

11101129D

SENATE BILL NO. 1132

Senate Amendments in [] — February 4, 2011

A *BILL to amend and reenact §§ 33.1-221.1:1.1, 46.2-711, 46.2-755, 58.1-604.1, 58.1-2401 through 58.1-2404, 58.1-2411, 58.1-2419 through 58.1-2421, 58.1-2424 through 58.1-2426, and 58.1-3510 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 17 of Title 58.1 an article numbered 9, consisting of sections numbered 58.1-1734 through 58.1-1741; and to repeal §§ 58.1-2407 through 58.1-2410 and 58.1-2412 through 58.1-2417 of the Code of Virginia, relating to motor vehicle rental tax.*

Patron Prior to Engrossment—Senator Stosch

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-221.1:1.1, 46.2-711, 46.2-755, 58.1-604.1, 58.1-2401 through 58.1-2404, 58.1-2411, 58.1-2419 through 58.1-2421, 58.1-2424 through 58.1-2426, and 58.1-3510 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 17 of Title 58.1 an article numbered 9, consisting of sections numbered 58.1-1734 through 58.1-1741, as follows:

§ 33.1-221.1:1.1. Rail Enhancement Fund.

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement and development of freight and passenger railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Fund, hereafter referred to as "the Fund."

B. The Fund shall be established on the books of the Comptroller, and shall consist of dedications pursuant to ~~§ 58.1-2425~~ § 58.1-1754 and such funds from other sources as may be set forth in the appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Prior to recommending an allocation of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation shall consult with and obtain the advice and recommendations of the Rail Advisory Board established pursuant to § 33.1-391.3:1.

D. Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such public benefits shall include, but not be limited to, the impact of the project on traffic congestion, environmental quality, and whenever possible, give due consideration to passenger rail capacity on corridors identified by the Commonwealth Transportation Board that have existing or proposed passenger rail service. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources.

§ 46.2-711. Furnishing number and design of plates; displaying on vehicles required.

A. The Department shall furnish one license plate for every registered motorcycle, tractor truck, semitrailer, or trailer, and two license plates for every other registered motor vehicle, except to licensed

ENGROSSED

SB1132E

60 motor vehicle dealers and persons delivering unladen vehicles who shall be furnished one license plate.
61 The license plates for trailers, semitrailers, commercial vehicles, and trucks, other than license plates for
62 dealers, may be of such design as to prevent removal without mutilating some part of the indicia
63 forming a part of the license plate, when secured to the bracket.

64 B. The Department shall issue appropriately designated license plates for:

- 65 1. Passenger-carrying vehicles for rent or hire for the transportation of passengers for private trips;
- 66 2. Taxicabs;
- 67 3. Passenger-carrying vehicles operated by common carriers or restricted common carriers;
- 68 4. Property-carrying motor vehicles to applicants who operate as private carriers only;
- 69 5. Applicants who operate motor vehicles as carriers for rent or hire; and
- 70 6. Trailers and semitrailers.

71 C. The Department shall issue appropriately designated license plates for motor vehicles held for
72 rental as defined in ~~§ 58.1-2401~~ § 58.1-1735.

73 D. No vehicles shall be operated on the highways in the Commonwealth without displaying the
74 license plates required by this chapter. The provisions of this subsection shall not apply to vehicles used
75 to collect and deliver the United States mail to the extent that their rear license plates may be covered
76 by the "CAUTION, FREQUENT STOPS, U.S. MAIL" sign when the vehicle is engaged in the
77 collection and delivery of the United States mail.

78 E. Pickup or panel trucks are exempt from the provisions of subsection B with reference to
79 displaying for-hire license plates when operated as a carrier for rent or hire. However, this exemption
80 shall not apply to pickup or panel trucks subject to regulation under Chapter 21 (§ 46.2-2100 et seq.) of
81 this title.

82 § 46.2-755. Limitations on imposition of motor vehicle license taxes and fees.

