. She specifically asked whether the DOR did send notifications to rental car agencies asking them specific questions requesting documentation.

MS. BALES answered yes; the department sent notices to every business that indicated vehicle rentals; however, some do not list vehicle rentals on their business license so unless the department receives a complaint, the DOR would not know of the activity. She reiterated that the department did send letters and forms to the businesses. In further response to a question, she agreed that the DOR sent letters and forms since 2004 as new businesses appear in the business licensing data.

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CHAIR P. WILSON asked whether the companies receive letters every year. More specifically, she asked for the timing of how the DOR sends its three notifications.

MS. BALES responded that the DOR sends out a letter to a new business; that the DOR checks the business license database annually and send letters stating their responsibilities under the law.

CHAIR P. WILSON asked for further clarification. She understood new businesses are sent letters of inquiry and they will respond yes or no; if no, she asked whether the DOR will follow up with additional inquiry.

MS. BALES answered yes; that is correct. In some instances the businesses will not respond. Sometimes, the information does not seem entirely correct, particularly if the department has received complaints. Thus, the DOR may ask for additional information to make a determination on whether the party should collect the tax.

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REPRESENTATIVE ISAACSON recalled municipal collections he previously was involved in at the City of North Pole. He understood that the department tries to give businesses the benefit of the doubt. He asked whether the department's authority was specific enough so that all companies pay the taxes. He further asked how the department avoids having to enforce lapses by taxpayers and having multi-year gaps leading to large penalties. He wondered whether the Department of Law is used to enforce delinquent taxpayers.

MS. BALES responded that if potential taxpayers ignore or provide skeptical information, the DOR has internal criminal investigators that conduct investigations. Secondly, the DOR proactively sent letters in 2003 since the effective date of the vehicle rental tax went into effect January 1, 2004 to all known vehicle rental companies and the DOR's procedure is to attempt to update the process each year. Sometimes the department cannot do so since it may be involved in other activities but must follow through on every complaint. She said she has two jobs as tax administrator. First, she must protect state revenues. Second, her job is also to ensure that the tax programs are fairly administered by the department so all taxpayers are treated fairly by the department.

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REPRESENTATIVE ISAACSON asked how companies report, whether it is handwritten or electronically and how often the activity occurs.

MS. BALES answered that the department has a form businesses are required to complete and submit quarterly. At the end of the first quarter, which runs January 1 to March 31, the business is required to file a return and remit the tax collected from the consumer by April 30 [for the first quarter.] She stated that the DOR has forms and instructions on the department's website. Additionally, taxpayers can also file the vehicle rental tax electronically. In fact, all taxpayers can file on-line, she said.

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REPRESENTATIVE ISAACSON asked for the percentage of the rental companies that are not compliant and how much has not been collected. He clarified that the bill would essentially provide a clean ledger and prior taxes would be forgiven.

MS. BALES answered that this bill would forgive the tax for anyone who did not remit the tax since the tax would not exist for specific types of rentals. It would require the department to refund taxes to the ultimate taxpayer for taxes collected during the prior ten years, which would be a hefty undertaking. Unlike other taxes, such as an income tax which is levied on the corporation, this tax is on the end consumer, similar to a sales tax, so the department would need to refund to every individual who rented a car during that timeframe if the rentals are exempt under the bill.

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CHAIR P. WILSON asked to have the specific tax form faxed or e-mailed.

MS. BALES offered to e-mail the form since it is a faster process.

[1:32:51 PM](#)

REPRESENTATIVE GATTIS acknowledged that some taxpayers did not pay and her question on how onerous it might be to return the funds was just answered.

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REPRESENTATIVE FEIGE said a record exists that identifies who paid the passenger vehicle rental tax. He asked whether the department had any way to tell if the tax was initially collected for the nine years. He referred to the sponsor statement which seemed to indicate little effort was made early on to collect the tax. He wondered whether businesses did not realize the tax applied to them and subsequently did not collect

the tax or if the parties in question collected the tax from the vehicle rentals but did not remit the tax and kept the funds.

