

19100726D

HOUSE BILL NO. 1679

Offered January 9, 2019

Prefiled December 5, 2018

A BILL to amend and reenact §§ 58.1-2402, as it is currently effective and as it may become effective, 58.1-2403, and 58.1-2425, as it is currently effective, of the Code of Virginia, relating to taxation of all-terrain vehicles, mopeds, and off-road motorcycles.

Patron—Orrock

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2402, as it is currently effective and as it may become effective, 58.1-2403, and 58.1-2425, as it is currently effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2402. (Contingent expiration date) 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 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.

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:

1. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013, through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15 percent beginning on and after July 1, 2016, 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 the 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 the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth; and if such vehicle is an all-terrain vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, sold by a Virginia dealer, or, if sold by anyone other than a Virginia dealer ~~and then~~, used or stored for use in the Commonwealth, (a) in a county or city located in a planning district described in § 58.1-603.1, the tax shall be six percent of the sales price of each such vehicle or (b) in any county or city other than those set forth in clause (a), the tax shall be 5.3 percent of the sales price of each such vehicle.

2. Three percent through midnight on June 30, 2013, four percent beginning July 1, 2013, through midnight on June 30, 2014, 4.05 percent beginning July 1, 2014, through midnight on June 30, 2015, 4.1 percent beginning July 1, 2015, through midnight on June 30, 2016, and 4.15 percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in Virginia but used or stored for use in the Commonwealth; 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. If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. If such vehicle is an all-terrain vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, not sold in the Commonwealth but used or stored for use in the Commonwealth (a) in a county or city located in a planning district described in § 58.1-603.1, the tax shall be six percent of the sales price of each such vehicle or (b) in any county or city other than those set forth in clause (a), the tax shall be 5.3 percent of the sales price of each such vehicle. When any motor vehicle or manufactured home not sold in the Commonwealth 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. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to

INTRODUCED

HB1679

59 taxation at a rate exceeding zero percent shall be \$75, except as provided by those exemptions defined
60 in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle, moped, or off-road motorcycle
61 subject to taxation under this chapter.

62 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall
63 the same transaction be taxed more than once under either subdivision.

64 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of
65 § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no
66 longer owned or used by the United States government or any governmental agency, or the
67 Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in
68 which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions provided in
69 § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this
70 chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax,
71 based on the current market value, when such vehicle is subsequently licensed to operate on the
72 highways of the Commonwealth.

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

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

80 **§ 58.1-2402. (Contingent effective date) Levy.**

81 A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law,
82 a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for
83 rental as an established business or part of an established business or incidental or germane to such
84 business.

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

87 1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a
88 manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such
89 manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in
90 § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in the
91 Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of
92 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile
93 office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not
94 designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero
95 percent of the sale price of each such vehicle sold in the Commonwealth; and if such vehicle is an
96 all-terrain vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, ~~sold by a~~
97 ~~Virginia dealer, or sold by anyone other than a Virginia dealer and then used or stored for use in the~~
98 ~~Commonwealth, (a) in a county or city located in a planning district described in § 58.1-603.1, the tax~~
99 ~~shall be six percent of the sales price of each such vehicle or (b) in any county or city other than those~~
100 ~~set forth in clause (a), the tax shall be 5.3 five percent of the sales price of each such vehicle.~~

101 2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each
102 manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as
103 defined in § 58.1-2401, not sold in Virginia but used or stored for use in the Commonwealth. If such
104 vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more
105 and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in
106 § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to
107 carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale
108 price of each such vehicle not sold in the Commonwealth but used or stored for use in the
109 Commonwealth. If such vehicle is an all-terrain vehicle, moped, or off-road motorcycle, as those terms
110 are defined in § 46.2-100, not sold in the Commonwealth but used or stored for use in the
111 Commonwealth ~~(a) in a county or city located in a planning district described in § 58.1-603.1, the tax~~
112 ~~shall be six percent of the sales price of each such vehicle or (b) in any county or city other than those~~
113 ~~set forth in clause (a), the tax shall be 5.3 five percent of the sales price of each such vehicle. When any~~
114 ~~motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in~~
115 ~~Virginia six months or more after its acquisition, the tax shall be based on its current market value.~~

116 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to
117 taxation at a rate exceeding zero percent shall be \$35, except as provided by those exemptions defined
118 in § 58.1-2403. This subdivision shall not apply to any all-terrain vehicle, moped, or off-road motorcycle
119 subject to taxation under this chapter.

