

Full Performance Evaluation

Division of Motor Vehicles

**Update of Recommendations Made In
the September 2002; January and August
2003 Reports**



**November 2005
PE 05-16-359**

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John Sylvia
Director

November 13, 2005

The Honorable Edwin J. Bowman
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129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the Division of Motor Vehicles, which will be presented to the Joint Committee on Government Operations on Sunday, November 13, 2005. The issue covered herein is "Update of Recommendations Made In the September 2002; January and August 2003 Reports."

We transmitted a draft copy of the report to the Division of Motor Vehicles on October 31, 2005. The Division of Motor Vehicles opted not to hold an exit conference. We received the agency response on November 7, 2005.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

This is a Full Performance Evaluation of the Division of Motor Vehicles. The purpose of this evaluation is to determine whether or not the Division has complied with recommendations made in the previous evaluations that occurred in September 2002 and January and August 2003

The September 2002 report recommendations were as follows:

2. *The Division of Motor Vehicles should continue to proceed with the dealer registration program allowing automobile dealers to register new and used vehicle purchases.*
3. *The Legislative Auditor recommends that the Division should provide online vehicle registration renewals.*

The January 2003 report recommendations were as follows:

1. *The Division of Motor Vehicles should consider all forms of legislation to prevent fraudulent drivers licenses and personal identification cards, such as requiring a picture I.D. for non-residents to obtain a drivers license or tying non-residents drivers license expiration date with their visa.*
2. *The Division of Motor Vehicles should consider the addition of an ultraviolet hologram of the West Virginia driver's license to counteract fraudulent use of identifications for underage drinking.*
3. *The Legislature should consider amending West Virginia Code §17A-3-4(1) by creating a minimum value for vehicle transactions at \$500 and set a flat rate on any transaction \$500 and below at \$25.*
4. *The Division should audit vehicle transactions to determine the present market value to ensure that the proper tax is being paid by those conducting used vehicle transactions.*

The August 2003 report recommendations were as follows:

1. *The Legislative Auditor recommends that the Division of Motor Vehicles enact policy to charge a privilege tax on title transactions based on the present market value as required by West Virginia Code §17A-3-4.*

2. *The Legislative Auditor recommends that the Division of Motor Vehicles consult the Automobile Red Book in all privilege tax title transactions. The Division should charge a privilege tax based on the Automobile Red Book value when the sales price as reported by the vehicle owner is lower than the Red Book Value.*

In examining the status of the Division of Motor Vehicle's efforts toward compliance with these recommendations, this update used the following designations for levels of compliance:

Levels of Compliance
<u>In Compliance</u> - The Division has complied with the recommendation of the previous report.
<u>Partial Compliance</u> - The Division has partially complied with the recommendation of the previous report.
<u>Planned Compliance</u> - The Division has not complied with the recommendation, but has provided sufficient documentary evidence to find that the Division will do so in the future.
<u>In Dispute</u> - The Division does not agree with the recommendation of the previous report.
<u>Non-Compliance</u> - The Division has not complied with the recommendation of the previous report.
<u>Requires Legislative Action</u> - The recommendation was intended to call the attention of the Legislature to one or more statutory issues.

The Legislative Auditor found the Division to be in compliance with four of the recommendations; in partial compliance with two of the recommendations; and in non compliance with two of the recommendations.

Review Objective, Scope and Methodology

This Full Performance Evaluation of the Division of Motor Vehicles is required and authorized by the West Virginia Sunset Law §4-10-4 of the West Virginia Code, as amended.

Objective

The objective of this evaluation is to monitor the Division of Motor Vehicle's progress made on the Legislative Auditor's recommendations made in three previous Full Performance Evaluation reports; September 2002 and January and August 2003.

Scope

The scope of this evaluation covers from September 2002 to September 2005.

Methodology

The methodology for this update evaluation involved gathering information from the September 2002 and January and August 2003 reports; current West Virginia Code; DMV annual reports and budget information; and referencing the National Conference of State Legislatures archives. Every aspect of this evaluation complied with **Generally Accepted Government Auditing Standards (GAGAS)**.

Issue 1

September 2002

Implementing a West Virginia Automobile Dealers Titling Plan is a Convenience for Customers

Recommendation 2

The Division of Motor Vehicles should continue to proceed with the dealer registration program allowing automobile dealers to register new and used vehicle purchases.

