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HOUSE BILL NO. 2466

Offered January 10, 2007

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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 *lesser of \$70,000 or 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*

59 encumbrances less (i) the credit given by the seller for any motor vehicle taken as a trade-in, and (ii)
60 the amount of cash discount or rebate given by the seller or the manufacturer. However, "sale price"
61 shall not include the cost of controls, lifts, automatic transmission, power steering, power brakes or any
62 other equipment installed in or added to a motor vehicle which is required by law or regulation as a
63 condition for operation of a motor vehicle by a handicapped person.

64 § 58.1-2402. Levy.

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

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

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

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

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

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

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

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

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

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

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

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

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

117 § 58.1-2405. Basis of tax.

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

121 paid less than such price, by such evidence as the Commissioner may require, he may assess and collect
122 the tax upon the basis of the sale price so found by him. In no case shall such lesser price include
123 credits for trade-in or any other transaction of such nature *as defined in § 58.1-2401*.

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

128 CB. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, between
129 individuals who are not required to be licensed as dealers or salespersons under the provisions of
130 §§ 46.2-1508 and 46.2-1908, the Commissioner ~~may~~ *shall* collect the tax upon the basis of the total sale
131 price, *as defined in § 58.1-2401*, as established by such evidence as the Commissioner may require;
132 provided that if such motor vehicle is no more than five years old and is listed in a recognized pricing
133 guide, the total sale price shall not be less than the value listed in such pricing guide for such vehicle,
134 less an allowance of \$1,500, unless the purchaser shall execute an affidavit under penalty of perjury
135 stating a lesser total sale price and declaring such sale or use to be a bona fide transaction for full
136 value. *However, in no case shall the Commissioner use a sale price greater than \$70,000.* In using a
137 recognized pricing guide, the Commissioner shall use the trade-in value specified in such guide, with no
138 additions for optional equipment or subtractions for mileage, so long as uniformly applied for all types
139 of motor vehicles. ~~In no case shall any credit be allowed for trade-in, prior rental or any other~~
140 ~~transaction of like nature.~~