

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2439

FISCAL  
NOTE

By Delegate Cooper

[Introduced January 11, 2023; Referred to the  
Committee on Agriculture and Natural Resources  
then Finance]

1 A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating  
 2 to exempting from the sales tax all-terrain vehicles and utility terrain vehicles used as farm  
 3 equipment.

*Be it enacted by the Legislature of West Virginia:*

**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.**

1 (a) Notwithstanding any provision of this article or §11-15A-1 *et seq.* of this code to the  
 2 contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be  
 3 subject to the consumers sales tax imposed by this article.

4 (b) *Rate of tax on motor vehicles.* — Notwithstanding any provision of this article or §11-  
 5 15A-1 *et seq.* of this code to the contrary, the rate of tax on the sale and use of a motor vehicle shall  
 6 be five percent of its sale price, as defined in §11-15B-2 of this code: *Provided*, That so much of the  
 7 sale price or consideration as is represented by the exchange of other vehicles on which the tax  
 8 imposed by this section or §17A-3-4 of this code has been paid by the purchaser shall be deducted  
 9 from the total actual sale price paid for the motor vehicle, whether the motor vehicle ~~be~~ is new or  
 10 used. However, beginning July 1, 2017, the rate of tax imposed by this section shall increase to six  
 11 percent of the sales price for purchases of motor vehicles made on and after that date.

12 (c) *Motor vehicles purchased out of state.* — Notwithstanding this article or §11-15A-1 *et*  
 13 *seq.* of this code to the contrary, the tax imposed by this section shall apply to all motor vehicles,  
 14 used as defined by §11-15A-1 of this code, within this state, regardless of whether the vehicle was  
 15 purchased in a state other than West Virginia.

16 (d) *Definition of sale.* — Notwithstanding any provision of this article or §11-15A-1 *et seq.* of  
 17 this code to the contrary, for purposes of this section, "sale", "sales", or "selling" means any

18 transfer or lease of the possession or ownership of a motor vehicle for consideration, including  
19 isolated transactions between individuals not being made in the ordinary course of repeated and  
20 successive business and also including casual and occasional sales between individuals not  
21 conducted in a repeated manner or in the ordinary course of repetitive and successive  
22 transactions.

23       (e) *Definition of motor vehicle.* — For purposes of this section, "motor vehicle" means  
24 every propellable device in or upon which any person or property is or may be transported or  
25 drawn upon a highway including, but not limited to: Automobiles; buses; motor homes;  
26 motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck  
27 tractors, and road tractors having a weight of less than 55,000 pounds; trailers, semitrailers, full  
28 trailers, pole trailers and converter gear having a gross weight of less than 2,000 pounds; and  
29 motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes;  
30 except that the term "motor vehicle" does not include: Modular homes, manufactured homes,  
31 mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the  
32 highways but primarily designed for habitation and occupancy; devices operated regularly for the  
33 transportation of persons for compensation under a certificate of convenience and necessity or  
34 contract carrier permit issued by the Public Service Commission; mobile equipment as defined in  
35 §17A-1-1 of this code; special mobile equipment as defined in §17A-1-1 of this code; trucks, truck  
36 tractors and road tractors having a gross weight of 55,000 pounds or more; trailers, semitrailers,  
37 full trailers, pole trailers and converter gear having weight of 2,000 pounds or greater: *Provided,*  
38 That notwithstanding the provisions of §11-15-9 of this code, the exemption from tax under this  
39 section for mobile equipment as defined in §17A-1-1 of this code; special mobile equipment  
40 defined in §17A-1-1 of this code; Class B trucks, truck tractors, and road tractors registered at a  
41 gross weight of 55,000 pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers,  
42 and converter gear having weight of 2,000 pounds or greater does not subject the sale or  
43 purchase of the vehicle to the consumers sales and service tax imposed by §11-15-3 of this code.

44 (f) *Exemptions.* — Notwithstanding any other provision of this code to the contrary, the tax  
45 imposed by this section shall may not be subject to any exemption in this code other than the  
46 following:

47 (1) The tax imposed by this section does not apply to any passenger vehicle offered for rent  
48 in the normal course of business by a daily passenger rental car business as licensed under ~~the~~  
49 ~~provisions of §17A-6D-1 et seq.~~ of this code. For purposes of this section, a daily passenger car  
50 means a motor vehicle having a gross weight of 8,000 pounds or less and is registered in this state  
51 or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not  
52 less than \$1 nor more than \$1.50 for each day or part of the rental period. The Commissioner of  
53 the Division of Motor Vehicles shall propose an emergency rule in accordance with ~~the provisions~~  
54 of §29A-3-1 et seq. of this code to establish this tax.