MS. BALES answered that during the investigations the department has found both instances occurred. Some rental car companies have collected the tax and simply not remitted the tax. Some companies did not collect the funds; however, the statutes indicate they are required to collect the tax. Other companies did not collect the tax; however, the statutes require the businesses to collect the tax. The majority of the companies were ones that received letters and consequently were aware of their responsibility but simply did not do so. Some companies hold business licenses that were not specific enough to identify them as car rental businesses. She understood the effect of collecting the tax is difficult for the companies although the department must be fair across the board in its efforts to collect the taxes.

[1:35:46 PM](#)

JON COOK, Chief Financial Officer, Airport Equipment Rentals, Inc. (AER) stated AER is a local business that employs approximately 125 people with locations in Deadhorse, Fairbanks, Delta Junction, Anchorage, and Kenai. The company is the John Deere construction equipment dealer for Alaska and is the largest equipment rental company in Alaska that offers a variety of manufacturers in addition to John Deere. Primarily, as part of its customer service, the company offers pickup truck rentals, to producers and Alaska contractors operating on the North Slope with most rentals ranging from several months to years in duration. Again, the AER's primary line of business is equipment rental and out of 5,000 rentals, approximately 150 are for trucks. He was aware of the history since the AER owned the national Alamo car rental concession at the Fairbanks International Airport through May 2013. Additionally, he previously worked at a car dealership that also had car rental operations. He characterized himself as a "reformed car dealer which is how many of you know me." He said he has history with this tax dating back to 2003. He recalled the sponsor's statement highlighted that the original intent of the tax was to tax short-term rentals to tourists with a number of exemptions

granted to relieve unintended consequences of the initial law. He referred to recent retroactive reinterpretation of the taxes, with respect to the long-term rentals of pickup trucks between Alaskan businesses, primarily on the North Slope, which is contrary to the legislative intent. His company continues to pay the rental tax, but was made aware of the recent developments from AER's competitors. He emphasized that he has the utmost respect for Ms. Bales and the DOR's employees, who are trying to do their jobs and protect the state's interest. However, he expressed concern with some interpretations. If this bill does not pass it will adversely affect several Alaskan companies, who may have to declare bankruptcy. The truck rental business is a low margin truck business, and for nothing else, for selfish reasons, AER doesn't want to see its competitors put out of business since AER might have to buy more pickup trucks.

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MR. COOK said that one of the reasons for the delay is that the rental vehicle is a secondary line of business for some companies, which are primarily construction companies or equipment rental companies. He expressed concern with several provisions. Leases over 90 days are currently exempt from the tax and many companies will extend their leases for several additional months beyond the initial term. The DOR's interpretation is that any extension is considered month-to-month taxable rentals. For example, a company may have a two-year rental with a six month contract, in which the DOR would tax the additional 18 months. The department apparently is acknowledging that its position is contrary to the legislative intent since it has recently issued regulations to address this problem. He related his understanding that other businesses is that the department has attempted to seek back taxes to 2004. The statutes currently exempt trucks with a gross vehicle weight over 8,500 pounds used to transport personal property. This was meant to apply to U-Haul vehicles; however, personal property is not defined for purposes of this section. The company pays personal property taxes in three municipal jurisdictions. Each jurisdiction would not only define the truck as personal property, but any contents. Accordingly, he would assert that trucks over 8,500 pounds are already exempt from the tax. The

bill would lower the GBW, from 8,500 to 6,500 pounds to ensure that half ton, three-quarter ton and one ton trucks are included. Again, these trucks are rented from one Alaskan business to the next. Specifically with respect to North Slope rentals, AS 43.52.099 (2) defines a passenger vehicle as a motor vehicle that is driven on a highway or a public right-of-way. Many legislators may be aware, that once on the haul road the North Slope road system is a private road maintained by the producers. In fact, producers sometimes ask AER to "chip in equipment and fuel to help maintain the road system. Again, he asserted that any rentals on the North Slope should be exempt from this tax. This bill would clarify the original intent of the legislature, which is clearly not to tax Alaska businesses renting to other businesses so retroactive application is appropriate. He asked members to support HB 314.

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REPRESENTATIVE ISAACSON asked about retroactivity. The fiscal note says the unintended consequence would result in \$793,000 for several years in a row. However, if the bill didn't pass some businesses will need to file bankruptcy. He asked whether it would be fair that these businesses did not pay the tax while other business had been subjected to collecting the tax. He indicated creating a level playing field would mean the state would need to cover \$1.5 million.