83 A. No county, city, or town shall impose any motor vehicle license tax or fee on any motor vehicle,
84 trailer, or semitrailer when:

85 1. A similar tax or fee is imposed by the county, city, or town wherein the vehicle is normally
86 garaged, stored or parked;

87 2. The vehicle is owned by a nonresident of such locality and is used exclusively for pleasure or
88 personal transportation and not for hire or for the conduct of any business or occupation other than that
89 set forth in subdivision 3 of this subsection;

90 3. The vehicle is (i) owned by a nonresident and (ii) used for transporting into and within the
91 locality, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk,
92 butter, cream, or eggs produced or grown by him, and not purchased by him for sale;

93 4. The motor vehicle, trailer, or semitrailer is owned by an officer or employee of the
94 Commonwealth who is a nonresident of such county, city, or town and who uses the vehicle in the
95 performance of his duties for the Commonwealth under an agreement for such use;

96 5. The motor vehicle, trailer, or semitrailer is kept by a dealer or manufacturer for sale or for sales
97 demonstration;

98 6. The motor vehicle, trailer, or semitrailer is operated by a common carrier of persons or property
99 operating between cities and towns in the Commonwealth and not in intracity transportation or between
100 cities and towns on the one hand and points and places outside cities and towns on the other and not in
101 intracity transportation; or

102 7. The motor vehicle, trailer, or semitrailer is inoperable and unlicensed pursuant to § 46.2-734.

103 B. No county, city, or town shall impose a license fee for any one motor vehicle owned and used
104 personally by any veteran who holds a current state motor vehicle registration card establishing that he
105 has received a disabled veteran's exemption from the Department and has been issued a disabled
106 veteran's motor vehicle license plate as prescribed in § 46.2-739.

107 C. No county, city, or town shall impose any license tax or license fee or the requirement of a
108 license tag, sticker or decal upon any daily rental vehicle, as defined in ~~§ 58.1-2401~~ § 58.1-1735, the
109 rental of which is subject to the tax imposed by ~~§ 58.1-2402 A 4 subdivision A 2 of~~ § 58.1-1736.

110 D. In the rental agreement between a motor vehicle renting company and a renter, the motor vehicle
111 renting company may separately itemize and charge daily fees or transaction fees to the renter, provided
112 that the amounts of such fees are disclosed at the time of reservation and rental as part of any estimated
113 pricing provided to the renter. Such fees include a vehicle license fee to recover the company's incurred
114 costs in licensing, titling, and registering its rental fleet, concession recovery fees actually charged the
115 company by an airport, or other governmentally owned or operated facility, and consolidated facility
116 charges actually charged by an airport, or other governmentally owned or operated facility for
117 improvements to or construction of facilities at such facility where the motor vehicle rental company
118 operates. The vehicle license fee shall represent the company's good faith estimate of the average per
119 day per vehicle portion of the company's total annual vehicle licensing, titling, and registration costs.

120 No motor vehicle renting company charging a vehicle license fee, concession recovery fee, or
121 consolidated facility charge may make an advertisement in the Commonwealth that includes a statement

of the rental rate for a vehicle available for rent in the Commonwealth unless such advertisement includes a statement that the customer will be required to pay a vehicle license fee, concession recovery fee, or consolidated facility charge. The vehicle license fee, concession recovery fee, or consolidated facility charge shall be shown as a separately itemized charge on the rental agreement. The vehicle license fee shall be described in either the terms and conditions of the rental agreement as the "estimated average per day per vehicle portion of the company's total annual vehicle licensing, titling, and registration costs" or, for renters participating in an extended rental program pursuant to a master rental agreement, by posting such statement on the rental company website.

Any amounts collected by the motor vehicle renting company in excess of the actual amount of its costs incurred relating to its vehicle license fees shall be retained by the motor vehicle renting company and applied toward the recovery of its next calendar year's costs relating to such fees. In such event, the good faith estimate of any vehicle license fee to be charged by the company for the next calendar year shall be reduced to take into account the excess amount collected from the prior year.

E. As used in this section, common carrier of persons or property includes any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or household goods for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, that has obtained the required certificate of public convenience and necessity from the Department of Motor Vehicles pursuant to § 46.2-2075.

§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004, on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736 or § 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

Article 9.

Virginia Motor Vehicle Rental Tax.

§ 58.1-1734. Title.

This article shall be known and may be cited as the "Virginia Motor Vehicle Rental Tax Act."

§ 58.1-1735. Definitions.

As used in this article, unless the context requires a different meaning:

"Daily rental vehicle" means 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.

"Gross proceeds" means 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 12 months.

"Mobile office" means an industrialized building unit not subject to 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

183 without a permanent foundation, for commercial use and not for residential use; or two or more such
184 units separately towable but designed to be joined together at the point of use to form a single
185 commercial structure, and which may be designed for removal to, and installation or erection on, other
186 sites.

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

194 "Rental" means the transfer of the possession or use of a motor vehicle, whether or not the motor
195 vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the
196 transfer of the ownership of such motor vehicle, for a period of less than 12 months. Any fee
197 arrangement between the holder of a permit issued by the Department of Motor Vehicles for taxicab
198 services and the driver or drivers of such taxicabs shall not be deemed a rental under this section. [
199 Any fee arrangement between a licensed driver training school and a student in that school, whereby the
200 student may use a vehicle owned or leased by the school to perform a road skills test administered by
201 the Department of Motor Vehicles, shall not be deemed a rental under this section.]

