

TNC-USER TAX: GETTING RIDESHARE COMPANIES TO PAY THEIR “FARE” SHARE

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1

THIS PRESENTATION WILL ADDRESS:

- ❖ The negative impacts of TNCs
- ❖ The ability of California cities to tax the TNC model
- ❖ What a TNC tax looks like and how it operates

2

WHAT IS A TRANSPORTATION NETWORK COMPANY (TNC)?

“‘Transportation network company’ means an organization, ... or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”

(Pub. Util. Code § 5431, subd. (c).)

3

TNCs HAVE SIGNIFICANT IMPACTS ON THE COMMUNITIES IN WHICH THEY OPERATE.

- ❖ Additional vehicle miles on the roads
- ❖ Added pollution
- ❖ They supplant public transportation, biking, and walking.

4

UBER AND LYFT CONCEDE THEY CAUSE BURDENS; IT IS A QUESTION OF DEGREE.

- ❖ San Francisco estimates that TNCs account for 20% of the total driving in the city.
- ❖ Uber and Lyft estimate that this amount is 12% to 14%.
- ❖ In Boston, Uber and Lyft estimate that TNCs account for 7% to 8% of vehicle miles.
- ❖ In Washington D.C. 6% to 7%.

5

SOME OF THE INCREASED CONGESTION IS DUE TO HOW TNCs OPERATE.

- ❖ Drivers circle waiting for ride requests
- ❖ Then they have to drive to the pick-up location

6

THE ADDITIONAL VEHICLE MILES ALSO
INCREASE EMISSIONS OF GREENHOUSE
GASES AND OTHER POLLUTANTS

7

TNCs TAKE RIDERS AWAY FROM PUBLIC
TRANSPORTATION

❖ Uber has stated that it targets public transit riders.

8

CITIES AND STATES HAVE BEGUN IMPOSING TAXES ON TNCs.

- ❖ Chicago – \$0.72 tax on a TNC trip
- ❖ Seattle – \$0.57 tax per TNC trip
- ❖ Massachusetts – \$0.20 tax per TNC trip
- ❖ Alabama and South Carolina – 1% tax on total fare

9

IN CALIFORNIA, SAN FRANCISCO AND BERKELEY HAVE TAKEN THE LEAD ON IMPOSING TAXES ON TNCs

San Francisco (2019)

- 3.25% for trips originating in San Francisco
- Reduced 1.5% rate for pooled rides
- Reduced 1.5% rate for rides in zero-emission vehicles.

10

Berkeley (2020)

- \$0.50 per ride originating in the city.
- Reduced \$0.25 per ride for shared rides.
- Trips paid for by a government healthcare program are exempt.
- Wheelchair accessible trips are exempt.

11

THREE IMPORTANT QUESTIONS IF A CITY WANTS TO TAX THE TNC BUSINESS MODEL:

- ❖ Who are you going to tax? The company? The driver? The customer?
- ❖ Is there sufficient Constitutional nexus?
- ❖ Is a tax preempted by state law?

12

NEXUS TO TAX

- ❖ For a jurisdiction to tax a person or company, that person or company must have sufficient contacts with the jurisdiction.
- ❖ To an extent, this is common sense.

13

THE NEXUS QUESTIONS ARE:

- ❖ Are there sufficient contacts to tax a TNC that arranges rides in the city?
- ❖ Are there sufficient contacts to tax a TNC driver who drives in the city?
- ❖ Are there sufficient contacts to tax a TNC customer who takes rides in the city?

14

NEXUS TO TAX A TNC

The primary question is:

Are there activities in the city by representatives of the TNC that are significantly associated with the TNC's ability to establish and maintain a market in the city?

15

NEXUS TO TAX A TNC

- ❖ TNC drivers are representatives of the TNC
- ❖ They are essential for the TNC to maintain a market in the city
- ❖ It doesn't matter that TNC drivers may be independent contractors.

16

NEXUS TO TAX A TNC DRIVER

- ❖ A person in the business of transporting people for hire can be taxed by the cities in which customers are picked up or dropped off.

(City of Los Angeles v. London Towne Livery Service, Ltd. (1979) 97 Cal.App.3d 814, 817)

17

NEXUS TO TAX A TNC DRIVER

- ❖ A person in the business of transporting people for hire can be taxed by the cities in which customers are picked up or dropped off.
- ❖ But a driver who just passes through a city without picking up or dropping off a customer cannot be taxed.

18

NEXUS TO TAX A TNC USER

- ❖ A city can tax a TNC user who begins or ends a ride in the city.
- ❖ The activity is occurring in the city.

19

PREEMPTION OF TAXES ON THE TNC MODEL

- ❖ Taxes on TNCs themselves are preempted, unless the TNC has an office in the city.
- ❖ Taxes on TNC drivers are preempted, except for TNC drivers domiciled in the city.
- ❖ Taxes on TNC users are not preempted.

20

PREEMPTION OF TAXES ON TNCs

Section 5371.4 of the Public Utilities Code prohibits a city from imposing a business license tax on a TNC, unless the TNC is domiciled or maintains a business office in the city.

21

PREEMPTION OF TAXES ON TNCs

“The governing body of any city, county, or city and county ***may not impose a fee on charter-party carriers operating limousines.*** However, the governing body of any city, county, or city and county may impose a business license fee on ... any charter-party carrier domiciled or maintaining a business office within that city, county, or city and county.”

(Pub. Util. Code § 5371.4.)

22

TNCs ARE CHARTER-PARTY CARRIERS

A charter-party carrier is defined as a “person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state.”

(Pub. Util. Code § 5360.)