MR. COOK answered his company has likely paid more. He pointed out that to the extent the DOR intends to retroactively collect the tax; that the businesses can no longer collect the tax from the rental customers so these businesses would need to pay from their cash flow. He understood the department does not have a record of the specific individual who paid the tax. The rental car companies and equipment leasing companies have knowledge of the individuals. He did not find any incentive for his company to determine who to refund the tax dating back for ten years, especially since the company's retention policy is limited to six years. Unless the individual consumers apply for the refund, from a practical standpoint, it seems like the fiscal note might be high. He reiterated that his company would have zero financial interest in embarking on such an effort.

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CHAIR P. WILSON remarked it was the first time she has heard a company that wanted to have competitors.

REPRESENTATIVE GATTIS thought about refunds and the businesses that made an effort to collect the vehicle rental taxes and keep informed. She wondered whether it was possible to reward the businesses that did remit the taxes.

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CHAIR P. WILSON asked whether Mr. Cook received any letters from the DOR.

MR. COOK said that he paid the tax and continued to pay the tax since his company had the Alamo concession. While he had not been contacted by DOR, he was privy to several letters sent in November 2013, and the earliest he was aware of any equipment company being contacted was in 2010, which is based on the letters he has personally seen. In response to Representative Gattis in terms of rewarding businesses, he reminded members that the consumer was the end user. He offered his belief that the only time a business could profit would be if the business collected the tax from the consumer, but did not remit it to the department.

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CHAIR P. WILSON if paid tax and rented the vehicle to the next company, whether that would mean paying the vehicle rental tax twice.

MR. COOK disagreed. He explained he would collect the tax and remit to department.

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TOM PELLEGRON, Area Manager, Peak Oilfield Service Company, stated Peak Oilfield Service Company currently employs close to

500 people on the Kenai Peninsula. He received an e-mail from his competitors. He offered his belief that this is an opportunity to clean up some old legislation that will help the industry. He appreciated the committee taking time to review this.

CHAIR P. WILSON asked whether his company has collected and paid the vehicle rental taxes.

MR. COOK explained that the company received a notice about a year ago. His company rents items from cranes to lawn mowers. He rents a small incidental fleet of pickup trucks that fall under this classification. He said it would be tough to go back nine years and unravel an F-150 pickup that might have been rented in 2005 to someone. He thinks the bill is doing the right thing and it will be good for the industry and he hates to see people "go under" over some pickup trucks.

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RANDY JOHNSON, Owner, Tyler Rental stated he is a 33-year resident of Ketchikan and his company has been in business for over 25 years and operates from five locations in Southeast Alaska. He currently employs 58 Alaskans. Tyler Rental's core business is focused on tool and equipment to construction, timber, and mining industries. Although the majority of the business consists of construction equipment Tyler Rental rents half ton and larger pickups to support contractors needs throughout Southeast Alaska. A percentage of their rentals are for remote mining operations such as Kensington Mine, not on the state highway system. Tyler Rental recently became aware of the vehicle rental tax from another Alaska based equipment rental company. From my knowledge Tyler Rental has never received notice of the tax since its inception in 2004. The company has not collected the vehicle rental taxes from its customers.

MR. JOHNSON said that now that his company is aware of the tax he is in the process of submitting records for calendar year 2013 to the DOR along with the estimated payment for FY 2013 in a good faith effort to comply with the regulations. He said that he will pay the tax under protest on the basis that his

company was never informed of the tax requirement. He said this lack of notice substantiates his support for the retroactivity clause in the bill. Most if not all rental car companies did receive notice and he surmised that is accurate. However, assumed that the reason Tyler Rental never received notification is that the state did not initially intend to apply the tax to the circumstances or the state did not understand the equipment rental activity handled by his company. He could see where the oversight may have occurred. He investigated the legislative history and intent and believes the legislature did not intend to apply this tax to his type of rental activity. Additionally, the majority of Tyler Rental's business is to provide equipment and pickup rentals to other Alaska businesses and individuals. He understood the primary intent behind the tax was to recoup visitor dollars for the use of state roads. He thanked members for the opportunity to testify and go on record to support enactment of HB 314 in its current form.

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REPRESENTATIVE FEIGE asked how he kept track of where the vehicles were operated.

