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HOUSE BILL NO. 2076

Offered January 13, 2021

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A BILL to amend and reenact §§ 58.1-2401, 58.1-2405, and 58.1-3503 of the Code of Virginia, relating to motor vehicle sales and use tax; definition of sale price.

Patron—Marshall

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2401, 58.1-2405, and 58.1-3503 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.

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

"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 all-terrain vehicles, manufactured homes, mopeds, and off-road motorcycles as those terms are 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.

"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 (i) any manufacturer rebate or manufacturer incentive payment applied to the transaction by the customer or dealer whether as a reduction in the sales price or as payment for the vehicle ~~and~~; (ii) the cost of controls, lifts, automatic transmission, power steering, power brakes, or any other equipment installed in or added to a motor vehicle ~~which that~~ is required by law or regulation as a condition for operation of a motor vehicle by a handicapped person; ~~and (iii) any amount of credit given by the seller for any motor vehicle taken in trade as a full or partial payment for the purchased motor vehicle.~~

§ 58.1-2405. Basis of tax.

A. In the case of the sale or use of a motor vehicle upon which the pricing information is required by federal law to be posted, ~~the~~ The Commissioner ~~may shall~~ collect the tax upon the basis of the total sale price shown on such document; however, if the Commissioner is satisfied that the purchaser has paid less than such price, by such evidence as the Commissioner may require, he may assess and collect the tax upon the basis of the sale price so found by him. In no case shall such lesser price include credits for trade-in or any other transaction of such nature as defined in § 58.1-2401.

B. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, the Commissioner may employ such publications, sources of information, and other data as are customarily

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59 employed in ascertaining the maximum sale price of such used motor vehicles ~~but in no case shall any~~
60 ~~credit be allowed for trade-in, prior rental or any other transaction of like nature.~~

61 C. In the case of the sale or use of a motor vehicle, which is not a new motor vehicle, between
62 individuals who are not required to be licensed as dealers or salespersons under the provisions of
63 § 46.2-1508, the Commissioner ~~may~~ *shall* collect the tax upon the basis of the total sale price, *as*
64 *defined in § 58.1-2401*, as established by such evidence as the Commissioner may require, provided that
65 if such motor vehicle is no more than five years old and is listed in a recognized pricing guide, the total
66 sale price shall not be less than the value listed in such pricing guide for such vehicle, less an allowance
67 of \$1,500, unless the purchaser ~~shall execute~~ *executes* an affidavit under penalty of perjury stating a
68 lesser total sale price and declaring such sale or use to be a bona fide transaction for full value. In using
69 a recognized pricing guide, the Commissioner shall use the trade-in value specified in such guide, with
70 no additions for optional equipment or subtractions for mileage, so long as uniformly applied for all
71 types of motor vehicles. ~~In no case shall any credit be allowed for trade-in, prior rental, or any other~~
72 ~~transaction of like nature.~~

73 **§ 58.1-3503. General classification of tangible personal property.**

74 A. Tangible personal property is classified for valuation purposes according to the following separate
75 categories, which are not to be considered separate classes for rate purposes:

76 1. Farm animals, except as exempted under § 58.1-3505.

77 2. Farm machinery, except as exempted under § 58.1-3505.

78 3. Automobiles, except those described in subdivisions 7, 8, and 9 of this subsection and in
79 subdivision A 8 of § 58.1-3504, which shall be valued by means of a recognized pricing guide or if the
80 model and year of the individual automobile are not listed in the recognized pricing guide, the
81 individual vehicle may be valued on the basis of percentage or percentages of original cost. In using a
82 recognized pricing guide, the commissioner shall use either of the following two methods. The
83 commissioner may use all applicable adjustments in such guide to determine the value of each
84 individual automobile, or alternatively, if the commissioner does not utilize all applicable adjustments in
85 valuing each automobile, he shall use the base value specified in such guide, which may be either
86 average retail, wholesale, or loan value, so long as uniformly applied within classifications of property.
87 If the model and year of the individual automobile are not listed in the recognized pricing guide, the
88 taxpayer may present to the commissioner proof of the original cost, ~~and the basis of the tax for~~
89 ~~purposes of the motor vehicle sales and use tax as described in § 58.1-2405 shall constitute proof of~~
90 ~~original cost. For purposes of this subsection, "original cost" means the sale price, as defined in~~
91 ~~§ 58.1-2401, plus the amount of any credit given by the seller for any motor vehicle taken in trade as a~~
92 ~~full or partial payment in the acquisition of the automobile.~~ If such percentage or percentages of original
93 cost do not accurately reflect fair market value, or if the taxpayer does not supply proof of original cost,
94 then the commissioner may select another method ~~which~~ *that* establishes fair market value.

95 4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or, if
96 the model and year of the individual truck are not listed in the recognized pricing guide, on the basis of
97 a percentage or percentages of original cost.

98 5. Trucks and other vehicles, as defined in § 46.2-100, except those described in subdivisions 4, and
99 6 through 10 of this subsection, which shall be valued by means of either a recognized pricing guide
100 using the lowest value specified in such guide or a percentage or percentages of original cost.

101 6. Manufactured homes, as defined in § 36-85.3, which may be valued on the basis of square footage
102 of living space.

103 7. Antique motor vehicles, as defined in § 46.2-100, which may be used for general transportation
104 purposes as provided in subsection C of § 46.2-730.

105 8. Taxicabs.

106 9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be
107 valued in relation to their initial cost, but by determining their actual market value if offered for sale on
108 the open market.

109 10. Motorcycles, mopeds, all-terrain vehicles, and off-road motorcycles as defined in § 46.2-100,
110 campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide
111 or a percentage or percentages of original cost.

112 11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized
113 pricing guide or a percentage or percentages of original cost.

114 12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage
115 or percentages of original cost.

116 13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or
117 percentages of original cost.

118 14. Household goods and personal effects, except as exempted under § 58.1-3504.

119 15. Tangible personal property used in a research and development business, which shall be valued
120 by means of a percentage or percentages of original cost.

121 16. Programmable computer equipment and peripherals used in business, which shall be valued by
122 means of a percentage or percentages of original cost to the taxpayer, or by such other method as may
123 reasonably be expected to determine the actual fair market value.

124 17. Computer equipment and peripherals used in a data center, as defined in subdivision A 43 of
125 § 58.1-3506, which shall be valued by means of a percentage or percentages of original cost, or by such
126 other method as may reasonably be expected to determine the actual fair market value.

127 18. All tangible personal property employed in a trade or business other than that described in
128 subdivisions 1 through 17, which shall be valued by means of a percentage or percentages of original
129 cost.

130 19. Outdoor advertising signs regulated under Article 1 (§ 33.2-1200 et seq.) of Chapter 12 of Title
131 33.2.

132 20. All other tangible personal property.

133 B. Methods of valuing property may differ among the separate categories, so long as each method
134 used is uniform within each category, is consistent with requirements of this section, and may
135 reasonably be expected to determine actual fair market value as determined by the commissioner of
136 revenue or other assessing official; however, assessment ratios shall only be used with the concurrence
137 of the local governing body. A commissioner of revenue shall upon request take into account the
138 condition of the property. The term "condition of the property" includes, but is not limited to,
139 technological obsolescence of property where technological obsolescence is an appropriate factor for
140 valuing such property. The commissioner of revenue shall make available to taxpayers on request a
141 reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his
142 authorized agent, when using a recognized pricing guide as provided for in this section, may
143 automatically extend the assessment if the pricing information is stored in a computer.