

Senate Bill No. 17

(By Senators Williams and Beach)

[Introduced February 13, 2013; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-15-3c of the Code of West Virginia,
1931, as amended, relating to the taxing of utility terrain
vehicles; making an exception for vehicles used for
agricultural purposes; and defining "utility terrain vehicles"
as motor vehicles.

Be it enacted by the Legislature of West Virginia:

That §11-15-3c of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

**§11-15-3c. Imposition of consumers sales tax on motor vehicle
sales; rate of tax; use of motor vehicle purchased out of
state; definition of "sale"; definition of "motor vehicle";**

1 **exemptions; collection of tax by Division of Motor Vehicles;**
2 **dedication of tax to highways; legislative and emergency**
3 **rules.**

4 (a) Notwithstanding any provision of this article or article
5 fifteen-a of this chapter to the contrary, beginning on July 1,
6 2008, all motor vehicle sales to West Virginia residents shall be
7 subject to the consumers sales tax imposed by this article.

8 (b) *Rate of tax on motor vehicles.* -- Notwithstanding any
9 provision of this article or article fifteen-a of this chapter to
10 the contrary, the rate of tax on the sale and use of a motor
11 vehicle shall be five percent of its sale price, as defined in
12 section two, article fifteen-b of this chapter: *Provided,* That so
13 much of the sale price or consideration as is represented by the
14 exchange of other vehicles on which the tax imposed by this section
15 or section four, article three, chapter seventeen-a of this code
16 has been paid by the purchaser shall be deducted from the total
17 actual sale price paid for the motor vehicle, whether the motor
18 vehicle be new or used.

19 (c) *Motor vehicles purchased out of state.* -- Notwithstanding
20 this article or article fifteen-a to the contrary, the tax imposed
21 by this section shall apply to all motor vehicles, used as defined
22 by section one, article fifteen-a of this chapter, within this

1 state, regardless of whether the vehicle was purchased in a state
2 other than West Virginia.

3 (d) *Definition of "sale"*. -- Notwithstanding any provision of
4 this article or article fifteen-a of this chapter to the contrary,
5 for purposes of this section, "sale", "sales" or "selling" means
6 any transfer or lease of the possession or ownership of a motor
7 vehicle for consideration, including isolated transactions between
8 individuals not being made in the ordinary course of repeated and
9 successive business and also including casual and occasional sales
10 between individuals not conducted in a repeated manner or in the
11 ordinary course of repetitive and successive transactions.

12 (e) *Definition of "motor vehicle"*. -- For purposes of this
13 section, "motor vehicle" means every propellable device in or upon
14 which any person or property is or may be transported or drawn upon
15 a highway including, but not limited to: Automobiles; buses; motor
16 homes; motorcycles; motorboats; all-terrain vehicles; utility
17 terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck
18 tractors and road tractors having a weight of less than fifty-five
19 thousand pounds; trailers, semitrailers, full trailers, pole
20 trailers and converter gear having a gross weight of less than two
21 thousand pounds; and motorboat trailers, fold-down camping
22 trailers, traveling trailers, house trailers and motor homes;
23 except that the term "motor vehicle" does not include: Modular

1 homes, manufactured homes, mobile homes, similar nonmotive
2 propelled vehicles susceptible of being moved upon the highways but
3 primarily designed for habitation and occupancy; devices operated
4 regularly for the transportation of persons for compensation under
5 a certificate of convenience and necessity or contract carrier
6 permit issued by the Public Service Commission; mobile equipment as
7 defined in section one, article one, chapter seventeen-a of this
8 code; special mobile equipment as defined in section one, article
9 one, chapter seventeen-a of this code; trucks, truck tractors and
10 road tractors having a gross weight of fifty-five thousand pounds
11 or more; trailers, semitrailers, full trailers, pole trailers and
12 converter gear having weight of two thousand pounds or greater:
13 *Provided*, That notwithstanding the provisions of section nine,
14 article fifteen, chapter eleven of this code, the exemption from
15 tax under this section for mobile equipment as defined in section
16 one, article one, chapter seventeen-a of this code; special mobile
17 equipment defined in section one, article one, chapter seventeen-a
18 of this code; Class B trucks, truck tractors and road tractors
19 registered at a gross weight of fifty-five thousand pounds or more;
20 and Class C trailers, semitrailers, full trailers, pole trailers
21 and converter gear having weight of two thousand pounds or greater
22 does not subject the sale or purchase of the vehicle to the
23 consumer sales and service tax imposed by section three of this

1 article.