MR. JOHNSON answered that he wouldn't always know. He explained that if his company rented to a contractor working at Kensington or Greens Creek mine that the vehicles would be delivered to the barge for transport to the mine. Typically, those are long-term rentals ranging from a few months to up to a year or longer. The vehicles would then be returned to Tyler Rental. Additionally, the company rents to contractors. For example, Tyler Rental rents inspector pickups to the general contractor who provides the vehicles to a state inspector for application on a public highway; however, any charges would be passed through to the state by the contractor and it would add to cost of construction. He viewed the type of vehicle rental Tyler Rental is involved in is more geared toward construction related and heavier industry use.

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REPRESENTATIVE LYNN stated that he and Chair P. Wilson served in the legislature in 2004. He offered his belief the purpose of the tax was to capture tourist dollars.

CHAIR P. WILSON agreed.

REPRESENTATIVE ISAACSON said his question was previously answered.

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SAM BRICE, President, Brice, Inc., stated that Brice Inc. is a 50-year-old Alaska company that has been owned by the Calista Corporation since 2010. One company is Brice Companies, which primarily rents heavy equipment along with some pickups on the North Slope. If not being rented to producers and service companies, the company uses the pickups on projects in rural Alaska. He stated that Brice Inc. is a 100 percent Alaska business. The company was not aware of the tax or the applicability of the tax until he received a letter in November 2013. He said his company has rented equipment and vehicles since 2010 and are in the process of searching records to remit the vehicle rental taxes. He agreed with the previous comments by Mr. Cook and Mr. Johnson, which applies to his company as well.

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CHAIR P. WILSON asked for the number of employees employed by his company

MR. BRICE answered he has a baseline of 60 employees and during the season is upwards of 200 employees.

CHAIR P. WILSON asked whether he charged the tax.

MR. BRICE answered no; that he was not aware of the tax so this would be retroactive payment since he has not collected the vehicle rental tax.

[1:59:57 PM](#)

CHAIR P. WILSON asked whether he had any idea of the amount due.

MR. BRICE answered that it would be about \$31,000 going back to 2010.

2:00:45 PM

RYAN PETERKIN, Co-Owner, Mag Tec Alaska, said he is a fourth generation Alaskan and his company was founded in 2008. His great-grandfather worked on the Alaska railroad in 1916. He later operated a dairy, but sold his dairy to Matanuska Maid. He hoped the family business will continue. He currently operates an equipment rental business and renting pickups trucks is a byproduct of the business, similar to other equipment operators that testified today. He employs over 75 employees with an average annual salary of \$77,000 per year and over \$6 million of labor income in the Alaska economy. His business operates in two locations: one located in Deadhorse, and the other in Kenai. About 90 percent of his income is derived from oil and gas producers and 10 percent from construction. He said that he does not rent to the general public or to anyone without a commercial insurance policy. He offered his support for HB 314. He first learned about the bill on November 6, 2013. An armed enforcement officer and investigator visit his Deadhorse facility. He did not receive a letter prior to November 6th. The investigator was checking to see if the company was charging rental taxes on rentals less than 90 days. He left explicit instructions to contact an auditor in Anchorage. He subsequently set up a conference call with his chief financial officer to figure out what the tax was about and how it could be implemented. They found the DOR's website to be confusing and difficult to figure out how to implement legitimate tracking. Again, most of the companies that rent vehicles are major oil companies and although the rentals are not long-term rentals, they are multi-year contracts. The producers bring trucks in and out as needed. The company builds in maintained and non-maintained rates so the actual rental is difficult to determine. Although it is impossible to track with a hundred percent accuracy, he is in the process of attempting to do so. He has been working with the DOR. He faces resistance from customers

who have never heard of this tax. He has master service agreements with his customers in Kenai and the North Slope. This has created competitive advantages for competitor since no one wants to pay an additional 10 percent for vehicle rentals. Thus he has lost business. He discussed this with DOR and at one point the department was going to send a letter to advise some of the oil and gas companies. He reiterated that none of his competitors knew about the tax. He offered his belief that he did not receive a letter prior to November 6, 2013. He said, "We were blindsided on November 6th"

[2:06:19 PM](#)

CHAIR P. WILSON asked whether he has figured out the total amount.

MR. PETERKIN said he was unsure, but the arrears will be substantial. He has filed his first quarter return and remitted approximately \$8,000 for first quarter.

