

1997 RECONVENED SESSION

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 46.2-755, 58.1-2401, 58.1-2402, 58.1-2425 and 58.1-3510 of the Code of Virginia, relating to taxation and licensing of daily rental vehicles.

[H 2194]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-755, 58.1-2401, 58.1-2402, 58.1-2425 and 58.1-3510 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

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

§ 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 ~~passenger ear~~ vehicle" shall mean a motor vehicle, except a motorcycle *or a mobile home as defined in § 46.2-100*, used for rental as defined in this section and for the transportation of persons ~~and having a gross vehicle weight of 9,000 pounds or less~~ *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 mobile homes as defined in § 46.2-100 and every device in, upon and by which

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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 mobile 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 for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section.

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

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

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a sale.

"Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. 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 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 rate against the gross sales price or gross proceeds:

1. Three percent of the sale price of each motor vehicle sold in Virginia; however, if such vehicle is manufactured, converted or retrofitted to use clean special fuels, as defined in § 58.1-2101, as a source of propulsion, the tax shall be one and one-half 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 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.

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 the 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.

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 ~~passenger car~~ vehicle, whether or not such ~~car~~ vehicle is required to be licensed in the Commonwealth.

5. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be thirty-five dollars, 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. 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 10 of § 46.2-1530, shall be subject to the tax.

§ 58.1-2425. Disposition of revenues.

A. All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. 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 mobile homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such mobile home is to be situated as a dwelling, (ii) all funds collected from the additional tax imposed by subdivision A 4 of § 58.1-2402 on the rental of daily rental ~~passenger cars~~ *vehicles* shall be distributed quarterly to the city, town, or county wherein such ~~car~~ *vehicle* was delivered to the rentee, and (iii) effective January 1, 1987, an amount equivalent to the net additional revenues 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, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs, and (iv) except as otherwise provided in subdivision (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 set aside in a special fund to be used to meet the expenses of the Department of Motor Vehicles.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to subdivision (iii) 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 8.4 percent 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 ~~passenger cars~~ *vehicles* as defined in § 58.1-2401; daily rental property as defined below; 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.

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 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.

B. For purposes of this section, "daily rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business, except trailers as defined in § 46.2-100 and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.

C. A person is engaged in the short-term rental business if not less than eighty percent of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor. "Affiliated" for purposes of this subsection shall mean any common ownership interest in excess of five percent of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the eighty percent requirement, and (ii) any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall

179 not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of
180 tangible personal property shall not mean operation.

181 D. Except for daily rental ~~passenger cars~~ *vehicles*, rental property that is not daily rental property
182 shall be classified pursuant to § 58.1-3503.

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