2 (f) *Exemptions.* -- Notwithstanding any other provision of this
3 code to the contrary, the tax imposed by this section shall not be
4 subject to any exemption in this code other than the following:

5 (1) The tax imposed by this section does not apply to any
6 passenger vehicle offered for rent in the normal course of business
7 by a daily passenger rental car business as licensed under the
8 provisions of article six-d, chapter seventeen-a of this code. For
9 purposes of this section, a daily passenger car means a motor
10 vehicle having a gross weight of eight thousand pounds or less and
11 is registered in this state or any other state. In lieu of the tax
12 imposed by this section, there is hereby imposed a tax of not less
13 than \$1 nor more than \$1.50 for each day or part of the rental
14 period. The Commissioner of Motor Vehicles shall propose an
15 emergency rule in accordance with the provisions of article three,
16 chapter twenty-nine-a of this code to establish this tax.

17 (2) The tax imposed by this section does not apply where the
18 motor vehicle has been acquired by a corporation, partnership or
19 limited liability company from another corporation, partnership or
20 limited liability company that is a member of the same controlled
21 group and the entity transferring the motor vehicle has previously
22 paid the tax on that motor vehicle imposed by this section. For the
23 purposes of this section, control means ownership, directly or

1 indirectly, of stock or equity interests possessing fifty percent
2 or more of the total combined voting power of all classes of the
3 stock of a corporation or equity interests of a partnership or
4 limited liability company entitled to vote or ownership, directly
5 or indirectly, of stock or equity interests possessing fifty
6 percent or more of the value of the corporation, partnership or
7 limited liability company.

8 (3) The tax imposed by this section does not apply where motor
9 vehicle has been acquired by a senior citizen service organization
10 which is exempt from the payment of income taxes under the United
11 States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and
12 which is recognized to be a bona fide senior citizen service
13 organization by the Bureau of Senior Services existing under the
14 provisions of article five, chapter sixteen of this code.

15 (4) The tax imposed by this section does not apply to any
16 active duty military personnel stationed outside of West Virginia
17 who acquires a motor vehicle by sale within nine months from the
18 date the person returns to this state.

19 (5) The tax imposed by this section does not apply to motor
20 vehicles acquired by registered dealers of this state for resale
21 only.

22 (6) The tax imposed by this section does not apply to motor
23 vehicles acquired by this state or any political subdivision

1 thereof or by any volunteer fire department or duly chartered
2 rescue or ambulance squad organized and incorporated under the laws
3 of this state as a nonprofit corporation for protection of life or
4 property.

5 (7) The tax imposed by this section does not apply to motor
6 vehicles acquired by an urban mass transit authority, as defined in
7 article twenty-seven, chapter eight of this code, or a nonprofit
8 entity exempt from federal and state income tax under the Internal
9 Revenue Code for the purpose of providing mass transportation to
10 the public at large or designed for the transportation of persons
11 and being operated for the transportation of persons in the public
12 interest.

13 (8) The tax imposed by this section does not apply to the
14 registration of a vehicle owned and titled in the name of a
15 resident of this state if the applicant:

16 (A) Was not a resident of this state at the time the applicant
17 purchased or otherwise acquired ownership of the vehicle;

18 (B) Presents evidence as the Commissioner of Motor Vehicles
19 may require of having titled the vehicle in the applicant's
20 previous state of residence;

21 (C) Has relocated to this state and can present such evidence
22 as the Commissioner of Motor Vehicles may require to show bona fide
23 residency in this state; and

1 (D) Makes application to the Division of Motor Vehicles for a
2 title and registration and pays all other fees required by chapter
3 seventeen-a of this code within thirty days of establishing
4 residency in this state as prescribed in subsection (a), section
5 one-a of this article.