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REPRESENTATIVE GATTIS asked whether the business license indicates rental in the name of the business.

MR. PETERKIN answered yes.

[2:07:12 PM](#)

REPRESENTATIVE GATTIS referred to the business license codes and asked whether his company indicates it is a rental business.

MR. PETERKIN said he was uncertain about the code.

[2:07:38 PM](#)

REPRESENTATIVE GATTIS indicated that she fills out the business license code and rents heavy equipment and airplanes. Although her business isn't subject to the tax, she can't imagine going back five or six years to remit back taxes if she were asked to do so. She would like to ask the DOR for specific documentation

and whether they sent his company a letter every year. She said, "I'm sorry. I'm just feeling like it could happen to me. I'm feeling your pain."

[2:08:58 PM](#)

MR. PETERKIN was certain he has never received a letter. He also did not believe most of his competitors had. He recently received a certified letter in mid-November 2013. He said that making this retroactive will be detrimental to his business and he would need to seek financial aid to do. He characterized this as a hit on an uncollected tax which is assessed on the gross rental, noting it would exceed any profit. He did not think the tax is justifiable since it was not intended to be assessed on Alaskan businesses doing business with other Alaskan businesses.

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REPRESENTATIVE ISAACSON said that either the state didn't intend to tax this category or it didn't understand this segment of the business. He said his business doesn't rent to the general public.

MR. PETERKIN answered yes.

REPRESENTATIVE ISAACSON related his understanding that this tax is intended for passenger vehicle rental tax and is not intended for commercial. He wondered why Mr. Peterkin is receiving the letter. He also said, "I feel your pain in that regard." He asked whether he rents passenger vehicles intended for commercial use.

MR. PETERKIN answered that is correct. He only rents pickup trucks to commercial vehicle [companies] and never to individuals.

[2:12:06 PM](#)

REPRESENTATIVE ISAACSON referred to page 2, of the instructions for the DOR form, entitled "Alaska Vehicle Rental Tax Quarterly

Return." He read, "Passenger vehicle means a motor vehicle (self-propelled, but not by animal or human power) that is driven or moved on a highway or other public right-of-way in the state. Passenger vehicles do not include commercial vehicles, emergency or fire equipment," He said he is baffled by this predicament.

[2:12:29 PM](#)

REPRESENTATIVE FEIGE asked for clarification on the nature of the business. He understood that he has master service agreements.

MR. PETERKIN answered yes.

REPRESENTATIVE FEIGE related his understanding that Mag Tec Alaska has a contract with a company to provide a vehicle for a period of time. It doesn't have to be the same vehicle but his company is on contract to provide a pickup. Individual pickups may come and go as their servicing needs vary, but the contract covers providing the vehicles, typically greater than 90 days.

MR. PETERKIN answered yes.

[2:13:30 PM](#)

CHAIR P. WILSON asked for clarification from the DOR.

[2:13:50 PM](#)

MS. BALES asked to make a couple of clarifying points. She explained that tax administration is not the most kindly looked upon professions; however, the DOR does its best to identify those affected by any new taxes or changes. She acknowledged that the parties who testified most likely did not receive letters since the department did not identify heavy equipment businesses as those who rent vehicles that meet the definition of a passenger vehicle in the law. Once the DOR discovered this, it didn't represent "a new interpretation by the department." She said she was pretty emphatic about this and the DOR would have sent letters in 2004 to the heavy equipment

operators. Most of those types of companies were discovered through complaints. In 2004, at the time the letters were sent to vehicle rental companies the department also issued public notices. She acknowledged that a certain amount of responsibility is placed on potential taxpayers to be cognizant of things that might affect their businesses. She referred to the definition of a commercial vehicle. The statute is clear in motor vehicle statutes that the vehicle is greater than 26,000 pounds. She reiterated the definition of commercial vehicle is clear and although the testimony indicates the vehicles were used for commercial use, the use doesn't fall under commercial vehicle use per statute.

[2:17:28 PM](#)

CHAIR P. WILSON understood that the department must carry out the laws the legislature enacts; however, she asked whether the DOR is aware of anything in statute that is "kind of ridiculous." She emphasized that the legislature doesn't want to burden businesses. She said, "If business doesn't make any money there are no jobs. We all know that." Thus, the legislature doesn't want to make matters worse for businesses in this state. She asked Ms. Bales to notify the legislature if anything in the statutes is ambiguous so people don't have to guess if the law applies to them.