The Legislative Auditor finds that this program provides a convenient service at a minimal cost to the citizens of West Virginia.

Level of Compliance: In Compliance

On December 21, 2001, the Division of Motor Vehicles contracted with the Computerized Vehicle Registration (CVR) to establish the “Electronic Title Filing System” in West Virginia. This program allows automobile dealers to register titles and licenses for customers purchasing vehicles. The Legislative Auditor finds that this program provides a convenient service at a minimal cost to the citizens of West Virginia by allowing them to receive their title and license from the dealer, rather than having to go to their local DMV office after purchasing a vehicle.

The Division continues to sign dealers into the CVR program. As of August 31, 2005, there were 30 dealers participating. The Division is preparing to allow dealers to process transactions dealing with used vehicle titles. Up to this point, dealers have only been processing transactions on new cars. In the near future, the CVR program will allow new car dealers to transfer all classes of license plates.

Issue 2

September 2002

Online Vehicle Registration Renewal Should be Implemented for Customer Convenience and Cost Savings to the State

Recommendation 3

The Legislative Auditor recommends that the Division should provide online vehicle registration renewals.

Currently, 37 states and the District of Columbia offer online vehicle registration renewal.

Level of Compliance: Non-Compliance

The Division does not offer online vehicle registration renewal to the citizens of West Virginia. Currently, 38 states and the District of Columbia offer online vehicle registration renewal. The Division supports the internet renewal concept, but faces opposition from the county sheriffs. The Division stated:

In two different years, the Division introduced legislation providing for an internet vehicle renewal option. In both years the legislation was defeated by the strong lobby efforts of the Sheriffs.

As stated in the September 2002 report, the Legislative Auditor finds that online registration not only provides a convenience to citizens, but could provide a cost savings for the DMV.

According to the Division, the Sheriffs have argued that online renewals would:

1. Result in an increased workload on their staffs;
2. Would keep taxpayers who normally pay property taxes at the time they renew from coming to the courthouse and subsequently paying their tax;
3. Would result in revenue loss for the county seat from the decline in persons visiting the courthouse; and
4. Would result in the loss of the \$1 service fee that County Sheriff's offices collect when licenses are renewed at the County Sheriff's office.

In response, the Division has offered:

1. To allow the sheriffs to place a stop on an individual's renewal who was delinquent in tax payments;
2. Develop an affidavit type system much like that used for insurance coverage to certify payment of property tax; and

-
3. Reimburse the Sheriffs \$1 for each vehicle renewal done on the internet.

The DMV continues to explore ways to provide this service. The Division is currently working with the Kanawha County Sheriff's Department in a pilot test to link web based tax records with the Division's vehicle data base. **As stated in the September 2002 report, the Legislative Auditor finds that online registration not only provides a convenience to citizens, but could provide a cost savings for the DMV.** The Legislative Auditor recommends that the Division continue to work with the county sheriffs in order to provide this service to the citizens of the state.

Issue 3

January 2003

The Division accepts valid INS documents, including INS issued photo identification cards.

The Division Has Taken Appropriate Measures in Tightening Laws for Obtaining Driver's Licenses and Personal Identification Cards But It Could Do More

Recommendation 1

The Division of Motor Vehicles should consider all forms of legislation to prevent fraudulent driver's licenses and personal identification cards, such as requiring a picture I.D. for non-residents to obtain a driver's license or tying non-residents driver's license expiration date with their visa.

The Division has added ultraviolet holograms to the West Virginia driver's license as recommended by the Legislative Auditor in January 2003.

Level of Compliance: In Compliance

During the 2003 legislative session, S.B. 342 was passed requiring the Division of Motor Vehicles, when issuing a driver's license or identification card to a non U.S. citizen, to require proof of legal presence. The Division accepts valid INS documents, including INS issued photo identification cards. **The expiration date of the drivers license or DMV identification card is tied to the expiration of the INS issued documents to ensure validity.**

The Legislative Auditor commends the Division of Motor Vehicles for implementing the ultraviolet hologram, and implementing proposed provisions of the Real I.D. Act.

