

# 2006 SPECIAL SESSION I

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## HOUSE BILL NO. 5040

Offered September 13, 2006

A *BILL to amend and reenact §§ 58.1-2401, 58.1-2402, and 58.1-2405 of the Code of Virginia, relating to the motor vehicle sales and use tax; basis and rate.*

Patron—Marshall, D.W.

Referred to Committee on Finance

### Be it enacted by the General Assembly of Virginia:

**1. That §§ 58.1-2401, 58.1-2402, and 58.1-2405 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2401. Definitions.

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

"Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Daily rental vehicle" shall mean a motor vehicle, except a motorcycle or a manufactured home as defined in § 46.2-100, used for rental as defined in this section and for the transportation of persons or property, whether on its own structure or by drawing another vehicle or vehicles.

"Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through its duly authorized officers and agents.

"Gross proceeds" shall mean the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than twelve months.

"Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites.

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Rental" shall mean the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than twelve months. Any fee arrangement between the holder of a permit issued by the State Corporation Commission or the Department for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section.

"Rental in the Commonwealth" shall mean any rental where a person received delivery of a motor vehicle within the Commonwealth. The term "Commonwealth" shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

"Rentor" shall mean a person engaged in the rental of motor vehicles for consideration as defined in this section.

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. 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 made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a sale.

"Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise tax, ~~without any allowance or deduction for trade-ins or unpaid liens or encumbrances, less (i) the credit given by the seller for any motor vehicle taken as a trade-in, and (ii) the amount of cash discount or~~

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59 *rebate given by the seller or the manufacturer.* However, "sale price" shall not include the cost of  
60 controls, lifts, automatic transmission, power steering, power brakes or any other equipment installed in  
61 or added to a motor vehicle which is required by law or regulation as a condition for operation of a  
62 motor vehicle by a handicapped person.

63 § 58.1-2402. Levy.

64 A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law,  
65 a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle  
66 weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a  
67 person for rental as an established business or part of an established business or incidental or germane to  
68 such business.

69 There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to  
70 whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be  
71 levied upon a rental to a person for re-rental as an established business or part of an established  
72 business, or incidental or germane to such business.

73 The amount of the tax to be collected shall be determined by the Commissioner by the application of  
74 the following rates against the gross sales price or gross proceeds:

75 1. ~~Three~~*Four and one-half* percent of the sale price of each motor vehicle sold in Virginia. If such  
76 motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale  
77 price of each such manufactured home sold in this Commonwealth; if such vehicle is a mobile office as  
78 defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in this  
79 Commonwealth.

80 2. ~~Three~~*Four and one-half* percent of the sale price of each motor vehicle, or three percent of the  
81 sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each  
82 mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this  
83 Commonwealth. When any such motor vehicle or manufactured home is first used or stored for use in  
84 Virginia six months or more after its acquisition, the tax shall be based on its current market value *or*  
85 *sales price, whichever is less.*

86 3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those  
87 with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

88 4. In addition to the tax levied pursuant to subdivision A 3, a tax of four percent of the gross  
89 proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle  
90 is required to be licensed in the Commonwealth.

91 5. In addition to all other applicable taxes and fees, a fee of two percent of the gross proceeds shall  
92 be imposed on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required  
93 to be licensed in the Commonwealth. For purposes of this chapter, the rental fee shall be implemented,  
94 enforced, and collected in the same manner that rental taxes are implemented, enforced, and collected.

95 6. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be \$35,  
96 except as provided by those exemptions defined in § 58.1-2403.

97 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall  
98 the same transaction be taxed more than once under either subdivision. A motor vehicle subject to the  
99 tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when  
100 it ceases to be used for rental as an established business or part of an established business, or incidental  
101 or germane to such business.

102 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of  
103 § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no  
104 longer owned, rented or used by the United States government or any governmental agency, or the  
105 Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or  
106 semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or  
107 §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such  
108 vehicle is subsequently licensed to operate on the highways of this Commonwealth.

109 D. Any person who with intent to evade or to aid another person to evade the tax provided for  
110 herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for  
111 title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this  
112 title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

113 E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged  
114 by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to  
115 subdivision 10 of § 46.2-1530, shall be subject to the tax.

116 § 58.1-2405. Basis of tax.

117 A. ~~In the case of the sale or use of a motor vehicle upon which the pricing information is required~~  
118 ~~by federal law to be posted, the~~ *The* Commissioner ~~may~~ *shall* collect the tax upon the basis of the total  
119 sale price shown on such document; however, if the Commissioner is satisfied that the purchaser has  
120 paid less than such price, by such evidence as the Commissioner may require, he may assess and collect

121 the tax upon the basis of the sale price so found by him. In no case shall such lesser price include  
122 credits for trade-in or any other transaction of such nature *as defined in § 58.1-2401*.

123 B. In the case of the sale or use of a motor vehicle which is not a new motor vehicle, the  
124 Commissioner may employ such publications, sources of information, and other data as are customarily  
125 employed in ascertaining the maximum sale price of such used motor vehicles but in no case shall any  
126 credit be allowed for trade-in, prior rental or any other transaction of like nature.

127 CB. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, between  
128 individuals who are not required to be licensed as dealers or salespersons under the provisions of  
129 §§ 46.2-1508 and 46.2-1908, the Commissioner ~~may~~ *shall* collect the tax upon the basis of the total sale  
130 price, *as defined in § 58.1-2401*, as established by such evidence as the Commissioner may require;  
131 provided that if such motor vehicle is no more than five years old and is listed in a recognized pricing  
132 guide, the total sale price shall not be less than the value listed in such pricing guide for such vehicle,  
133 less an allowance of \$1,500, unless the purchaser shall execute an affidavit under penalty of perjury  
134 stating a lesser total sale price and declaring such sale or use to be a bona fide transaction for full value.  
135 In using a recognized pricing guide, the Commissioner shall use the trade-in value specified in such  
136 guide, with no additions for optional equipment or subtractions for mileage, so long as uniformly  
137 applied for all types of motor vehicles. ~~In no case shall any credit be allowed for trade-in, prior rental or~~  
138 ~~any other transaction of like nature.~~