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

205 "Rentor" means a person engaged in the rental of motor vehicles for consideration as defined in this
206 section.

207 § 58.1-1736. Levy.

208 A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law,
209 a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required
210 to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person
211 for re-rental as an established business or part of an established business, or incidental or germane to
212 such business.

213 The amount of the tax to be collected shall be determined by the Tax Commissioner by the
214 application of the following rates against the gross proceeds:

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

217 2. In addition to the tax levied pursuant to subdivision A 1, a tax of four percent of the gross
218 proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such
219 vehicle is required to be licensed in the Commonwealth.

220 3. In addition to all other applicable taxes and fees, a fee of two percent of the gross proceeds shall
221 be imposed on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required
222 to be licensed in the Commonwealth. For purposes of this article, the rental fee shall be implemented,
223 enforced, and collected in the same manner that rental taxes are implemented, enforced, and collected.

224 B. A motor vehicle subject to the tax imposed under subdivision A 1 of this section shall be subject
225 to the tax under subdivision A 1 or A 2 of § 58.1-2402 when it ceases to be used for rental as an
226 established business or part of an established business, or incidental or germane to such business.

227 C. Any motor vehicle, trailer, or semitrailer exempt from this tax under subdivision 1 or 2 of
228 § 58.1-1737 shall be subject to the tax when such vehicle is no longer rented by the United States
229 government or any governmental agency thereof, or the Commonwealth of Virginia or any political
230 subdivision thereof, unless at such time the vehicle is sold or its ownership is otherwise transferred, in
231 which case the tax imposed by § 58.1-2402 shall apply, subject to the exemptions provided for in
232 § 58.1-2403.

233 § 58.1-1737. Exemptions.

234 No tax shall be imposed as provided in § 58.1-1736 if the vehicle is:

235 1. Rented by the United States government or any governmental agency thereof;

236 2. Rented by the Commonwealth of Virginia or any political subdivision thereof;

237 3. A self-contained mobile computerized axial tomography scanner rented by a nonprofit hospital or
238 a cooperative hospital service organization as described in § 501(e) of the Internal Revenue Code;

239 4. A self-contained mobile unit designed exclusively for human diagnostic or therapeutic service,
240 rented to a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of
241 the Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue
242 Code, established for research in, diagnosis of, or therapy for human ailments; or

243 5. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and
244 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 subdivision A 1 of § 58.1-1736.

§ 58.1-1738. Administration of the tax.

The tax on the rental of a motor vehicle shall be paid by the person renting such motor vehicle, collected by the rentor of such motor vehicle, and remitted to the Tax Commissioner on or before the twentieth day of the month following the month in which the gross proceeds from such rental were due. All of the responsibilities imposed on dealers in Chapter 6 (§ 58.1-600 et seq.) of this title shall apply to rentors for purposes of this article. The tax on rental transactions in the Commonwealth shall apply regardless of the state for which a certificate of title is required.

The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title shall apply to this article, mutatis mutandis, except as herein provided.

§ 58.1-1739. Forwarding of tax information to law-enforcement officials.

The Tax Commissioner may, in his discretion, upon request duly received from the official charged with the duty of enforcement of motor vehicle tax laws of any other state, forward to such official any information that he may have in his possession relative to the registration and payment of any tax collected pursuant to this article.

§ 58.1-1740. Credits against tax.

Credit shall be granted any rentor subject to the additional tax on the rental of a daily rental passenger car for a portion of the tangible personal property tax assessed by a Virginia locality on such car for a tax year ending after June 30, 1981. The amount of such credit shall be equal to the ratio of the number of months in such tax year after June 30 to the total number of months in the tax year. Any such credit may be carried over from month to month for a period of up to six months or until fully absorbed, whichever occurs first. To the extent any credit is claimed hereunder as to any tangible personal property tax properly assessed and not actually paid when due, such credit shall be subject to collection as an underpayment of the additional tax imposed under subdivision A 2 of § 58.1-1736 as of the date the credit was claimed, with penalties and interest as provided in § 58.1-2411, mutatis mutandis.

§ 58.1-1741. Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § 58.1-1736 on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii) of this sentence, an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, and by §§ 58.1-1735, 58.1-1736 and this section, shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § 58.1-1736 at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § 33.1-221.1:1.1; and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § 58.1-1736 shall be [~~deposited into the general fund~~ used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.]