Recommendation 2

The Division of Motor Vehicles should consider the addition of an ultraviolet hologram of the West Virginia driver's license to counteract fraudulent use of identifications for underage drinking.

Level of Compliance: In Compliance

The Division has added ultraviolet holograms to the West Virginia driver's license as recommended by the Legislative Auditor in January 2003. This feature went into effect on August 3, 2005. In addition, the Division has taken the initiative to begin implementing provisions of the REAL I.D. Act of 2005 passed by the U.S. Congress. The REAL I.D. Act requires states to redesign its driver's licenses by 2008 to comply with federal antiterrorist standards. According to the Division:

Although the final rules have not been adopted and are not

expected for some time, the Division has implemented approximately 90% of the [Homeland Security's] proposed rules.

Other proposed rules by Homeland Security concerning the issuance of driver's licenses that are currently implemented by the Division include: providing a photo identity document; documentation showing the person's date of birth; and proof of the person's social security number or verification that the person is not eligible for a social security number. The Legislative Auditor commends the Division of Motor Vehicles for implementing the ultraviolet hologram, and implementing proposed provisions of the Real I.D. Act.

Issue 4

January 2003

The Division of Motor Vehicles Should Consider Restructuring Its Taxation on Vehicle Title Transactions

Recommendation 3

The Division estimates that it has increased the privilege tax revenue by approximately \$160,000 per month or roughly \$1.9 million per year.

The Legislature should consider amending West Virginia Code §17A-3-4(1) by creating a minimum value for vehicle transactions at \$500 and set a flat rate on any transaction \$500 and below at \$25.

Level of Compliance: In Compliance

Effective April 1, 2003, the Division implemented the \$500 minimum value for most transactions. The Division estimates that it has increased the privilege tax revenue by approximately \$160,000 per month or roughly \$1.9 million per year. This is higher than the \$1.3 million per year estimated by the Legislative Auditor in the January 2003 report. The Legislative Auditor commends the Division for taking the initiative in implementing this policy.

In the January 2003 report, the Legislative Auditor stated that the Division would raise additional revenues by verifying present market values through auditing vehicle transactions.

Recommendation 4

The Division should audit vehicle transactions to determine the present market value to ensure that the proper tax is being paid by those conducting used vehicle transactions.

Level of Compliance: Non Compliance

The Division stated that it cannot audit each title transaction because it would require additional staff and expenses. In the January 2003 report, the Legislative Auditor stated that the Division would raise additional revenues by verifying present market values through auditing vehicle transactions.

August 2003

The Division of Motor Vehicles Should Follow West Virginia Code by Taxing Vehicle Title Transactions at Present Market Value

Recommendation 1

The Legislative Auditor recommends that the Division of Motor Vehicles enact policy to charge a privilege tax on title transactions based on the present market value as required by West Virginia Code §17A-3-4.

The Division does not charge the present market value in each case for used vehicles.

Level of Compliance: Partial Compliance

The Division is charging a privilege tax on the purchase price on new vehicles as required by §17A-3-4. The Division does not charge the present market value in each case for used vehicles. For used vehicles, the Division offered the following policy:

On vehicles two years old or less, we follow the code and ask for the book value, regardless of bill of sale. Vehicles over two years old are treated as follows: 1) purchase price is above 50% of book value, vehicle is taxed on that amount, 2) purchase price if below 50%, must have notarized bill of sale or pay on book (\$500 minimum). Vehicles being transferred into West Virginia already titled in owner's name are taxed on book value.

...the Division of Motor Vehicles could generate an additional \$8,160,711 in yearly revenues by charging a privilege tax based on the present market value as required by Code.

According to this statement, the Division is not charging a privilege tax on vehicles older than two years. Thus, the Division is in partial compliance with this recommendation. In addition, the Division is not in compliance with the West Virginia Code by not taxing at the present market value. As stated in the Legislative Auditor's August 2003 report, approximately 69% of vehicle title transactions are taxed at less than the Red Book value, which is an option to determine the market value of the vehicle. Thus, as projected by the Legislative Auditor in the August 2003 report, the Division of Motor Vehicles could generate an additional \$8,160,711 in yearly revenues by charging a privilege tax based on the present market value as required by Code.

