

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 602

An Act to amend and reenact §§ 58.1-811, 58.1-1404, 58.1-1501 and 58.1-2403 of the Code of Virginia, relating to taxation of transfers of property to and from revocable trusts.

[H 527]

Approved April 7, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-811, 58.1-1404, 58.1-1501 and 58.1-2403 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-811. Exemptions.

A. The taxes imposed by § 58.1-801 shall not apply to any deed conveying real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To the trustee or trustees of any church or religious body, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to §§ 331, 332, 333 or § 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership or limited liability company upon merger or consolidation of two or more corporations, partnerships or limited liability companies, or in a reorganization within the meaning of § 368 (a) (1) (C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than fifty percent of the profits and surplus of such partnership or limited liability company;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than fifty percent of the profits and surplus of such partnership or limited liability company;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to ~~decedent's spouse or the kindred of decedent or decedent's spouse one or more beneficiaries after the death of the settlor~~ in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means, located in a county with a population of not less than 28,500 and not more than 28,650.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or

operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision; or

5. Securing a loan made by an organization described in subdivision 14 of subsection A of this section.

C. The tax imposed by § 58.1-802 shall not apply to any transaction described in subdivisions 6 through 13 of subsection A of this section, nor to any:

1. Instrument or writing given to secure a debt;

2. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

3. Deed conveying real estate from the Commonwealth or any county, city, town, district or other political subdivision thereof;

4. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802; or

5. Deed conveying real estate from any church or religious body.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

F. The taxes imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808 and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy; or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A and subdivision 2 of subsection B, mean the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

§ 58.1-1404. Exemptions.

A. Any watercraft sold to or used by the United States or any of the governmental agencies thereof, the Commonwealth of Virginia or any political subdivision thereof or sold to an insurance company for the sole purpose of disposition when such insurance company has paid the registered owner of such watercraft on a total loss claim, shall be exempt from the tax imposed by this chapter.

B. Any person who was the owner of a watercraft which was not required to be titled prior to January 1, 1998, shall apply for a title for such watercraft without incurring liability for the tax imposed under this chapter.

C. Any watercraft constructed by a commercial waterman for his own use shall be exempt from the tax imposed under this chapter.

D. Any registered dealer in watercraft shall be exempt from the tax imposed by subdivisions 1 and 2 of § 58.1-1402. Such dealer shall also be exempt from the titling requirement in § 29.1-713.

E. Any watercraft purchased by and for the use of a volunteer sea rescue squad, volunteer fire department or a volunteer rescue squad, not conducted for profit shall be exempt from the tax imposed under this chapter.

F. Any watercraft transferred to trustees of a revocable inter vivos trust, when the owners of the watercraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case, shall be exempt from the tax imposed under this chapter.

§ 58.1-1501. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than twenty-four inches above the ground. Such term shall not include parachutes.

"Dealer" means any person owning five or more aircraft during the calendar year who the Commissioner finds is in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § 58.1-1503 exceeds the charge actually made.

"Retail sale" means a sale to a consumer or to any person for any purpose other than for resale. The

term shall include any transaction the Commissioner, upon investigation, finds to be in lieu of a sale. Sales for resale must be made in strict compliance with any rules and regulations promulgated pursuant to this chapter.

"Sale" means any transfer of ownership or possession of an aircraft by exchange or barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession (i) made to secure payment of an obligation, ~~or~~ (ii) incidental to repossession under a lien and under which ownership is transferred to the reposessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral, ~~or~~ (iii) as part of the sale of all or substantially all the assets of any business, *or (iv) to trustees of a revocable inter vivos trust, when the owners of the aircraft and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case.*

"Sale price" means the total price paid for an aircraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Scheduled air service" means any scheduled service provided by an air carrier or foreign air carrier operating pursuant to authority issued by the U.S. Department of Transportation and under Federal Aviation Regulations, Parts 121, 129 or 135.

§ 58.1-2403. Exemptions.

No tax shall be imposed as provided in § 58.1-2402 if the vehicle is:

1. Sold to, rented or used by the United States government or any governmental agency thereof;
2. Sold to, rented or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or rescue squad not operated for profit;
4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;
5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;
6. A manufactured home permanently attached to real estate and included in the sale of real estate;
7. A gift to the spouse, son, or daughter of the transferor. This exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;
8. Transferred from an individual or partnership to a corporation or from a corporation to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation in which the individual or partnership holds the majority interest;
9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;
10. Being registered for the first time in this Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state and (i) has owned the vehicle for longer than twelve months or (ii) has owned the vehicle for less than twelve months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last twelve months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;
11. Titled in a Virginia motor vehicle dealer's name for resale if dealer's license plates are displayed when the vehicle is operated upon the public highways;
12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than forty miles, one way, on the same day;
13. Purchased in this Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;
14. A motor vehicle designed for the transportation of ten or more passengers, purchased by and for the use of a church conducted not for profit;
15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;
16. Sold to an insurance company for the sole purpose of disposition when such company has paid the registered owner of such vehicle a total loss claim;
17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;
18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501 (e) of the United

States Internal Revenue Code;

19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;

20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501 (e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501 (c) (3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;

21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world; ~~or~~

23. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and semitrailers not designed or used to carry property and vehicles registered under § 46.2-700, with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no tax shall be imposed pursuant to subdivisions 1 and 3 of subsection A of § 58.1-2402; *or*

24. *Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case.*