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

§ 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.

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

§ 58.1-2402. Levy.

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

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

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

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

2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each

manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. When any such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

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

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

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

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

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

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned, rented or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, *unless such vehicle is then rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions provided in § 58.1-1737.* Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of this Commonwealth.

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

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

§ 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. With the exception of a gift to a spouse, 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 limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company 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 or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 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 12 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

429 fair market value of the vehicle at the time of registration in Virginia;

430 11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or

431 b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for
432 any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. For purposes
433 of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are
434 defined in § 46.2-602.2;

435 12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban
436 bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles,
437 one way, on the same day;

438 13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole
439 purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than
440 Virginia;

441 14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for
442 the use of a church conducted not for profit;

443 15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the
444 instruction of driver's education when such education is a part of such school's curriculum for full-time
445 students;

446 16. Sold to an insurance company or local government group self-insurance pool, created pursuant to
447 § 15.2-2703, for the sole purpose of disposition when such company or pool has paid the registered
448 owner of such vehicle a total loss claim;

449 17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of
450 foreign governments, their employees or agents, and members of their families, if such persons are
451 nationals of the state by which they are appointed and are not citizens of the United States;

452 18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a
453 nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United
454 States Internal Revenue Code;

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

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

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

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

469 23. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and
470 semitrailers not designed or used to carry property and vehicles registered under § 46.2-700, with a gross
471 vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no
472 tax shall be imposed pursuant to subdivisions 4 and 3 of subsection A subdivision A 1 of § 58.1-2402;

473 24. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a
474 Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of
475 whether other beneficiaries of the trust may also be named in the trust instrument, when no
476 consideration has passed between the titleholder and the beneficiaries; and transferred to the original
477 titleholder from the trustees holding title to the motor vehicle;

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

483 26. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if
484 the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with
485 respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of
486 the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has
487 been paid to the Commonwealth by the lessee purchasing the vehicle; or

488 27. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will,
489 of such deceased person.

490 § 58.1-2404. Time for payment of tax on sale, or use or rental of a motor vehicle.

The tax on the sale or use of a motor vehicle shall be paid by the purchaser or user of such motor vehicle and collected by the Commissioner at the time the owner applies to the ~~Division~~ *Department* of Motor Vehicles for, and obtains, a certificate of title. ~~The tax on the renting of a motor vehicle shall be paid by the person renting such motor vehicle, collected by the rentor of such motor vehicle, and remitted to the Commissioner on or before the twentieth day of the month following the month in which the gross proceeds from such rental were due.~~ No tax shall be levied or collected under this chapter upon the sale or use of a motor vehicle for which no certificate of title is required by this Commonwealth. ~~The tax on rental transactions in the Commonwealth shall apply regardless of the state for which a certificate of title is required.~~

§ 58.1-2411. Civil penalties upon failure to ~~make return~~, pay tax, etc.

When any person fails to ~~make any return~~ and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a penalty to be added to the tax in the amount of ten percent or ten dollars, whichever is greater; however, if the failure is due to providential or other good cause, shown to the satisfaction of the Commissioner, the ~~return~~, with ~~remittance~~, tax may be accepted exclusive of penalties. The ten-dollar minimum penalty levied herein shall be applied only in cases where the ~~return~~ or payment of tax is not received within the time prescribed in this chapter and shall not be considered for audit purposes.

In the case of a false or fraudulent ~~return~~ *application*, where willful intent exists to defraud the Commonwealth of any tax due under this chapter, ~~or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax~~, a specific penalty of fifty percent of the amount of the proper tax shall be assessed. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any person reports the sale price ~~or gross proceeds from the rental~~ of a motor vehicle at fifty percent or less of the actual amount. ~~All penalties and interest imposed by this chapter shall be payable by the rentor and collectible by the Commissioner in the same manner as if they were a part of the tax imposed.~~

Interest at the rate of one and one-half of one percent per month, or a fraction thereof, shall accrue on both tax and penalty until paid.

§ 58.1-2419. Tax on sale ~~or rental price~~ to be separately stated.

In every transaction subject to the provisions of this chapter, the tax imposed by this chapter shall be separately stated from the sale ~~or rental price~~ of such motor vehicle and shall be paid by the purchaser ~~or rentor~~ in accordance with the provisions of this chapter.

§ 58.1-2420. Examination of dealer's records, etc.