Recommendation 2

The Legislative Auditor recommends that the Division of Motor Vehicles consult the Automobile Red Book in all privilege tax title transactions. The Division should charge a privilege tax based on the Automobile Red Book value when the sales price as reported by the vehicle owner is lower than the Red Book Value.

Level of Compliance: Partial Compliance

The Division is not using the Red Book in all title transactions. Although, the DMV employees are using Prime Media evaluation software which determines the amount to be taxed based on the vehicle's value. This software may assist in determining market value of the vehicle, but the Division still in some cases, accepts the lower sales value on vehicles, as reported by the new owner. The Legislative Auditor in making this recommendation determined that using the Red Book would be a solution for the DMV in determining market value. The Legislative Auditor is satisfied with the use of the evaluation software that is currently being utilized by the DMV as an alternative. But, the Division has provided no evidence or indication that the market value is used in every case, and has admitted to accepting a notarized bill of sale from the vehicle owner as the value. The Code does not provide for exceptions in using the present market value. Thus, the Division is in non-compliance with this recommendation.

...the Division has provided no evidence or indication that the market value is used in every case...

Appendix A: Transmittal Letter

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John Sylvia
Director

October 31, 2005

Joseph J. Cicchirillo, Commissioner
Department of Motor Vehicles
Building 3, Capitol Complex
1800 Kanawha Boulevard East
Charleston, WV 25317

Dear Commissioner Cicchirillo:

This is to transmit a draft copy of the Full Performance Evaluation of the Division of Motor Vehicles. This report is scheduled to be presented to the Joint Committee on Government Operations during the November interim meetings, which are scheduled for November 13 - 15, 2005. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us between October 31, 2005 and November 3, 2005. We need your written response by noon on November 7, 2005, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, November 10, 2005 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Joint Committee on Government and Finance

Appendix B: Agency Response



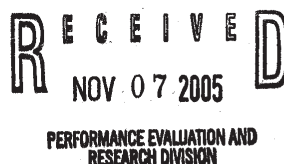
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • State Capitol Building Three
Charleston, West Virginia 25317-0010

Joe Manchin III
Governor

November 7, 2005



John Sylvia, Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
Charleston, WV 25305

Dear Mr. Sylvia:

Thank you for the opportunity to respond to the Full Performance Evaluation of the Division of Motor Vehicles. My predecessors have already responded in detail to these findings in the past so I will take this opportunity to respond to only those findings where there is not concurrence.

Recommendation 4. The Division should audit vehicle transactions to determine the present market value to ensure that the proper tax is being paid by those conducting used vehicle transactions.

This agency recognizes the value of a comprehensive audit program to verify vehicle values. However, with over 700,000 annual title transactions, this undertaking would require additional staff.

Recommendation 1. The Legislative Auditor recommends that the Division of Motor Vehicles enact policy to charge a privilege tax on title transactions based on the present market value as required by West Virginia Code §17A-3-4.

Recommendation 2. The Legislative Auditor recommends that the Division of Motor Vehicles consult the Automobile Red Book value when the sales price as recorded by the vehicle owner is lower than the Red Book value.

The Division's response to both of these questions is that our interpretation of the W. Va. Code §17A-3-4 reference to "present market value"

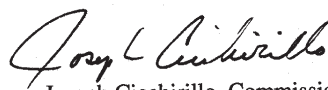
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John Silvia
November 7, 2005
Page Two

is to in most cases rely on the actual purchase price of an "arms length transaction" as the fairest method to West Virginia taxpayers. In many cases, the "book value" does not adequately reflect damage, mileage or other vehicle condition factors that may have influenced the purchase price. DMV has established several safeguards in this process; 1. Minimum \$500 value on any motor vehicle transaction. 2. Notarized bill of sale signed by seller when the indicated purchase price is below 50% of "book value"; and 3. Using "book value" for transactions involving vehicles two years old or less. All three of these policies have generated considerable controversy among title applicants who only want to pay tax based on their purchase price.

While there can be no argument requiring the privilege tax to be assessed on the "book value" rather than purchase price will increase revenue, the current policy provides West Virginia taxpayers with the fairest guidelines for paying the privilege tax.

Sincerely,


Joseph Cicchirillo, Commissioner
Division of Motor Vehicles

JC/SOD