55 (2) The tax imposed by this section does not apply where the motor vehicle has been  
56 acquired by a corporation, partnership or limited liability company from another corporation,  
57 partnership or limited liability company that is a member of the same controlled group and the  
58 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by  
59 this section. For the purposes of this section, control means ownership, directly or indirectly, of  
60 stock or equity interests possessing 50 percent or more of the total combined voting power of all  
61 classes of the stock of a corporation or equity interests of a partnership or limited liability company  
62 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing 50  
63 percent or more of the value of the corporation, partnership, or limited liability company.

64 (3) The tax imposed by this section does not apply where motor vehicle has been acquired  
65 by a senior citizen service organization which is exempt from the payment of income taxes under  
66 the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be  
67 a bona fide senior citizen service organization by the Bureau of Senior Services existing under the  
68 provisions of §16-5P-1 et seq. of this code.

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

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

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

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

78 (7) The tax imposed by this section does not apply to motor vehicles acquired by an urban  
79 mass transit authority, as defined in §8-27-1 *et seq.* of this code, or a nonprofit entity exempt from  
80 federal and state income tax under the Internal Revenue Code for the purpose of providing mass  
81 transportation to the public at large or designed for the transportation of persons and being  
82 operated for the transportation of persons in the public interest.

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

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

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

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

91 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays  
92 all other fees required by chapter 17A of this code within 30 days of establishing residency in this  
93 state as prescribed in §11-15-1a(a) of this code.

94 (9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B  
95 trucks, truck tractors and road tractors registered at a gross weight of 55,000 pounds or more or to

96 Class C trailers, semitrailers, full trailers, pole trailers, and converter gear having a weight of 2,000  
97 pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross  
98 weight of 55,000 pounds or more and the title was issued without the payment of the tax imposed  
99 by this section, then before the owner may obtain registration for the vehicle at a gross weight less  
100 than 55,000 pounds, the owner shall surrender to the commissioner the exempted registration, the  
101 exempted certificate of title and pay the tax imposed by this section based upon the current market  
102 value of the vehicle.

103 (10) The tax imposed by this section does not apply to vehicles leased by residents of West  
104 Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the lease of  
105 any motor vehicle leased under a written contract of lease by a resident of West Virginia for a  
106 contractually specified continuous period of more than 30 days, which tax is equal to five percent  
107 of the amount of the monthly payment, applied to each payment, and continuing for the entire term  
108 of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly  
109 basis by the lessor of the vehicle. Leases of 30 days or less are taxable under ~~the provisions of this~~  
110 article and §11-15A-1 *et seq.* of this code without reference to this section.

111 (11) The tax imposed by this article does not apply to all-terrain vehicles and utility terrain  
112 vehicles, as defined in §17A-6-1 of this code, if the vehicle receives a farm-use exemption  
113 certificate under §17A-3-2 of this code.

114 (g) *Division of Motor Vehicles to collect.* — Notwithstanding any provision of this article,  
115 §11-15A-1 *et seq.*, and §11-10-1 *et seq.* of this code to the contrary, the Division of Motor Vehicles  
116 shall collect the tax imposed by this section: *Provided*, That such tax is imposed upon the monthly  
117 payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is  
118 equal to five percent of the amount of the monthly payment, applied to each payment, and  
119 continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of  
120 Motor Vehicles on a monthly basis by the lessor of the vehicle.

121 (h) *Dedication of tax to highways.* — Notwithstanding any provision of this article or §11-

122 15A-1 *et seq.* of this code to the contrary, all taxes collected pursuant to this section, after  
123 deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in  
124 the State Treasury and expended by the Commissioner of Highways for design, maintenance and  
125 construction of roads in the state highway system.

126 (i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article, §11-  
127 15A-1 *et seq.*, and §11-10-1 *et seq.* of this code to the contrary, the Commissioner of the Division  
128 of Motor Vehicles shall promulgate legislative rules explaining and implementing this section,  
129 which rules shall be promulgated in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this  
130 code and should include a minimum taxable value and set forth instances when a vehicle is to be  
131 taxed at fair market value rather than its purchase price. The authority to promulgate rules includes  
132 authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the  
133 State Register before June 15, 2008, those rules may be promulgated as emergency legislative  
134 rules as provided in §29A-3-1 *et seq.* of this code.

135 (j) Notwithstanding any other provision of this code, effective January 1, 2009, no  
136 municipal sales or use tax or local sales or use tax or special downtown redevelopment district  
137 excise tax or special district excise tax shall may be imposed under §7-22-1 *et seq.* of this code or  
138 §8-13-1 *et seq.* of this code or §8-13B-1 *et seq.* of this code or §8-38-1 *et seq.* of this code or any  
139 other provision of this code, except this section, on sales of motor vehicles as defined in this article  
140 or on any tangible personal property excepted or exempted from tax under this section. Nothing in  
141 this subsection shall may be construed to prevent the application of the municipal business and  
142 occupation tax on motor vehicle retailers and leasing companies.

NOTE: The purpose of this bill is to exempt from the sales tax all-terrain vehicles and utility terrain vehicles used as farm equipment.

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