The Commissioner or any agent authorized by him may examine during the usual business hours all records, books, papers or other documents of any dealer in motor vehicles relating to the sales price of any motor vehicle to verify the truth and accuracy of any statement or any other information as to a particular sale. ~~With respect to rentors, the Commissioner shall have all powers under this chapter with respect to the records of such person as are granted to the State Tax Commissioner under § 58.1-633.~~

§ 58.1-2421. Rules and regulations.

The Commissioner shall have the power to make and publish reasonable rules and regulations consistent with this chapter, other applicable laws, and the Constitutions of Virginia and the United States, for the enforcement of the provisions of this chapter and the collection of the revenues hereunder.

Such rules and regulations shall not be subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. ~~With respect to the tax levied on rentals pursuant to § 58.1-2402 A 3, the rules and regulations promulgated shall include, but shall not be limited to, rules and regulations governing a person ceasing to operate a rental business, the issuance of bad checks incidental to a rental or payment of the tax, extensions of time for filing returns and paying the tax, out-of-state rentors and refunds.~~

§ 58.1-2424. Credits against tax.

A. Credit shall be granted for the amount of tax paid to another state on a motor vehicle purchased in another state at the time such vehicle is first registered in the Commonwealth, provided the purchaser provides proof of payment of such tax. However, no credit shall be granted for any tax paid to another state if that state exempts from the tax vehicles sold to residents of a state which does not give credit for the tax. Credit for taxes collected under the Virginia retail sales and use tax (§ 58.1-600 et seq.) shall be allowed against the tax levied for specially constructed or reconstructed vehicles and other motor vehicles subject to such tax.

B. Credit shall be granted any rentor subject to the additional tax on the rental of a daily rental passenger car for a portion of the tangible personal property tax assessed by a Virginia locality on such car for a tax year ending after June 30, 1981. The amount of such credit shall be equal to the ratio of the number of months in such tax year after June 30, to the total number of months in the tax year. Any such credit may be carried over from month to month for a period of up to six months or until fully absorbed, whichever occurs first. To the extent any credit is claimed hereunder as to any tangible

personal property tax properly assessed and not actually paid when due, such credit shall be subject to collection as an underpayment of the additional tax imposed under ~~§ 58.1-2402~~ A 4 as of the date the credit was claimed, with penalties and interest as provided in ~~§ 58.1-2411~~.

§ 58.1-2425. Disposition of revenues.

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; *and* (ii) ~~all funds collected from the additional tax imposed by subdivision A 4 of § 58.1-2402 on the rental of daily rental vehicles shall be distributed quarterly to the city, town, or county wherein such vehicle was delivered to the rentee;~~ (iii) effective January 1, 1987, an amount equivalent to the net additional revenues *from the sales and use tax on motor vehicles* generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402 and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iv) ~~except as otherwise provided in clause (iii) of this sentence, all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 3 of § 58.1-2402 at the tax rate in effect on December 31, 1986, shall be paid by the Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § 33.1-221.1:1.1; and (v) all additional revenues resulting from the fee imposed under subdivision A 5 of § 58.1-2402 as enacted by the 2004 Session of the General Assembly shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.~~

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause ~~(iii)~~ (ii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

§ 58.1-3510. Definition of merchants' capital.

A. Merchants' capital is defined as follows: Inventory of stock on hand; daily rental vehicles as defined in ~~§ 58.1-2401~~ § 58.1-1735; and all other taxable personal property of any kind whatsoever, except money on hand and on deposit and except tangible personal property not offered for sale as merchandise, which tangible personal property shall be reported and assessed as such.

B. For purposes of this section, a repair and service operation (i) carried on as an integral part of and in conjunction with a business that is primarily mercantile and (ii) the principal sales of such business are subject to the tax imposed by *Article 9 (§ 58.1-1734 et seq.) of Chapter 17 or to the tax imposed by Chapter 24 (§ 58.1-2400 et seq.)* of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

C. For purposes of valuing lottery tickets as part of a dealer's inventory, cost shall include only the compensation payable to a licensed sales agent as provided by rules or regulations adopted by the Board consistent with the provisions of subdivision 11 of subsection A of § 58.1-4007. The value of lottery tickets shall not be based on the cost of the tickets to the merchant.

2. That §§ 58.1-2407 through 58.1-2410 and 58.1-2412 through 58.1-2417 of the Code of Virginia are repealed.

3. That the Department of Taxation shall develop and publish guidelines and rules implementing the provisions of this act and shall update such guidelines and rules thereafter as deemed necessary by the Tax Commissioner. The development and publication of such guidelines and rules shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)

4. That the provisions of this act shall become effective July 1, 2012.