

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2511

By Delegates Howell, Clark, Smith, Crouse, Honaker,
Ferrell, Cannon, Phillips, Kelly, Hott, and Zatezalo

[Introduced January 12, 2023; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating
2 to modifying the collection and payment by the seller of sales tax on seller-financed sales
3 of motor vehicles to be done as the seller receives the proceeds of the sale from the buyer,
4 equal to the applicable percent sales tax of the amount of the monthly payment, applied to
5 each payment, and continuing for the entire term of the loan period.

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 article fifteen-a of this chapter 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 article
5 fifteen-a of this chapter 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 section two, article fifteen-b of this chapter: *Provided,*
7 That so much of the sale price or consideration as is represented by the exchange of other
8 vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-
9 a of this code has been paid by the purchaser shall be deducted from the total actual sale price
10 paid for the motor vehicle, whether the motor vehicle be new or used. However, beginning July 1,
11 2017, the rate of tax imposed by this section shall increase to six percent of the sales price for
12 purchases of motor vehicles made on and after that date.

13 (c) *Motor vehicles purchased out of state.* — Notwithstanding this article or article fifteen-a
14 to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by
15 section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was

16 purchased in a state other than West Virginia.

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

24 (e) *Definition of motor vehicle.* — For purposes of this section, "motor vehicle" means
25 every propellable device in or upon which any person or property is or may be transported or
26 drawn upon a highway including, but not limited to: Automobiles; buses; motor homes;
27 motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck
28 tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers,
29 semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two
30 thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house
31 trailers and motor homes; except that the term "motor vehicle" does not include: Modular homes,
32 manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being
33 moved upon the highways but primarily designed for habitation and occupancy; devices operated
34 regularly for the transportation of persons for compensation under a certificate of convenience and
35 necessity or contract carrier permit issued by the Public Service Commission; mobile equipment
36 as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment
37 as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and
38 road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full
39 trailers, pole trailers and converter gear having weight of two thousand pounds or greater:
40 *Provided*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this
41 code, the exemption from tax under this section for mobile equipment as defined in section one,

42 article one, chapter seventeen-a of this code; special mobile equipment defined in section one,
43 article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors
44 registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers,
45 semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or
46 greater does not subject the sale or purchase of the vehicle to the consumers sales and service
47 tax imposed by section three of this article.

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

50 (1) The tax imposed by this section does not apply to any passenger vehicle offered for rent
51 in the normal course of business by a daily passenger rental car business as licensed under the
52 provisions of article six-d, chapter seventeen-a of this code. For purposes of this section, a daily
53 passenger car means a motor vehicle having a gross weight of eight thousand pounds or less and
54 is registered in this state or any other state. In lieu of the tax imposed by this section, there is
55 hereby imposed a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental
56 period. The Commissioner of the Division of Motor Vehicles shall propose an emergency rule in
57 accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this
58 tax.

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

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

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

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

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

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

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

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

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

93 (C) Has relocated to this state and can present such evidence as the Commissioner of the

94 Division of Motor Vehicles may require to show bona fide residency in this state; and

95 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
96 all other fees required by chapter seventeen-a of this code within 30 days of establishing residency
97 in this state as prescribed in subsection (a), section one-a of this article.

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

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

115 (g) *Division of Motor Vehicles to collect.* — Notwithstanding any provision of this article,
116 article fifteen-a and article ten of this chapter to the contrary, the Division of Motor Vehicles shall
117 collect the tax imposed by this section: *Provided*, That such tax is imposed upon the monthly
118 payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is
119 equal to five percent of the amount of the monthly payment, applied to each payment, and

120 continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of
121 Motor Vehicles on a monthly basis by the lessor of the vehicle. The seller of a Motor Vehicle shall
122 report and pay the sales tax imposed on a seller-financed sale to the Division of Motor Vehicles on
123 the seller's receipts from seller-financed sales in the following manner: The seller shall add the tax
124 imposed on a seller-financed sale to the sales price of the vehicle sold, and when added, the tax is
125 a part of the sales price, a debt owed to the seller by the purchaser, and recoverable at law in the
126 same manner as the sales price, then regardless of the accounting method used by the seller, the
127 seller shall collect and pay the tax imposed on a seller-financed sale, equal to the applicable
128 percent sales tax of the amount of the monthly payment, applied to each payment, and continuing
129 for the entire term of the loan period to the Division of Motor Vehicles as the seller receives the
130 proceeds of the sale: *Provided, That, If a seller factors, assigns, or otherwise transfers the right to*
131 *receive payments, all unpaid tax is due on the total consideration not reported at the time the*
132 *agreement is factored, assigned, or otherwise transferred or the Division of Motor Vehicles may*
133 *proceed against the purchaser in a seller-financed sale for the amount of any tax not paid by the*
134 *purchaser.*

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

140 (i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article,
141 article fifteen-a and article ten of this chapter to the contrary, the Commissioner of the Division of
142 Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which
143 rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-
144 a of this code and should include a minimum taxable value and set forth instances when a vehicle
145 is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules

146 includes authority to amend or repeal those rules. If proposed legislative rules for this section are
147 filed in the State Register before June 15, 2008, those rules may be promulgated as emergency
148 legislative rules as provided in article three, chapter twenty-nine-a of this code.

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

NOTE: The purpose of this bill is to make the collection and payment by the seller of sales tax on seller-financed sales of motor vehicles to be completed as the seller receives the proceeds of the sale from the buyer equal to the applicable percent sales tax of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the loan period.

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