

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
23 state, regardless of whether the vehicle was purchased in a state

1 other than West Virginia.

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

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

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

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

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

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

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

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

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

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

21 (6) The tax imposed by this section does not apply to motor
22 vehicles acquired by this state or any political subdivision
23 thereof or by any volunteer fire department or duly chartered

1 rescue or ambulance squad organized and incorporated under the laws
2 of this state as a nonprofit corporation for protection of life or
3 property.

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

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

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

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

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

23 (D) Makes application to the Division of Motor Vehicles for a

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

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

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

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

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

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

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

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

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

1 code.

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