[2:18:45 PM](#)

CHRISTOPHER SLOTTEE, Attorney, Atkinson, Conway, and Gagnon, stated that he represents Old Harbor Native Corporation who has a 51 percent interest in Delta Leasing, which is an equipment leasing company. He said he did not have anything to add to the testimony.

[2:19:35 PM](#)

REPRESENTATIVE GATTIS asked whether Old Harbor Native Corporation and Delta leasing was sent a letter from the DOR with respect to the vehicle rental tax.

MR. SLOTTER answered that he represents Old Harbor Native Corporation who owns Delta Leasing, but he doesn't represent the leasing company.

[2:20:16 PM](#)

CHAIR P. WILSON asked whether he has any suggestions as to whether this bill is adequate.

MR. SLOTTER answered that the bill seems adequate. The main issue that he saw was that the original statute in 2003 exempts any rentals in excess of 90 days; however the DOR adopted a regulation that excluded rentals in excess of 90 days but the department didn't count renewals or lease extensions to count as part of the 90 days. He related a scenario in which a company rented a vehicle on a six-month lease then the lease reverted to a month-to-month lease. Under the DOR regulations, the vehicle so after six months the vehicle is still taxable even if the truck was rented for two years and never returned. He found this to be the biggest problem. Notably the DOR has a regulation project that revises this; however, the enforcement actions rely on the old regulation to assess taxes back to 2004, even though the department appears to realize a problem exists with the regulation.

[2:22:01 PM](#)

REPRESENTATIVE ISAACSON said he mentioned oil companies rented month-to-month after the six-month lease. He asked whether vehicles rented out-of-state would not be charged the tax.

MR. SLOTTER answered perhaps. He offered his belief that if the truck was rented for a total of two years, which is greater than 90 days, that the vehicle shouldn't be taxable. He related his understanding that oil companies like month-to-month rentals for the flexibility.

[2:23:17 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, closed public testimony on HB 314.

2:23:37 PM

REPRESENTATIVE FEIGE noted a number of issues were raised. First, it would address retroactive refunds to original customers who paid the tax and the tax was passed through [as required on page 3 lines 2-5]. He found the retroactivity to be problematic on refunds since some companies don't keep records beyond six years. Thus, it seemed that this is somewhat problematic. Second, with respect to the taxes collected or that should have been collected, a burden of proof should be on the DOR that the companies knew they needed to collect the tax. Obviously, a substantial amount of misunderstanding has occurred and it appears as though the original intent of the bill was primarily directed at taxing tourism operations rather than equipment leasing operations. He found that certified letter seems to be adequate proof. He said the bill doesn't address the master services agreements that are common industrial contracts. He suggested that the bill should address this or exclude the companies who rent in excess of 30 days.

REPRESENTATIVE FEIGE referred to page 1, line 12, " ... that is driven or moved on a highway or other public right-of-way in the state" He suggested this could mean moving the vehicle the place where the vehicle will be used, whether it is at a mine site or other site used off the highway system. He said that if a person drove the vehicle along the highway system it would be subject to the tax, which doesn't appear to be the intent of the tax. Finally, he also provided the sponsor with a conceptual amendment and he hoped the sponsor could create a committee substitute for the committee to consider.

2:28:02 PM

REPRESENTATIVE GATTIS rather than provide exemptions and to consider how to address the tax by clearly indicating the targeted group, which are basically the car rental companies since the true intentions of the statute was to assess tourists to help pay for road use. She found the commercial vehicle rental companies as being unintended consequences.

[2:29:03 PM](#)

CHAIR P. WILSON indicated some recreational vehicles are tourism related and the committee may wish to consider motor homes.

MS. PIERSON answered that the state imposes a three percent rental tax on motor homes.

[2:29:57 PM](#)

REPRESENTATIVE GATTIS recalled the department anticipated that 20 percent of its revenues were intended to apply to Alaska residents; however, she thought residents could be exempted.

CHAIR P. WILSON said she could envision everyone attempting to avoid the tax.

[HB 314 was held over.]

[2:32:20 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:32 p.m.