23

BUT DO TNCs OPERATE LIMOUSINES?

Yes – Just for this provision.

“For the purposes of this section, ‘limousine’ includes any sedan or sport utility vehicle, of either standard or extended length, with a seating capacity of not more than 10 passengers including the driver, used in the transportation of passengers for hire on a prearranged basis within this state.”

(Pub. Util. Code § 5371.4(h).)

24

THE DEFINITION OF “LIMOUSINE” IS INCONSISTENT

Another section of the Public Utilities Code has a definition of “limousine” that would not include vehicles used by a TNC, but it is limited to that part of the code.

25

ADDITIONAL NOTE

Section 5371.4’s prohibition on imposing “a fee” includes the imposition of a business license tax.

26

PREEMPTION OF TAXES ON TNC DRIVERS

- ❖ Until 2018 cities could impose business license taxes on TNC drivers operating within their borders.
- ❖ In 2017 the Legislature passed SB 182 adding sections 16550, 16550.1, and 16550.2 to the Business and Professions Code.

27

PREEMPTION OF TAXES ON TNC DRIVERS

SB 182 provides:

- ❖ A TNC driver only needs to acquire one business license.
- ❖ Only the city in which the driver is domiciled can issue that license.
- ❖ If the city in which a driver is domiciled does not require a business license, the driver does not need one.

28

PREEMPTION OF TAXES ON TNC USERS

- ❖ No state law preempts local taxation of TNC users.
- ❖ Charter cities have the power to tax TNC users under their constitutional home rule authority.
- ❖ General law cities have the power to tax TNC users under Section 37100.5 of the Government Code which gives general law cities the power to enact any tax that a charter city can enact.

29

TNC USER TAX

- ❖ A tax imposed on a TNC user
- ❖ Conceptually similar to other use taxes
- ❖ Utility user taxes – taxes on the use of utilities
- ❖ Transient occupancy taxes – taxes on the use of hotels
- ❖ Parking taxes – taxes on the use of parking spaces

30

TNC USER TAX

As with other user taxes, the company providing the service that is taxed can be required to collect the tax and remit it to the city.

31

(A SHORT ASIDE ABOUT SPECIAL LEGISLATION FOR SAN FRANCISCO)

- ❖ In 2018, the Legislature passed A.B. 1184.
- ❖ Added section 5446 to the Public Utilities Code to expressly authorize San Francisco to impose a tax on TNCs.
- ❖ Does not imply that special legislation is needed for a TNC user tax

32

WHAT DOES A TNC USER TAX LOOK LIKE?

- ❖ It can be imposed on trips that originate or terminate in the city.
- ❖ It can be a flat amount per trip, or it can be a percentage of the charge for each trip.

33

WHAT DOES A TNC USER TAX LOOK LIKE?

Berkeley's tax is 50 cents per ride originating in the City

- ❖ Pooled or shared rides are 25 cents

San Francisco's tax is a percentage of the fare

- ❖ • 3.25% for trips originating in San Francisco
- ❖ • 1.5% for pooled rides and zero-emission rides

34

TNC USER TAX

- ❖ If a tax is imposed as a percentage of the fare, it can be based on the fare for the entire trip, even if part of the trip is outside the city.
- ❖ Similarly, a flat per-trip tax can be the same for trips entirely or partially within the city.

(Oklahoma Tax Com'n v. Jefferson Lines, Inc. (1995) 514 U.S. 175.)

35

THERE MAY BE REQUESTS FOR EXEMPTIONS OR REDUCED RATES

Examples include:

- ❖ Rides for youth
- ❖ Wheelchair accessible rides
- ❖ Rides paid for by government healthcare
- ❖ Pooled or shared rides
- ❖ Rides in zero-emission vehicles

36

ADMINISTRATION OF A TNC USER TAX

- ❖ Like other user taxes, the tax is imposed on the user and collected and remitted by the TNC.
- ❖ It is unclear how some exemptions or reduced rates would be implemented.
- ❖ The practical effect of a reduced rate for zero-emission rides is unclear.

37

TAX RATE

- ❖ A flat per trip tax or a percentage tax?
- ❖ If a flat tax, do you include a CPI escalator?
- ❖ The limit on the tax rate is mostly political. What will the voters approve?
- ❖ Uber and Lyft may campaign against a proposed tax, and they are very good at it.

38

REVENUE POTENTIAL

- ❖ The revenue potential for a TNC user tax is substantial.
- ❖ There are more trips in urban areas, but overall the numbers are significant.

39

REVENUE POTENTIAL

- ❖ In 2019, Boston had 73.3 trips per capita.
- ❖ In 2019, Cambridge had 74.9 trips per capita.
- ❖ In 2019, Salem had 11.71 trips per capita.
- ❖ In 2018, Chicago had 25.25 rides per capita.
- ❖ In 2018, King County, Washington had 14.63 trips per capita.

40

REVENUE POTENTIAL

If a city with 100,000 residents imposes a 50 cent per ride tax

- ❖ If it has the same per capita trips as Boston, the tax would yield \$3,665,000 per year.
- ❖ If the same per capita trips as Chicago, the tax would yield \$1,262,500 per year.
- ❖ If the same per capita trips as King County, the tax would yield \$731,500 per year.

41

SUMMARY

- ❖ A city can constitutionally tax TNCs, TNC drivers, and TNC users.
- ❖ But due to State preemption, it can only tax a TNC with an offices in the city.
- ❖ It can only tax TNC drivers domiciled in the city.
- ❖ But it is not preempted from taxing TNC users.
- ❖ The main limitations on a TNC user tax are political.

42