120 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.

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 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 the 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 or used by the United States government or any governmental agency thereof;
2. Sold to or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or volunteer emergency medical services agency 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, daughter, or parent 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 the 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 fair market value of the vehicle at the time of registration in Virginia;
11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or
b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. For purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are defined in § 46.2-602.2;
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 40 miles, one way, on the same day;
13. Purchased in the 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 10 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 or local government group self-insurance pool, created pursuant to

§ 15.2-2703, for the sole purpose of disposition when such company or pool 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;

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

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;

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

26. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person;

27. An all-terrain vehicle, moped, or off-road motorcycle, as those terms are defined in § 46.2-100, that is ~~being~~:

a. Being titled for the first time in the Commonwealth and that the applicant (i) has owned for more than 12 months or (ii) has owned for less than 12 months and provides evidence of tax paid pursuant to Chapter 6 (§ 58.1-600 et seq.); or

b. Eligible for an agricultural exemption as provided in § 58.1-609.2;

28. A motor vehicle that is sold to an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is primarily used by the organization to transport to markets for sale produce that is (i) produced by local farmers and (ii) sold by such farmers to the organization; or

29. Transferred from the purchaser of the vehicle back to the seller of the vehicle who (i) accepted the vehicle pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.) or (ii) otherwise agreed to accept the return of the vehicle due to a mechanical defect or failure and refunded to the purchaser the purchase price of the vehicle. Except when the return of the vehicle is pursuant to the Virginia Motor Vehicle Warranty Enforcement Act, the transfer shall occur within 45 days of the date of purchase.

§ 58.1-2425. (Contingent expiration date) 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; (ii) 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 established pursuant to § 33.2-1524, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) the net additional revenues generated by increases in the rates of taxes under subdivisions A 1 and A 2 of § 58.1-2402 and generated by the increase in the minimum tax under subdivision A 3 of § 58.1-2402 pursuant to enactments of a Session of the General Assembly held in 2013 shall be deposited by the Comptroller into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530; and (iv) all funds collected pursuant to the provisions of this chapter from all-terrain vehicles, mopeds, and off-road motorcycles, as those terms are defined in § 46.2-100, shall be distributed as follows: (a) an amount equal to a one percent tax shall be distributed in the same manner as the one percent local sales tax pursuant to § 58.1-605, except that this amount collected on sales by anyone other than a Virginia dealer or on sales outside of Virginia shall be distributed to the county or city in which the vehicle is used or stored for use; (b) an amount equal to a 4.3 percent tax shall be distributed in the same manner as the state sales and use tax pursuant to §§ 58.1-638 and 58.1-638.3, except that this amount collected on sales by anyone other than a Virginia dealer or on sales outside of Virginia shall be distributed to the county or city in which the vehicle is used or stored for use; ~~and (c) if the all-terrain vehicle, moped, or off-road motorcycle was purchased from a Virginia dealer, or purchased from anyone other than a Virginia dealer or outside of Virginia and then used or stored for use in a county or city in a planning district described in § 58.1-603.1, an amount equal to a 0.7 percent tax shall be distributed pursuant to § 58.1-603.1; except that this; and (d) if the all-terrain vehicle, moped, or off-road motorcycle was purchased from anyone other than a Virginia dealer or outside of Virginia and then used or stored for use in a county or city in a planning district described in § 58.1-603.1, an amount collected on sales by anyone other than a Virginia dealer or on sales outside of Virginia equal to a 0.7 percent tax shall be distributed to the county or city in which the vehicle is used or stored for use.~~

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, 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.