

H. B. 2037

(By Delegate Williams and Moye)

[Introduced January 14, 2015; referred to the

Committee on Roads and Transportation then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating to eliminating the consumers sales tax on utility terrain vehicles that are used for agricultural purposes; and defining utility terrain vehicle as a motor vehicle.

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

(a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be

1 subject to the consumers sales tax imposed by this article.

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

9 (c) *Motor vehicles purchased out of state.* -- Notwithstanding this article or article fifteen-a
10 to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by
11 section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was
12 purchased in a state other than West Virginia.

13 (d) *Definition of sale.* -- Notwithstanding any provision of this article or article fifteen-a of
14 this chapter to the contrary, for purposes of this section, "sale", "sales" or "selling" means any
15 transfer or lease of the possession or ownership of a motor vehicle for consideration, including
16 isolated transactions between individuals not being made in the ordinary course of repeated and
17 successive business and also including casual and occasional sales between individuals not
18 conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

19 (e) *Definition of motor vehicle.* -- For purposes of this section, "motor vehicle" means every
20 propellable device in or upon which any person or property is or may be transported or drawn upon
21 a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats;
22 all-terrain vehicles; utility terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors

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

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

22 (1) The tax imposed by this section does not apply to any passenger vehicle offered for rent

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

8 (2) The tax imposed by this section does not apply where the motor vehicle has been acquired
9 by a corporation, partnership or limited liability company from another corporation, partnership or
10 limited liability company that is a member of the same controlled group and the entity transferring
11 the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the
12 purposes of this section, control means ownership, directly or indirectly, of stock or equity interests
13 possessing fifty percent or more of the total combined voting power of all classes of the stock of a
14 corporation or equity interests of a partnership or limited liability company entitled to vote or
15 ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the
16 value of the corporation, partnership or limited liability company.

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

22 (4) The tax imposed by this section does not apply to any active duty military personnel

1 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
2 the date the person returns to this state.

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

5 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
6 or any political subdivision thereof or by any volunteer fire department or duly chartered rescue or
7 ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation
8 for protection of life or property.

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

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

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

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

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

22 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays

1 all other fees required by chapter seventeen-a of this code within thirty days of establishing residency
2 in this state as prescribed in subsection (a), section one-a of this article.

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

12 (10) The tax imposed by this section does not apply to vehicles leased by residents of West
13 Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the lease of
14 any motor vehicle leased under a written contract of lease by a resident of West Virginia for a
15 contractually specified continuous period of more than thirty days, which tax is equal to five percent
16 of the amount of the monthly payment, applied to each payment, and continuing for the entire term
17 of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly
18 basis by the lessor of the vehicle. Leases of thirty days or less are taxable under the provisions of this
19 article and article fifteen-a of this chapter without reference to this section.

20 (11) The tax imposed by this section does not apply to utility terrain vehicle used for the
21 commercial production of an agricultural product whose ultimate sale is subject to tax under this
22 article where the vehicle is used on farmland valued in accordance with section ten, article one-a of

1 this chapter and legislative rule: *Provided*, That the purchaser shall present to the vendor a
2 completed application for farm use valuation for the property being farmed by the purchaser and the
3 application bears the assessor's stamp that the application was granted.

4 (g) *Division of Motor Vehicles to collect*. -- Notwithstanding any provision of this article,
5 article fifteen-a and article ten of this chapter to the contrary, the Division of Motor Vehicles shall
6 collect the tax imposed by this section: *Provided*, That such tax is imposed upon the monthly
7 payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal
8 to five percent of the amount of the monthly payment, applied to each payment, and continuing for
9 the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles
10 on a monthly basis by the lessor of the vehicle.

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

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

1 State Register before June 15, 2008, those rules may be promulgated as emergency legislative rules
2 as provided in article three, chapter twenty-nine-a of this code.

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

NOTE: The purpose of this bill is to eliminate the sales tax on tax utility terrain vehicles. The bill sets forth the conditions that must be met to qualify for the exclusion. 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.