6 (9) On and after January 1, 2009, the tax imposed by this
7 section does not apply to Class B trucks, truck tractors and road
8 tractors registered at a gross weight of fifty-five thousand pounds
9 or more or to Class C trailers, semitrailers, full trailers, pole
10 trailers and converter gear having a weight of two thousand pounds
11 or greater. If an owner of a vehicle has previously titled the
12 vehicle at a declared gross weight of fifty-five thousand pounds or
13 more and the title was issued without the payment of the tax
14 imposed by this section, then before the owner may obtain
15 registration for the vehicle at a gross weight less than fifty-five
16 thousand pounds, the owner shall surrender to the commissioner the
17 exempted registration, the exempted certificate of title and pay
18 the tax imposed by this section based upon the current market value
19 of the vehicle.

20 (10) The tax imposed by this section does not apply to
21 vehicles leased by residents of West Virginia. On or after January
22 1, 2009, a tax is imposed upon the monthly payments for the lease
23 of any motor vehicle leased under a written contract of lease by a

1 resident of West Virginia for a contractually specified continuous
2 period of more than thirty days, which tax is equal to five percent
3 of the amount of the monthly payment, applied to each payment, and
4 continuing for the entire term of the initial lease period. The tax
5 shall be remitted to the Division of Motor Vehicles on a monthly
6 basis by the lessor of the vehicle. Leases of thirty days or less
7 are taxable under the provisions of this article and article
8 fifteen-a of this chapter without reference to this section.

9 (11) The tax imposed by this section does not apply to utility
10 terrain vehicles used for the commercial production of an
11 agricultural product whose ultimate sale is subject to tax under
12 this article where the vehicle is used on farmland valued in
13 accordance with section ten, article one-a of this chapter and
14 legislative rule: Provided, That the purchaser presents to the
15 vendor a completed application for farm use valuation for the
16 property being farmed by the purchaser and the application bears
17 the assessor's stamp that the application was granted.

18 (g) *Division of Motor Vehicles to collect.* -- Notwithstanding
19 any provision of this article, article fifteen-a and article ten of
20 this chapter to the contrary, the Division of Motor Vehicles shall
21 collect the tax imposed by this section: *Provided, That such tax is*
22 *imposed upon the monthly payments for the lease of any motor*
23 *vehicle leased by a resident of West Virginia, which tax is equal*

1 to five percent of the amount of the monthly payment, applied to
2 each payment, and continuing for the entire term of the initial
3 lease period. The tax shall be remitted to the Division of Motor
4 Vehicles on a monthly basis by the lessor of the vehicle.

5 (h) *Dedication of tax to highways.* -- Notwithstanding any
6 provision of this article or article fifteen-a of this chapter to
7 the contrary, all taxes collected pursuant to this section, after
8 deducting the amount of any refunds lawfully paid, shall be
9 deposited in the State Road Fund in the State Treasury and expended
10 by the Commissioner of Highways for design, maintenance and
11 construction of roads in the state highway system.

12 (i) *Legislative rules; emergency rules.* -- Notwithstanding any
13 provision of this article, article fifteen-a and article ten of
14 this chapter to the contrary, the Commissioner of Motor Vehicles
15 shall promulgate legislative rules explaining and implementing this
16 section, which rules shall be promulgated in accordance with the
17 provisions of article three, chapter twenty-nine-a of this code and
18 should include a minimum taxable value and set forth instances when
19 a vehicle is to be taxed at fair market value rather than its
20 purchase price. The authority to promulgate rules includes
21 authority to amend or repeal those rules. ~~If proposed legislative~~
22 ~~rules for this section are filed in the State Register before June~~
23 ~~15, 2008, those rules may be promulgated as emergency legislative~~

1 ~~rules as provided in article three, chapter twenty-nine-a of this~~
2 ~~code.~~

3 (j) Notwithstanding any other provision of this code,
4 effective January 1, 2009, no municipal sales or use tax or local
5 sales or use tax or special downtown redevelopment district excise
6 tax or special district excise tax shall be imposed under article
7 twenty-two, chapter seven of this code or article thirteen, chapter
8 eight of this code or article thirteen-b of said chapter or article
9 thirty-eight of said chapter or any other provision of this code,
10 except this section, on sales of motor vehicles as defined in this
11 article or on any tangible personal property excepted or exempted
12 from tax under this section. Nothing in this subsection shall be
13 construed to prevent the application of the municipal business and
14 occupation tax on motor vehicle retailers and leasing companies.

NOTE: The purpose of this bill is to tax utility terrain vehicles. The bill makes an exception for vehicles used for agricultural purposes. The bill also defines utility terrain vehicles as motor vehicles.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.