WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

House Bill No. 2775

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]

Passed March 9, 2007

In Effect Ninety Days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-3b; and to amend and reenact §17A-3-4 of said code, all relating to the taxation of motor vehicles; providing an exemption for new residents of this state from payment of the privilege tax upon a showing that the applicant was not a resident of this state at the time the vehicle was purchased and the vehicle was properly titled in the applicant's previous state or jurisdiction of residence; providing a period of amnesty; eliminating the five percent tax for privilege of certification of title; imposing a five percent tax on the sale and use of motor vehicles; providing exemptions; and effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-15-3b; and that §17A-3-4 of said code be amended and reenacted, all to read as follows:
ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-3b. Imposition of consumer 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 Department 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 the first day of July, two thousand eight, all motor vehicle sales to West Virginia residents shall be subject to the consumer sales tax imposed by this article.

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

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

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

(e) Definition of Motor Vehicle. -- For purposes of this section "motor vehicle" means every propellable device in, or upon which any person or property is or may be transported or drawn upon a highway including but not limited to: automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low speed vehicles; trucks, truck tractors, and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers, and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold down camping trailers, traveling trailers, house trailers, and motor homes; except that the term "motor vehicle" does not include: modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors, and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand pounds or greater: Provided, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors, and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand
pounds or greater; does not subject the sale or purchase of the vehicle to the consumer sales and service tax imposed by section three, of this article.

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

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

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

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

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

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

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

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

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

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

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

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

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

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

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

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

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

ARTICLE 3. ORIGINAL AND RENEWAL REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumer sales and service tax provisions; exceptions.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer’s serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant’s title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by
the applicant. A duly certified copy of the division’s
electronic record of a certificate of title is admissible in any
civil, criminal or administrative proceeding in this state as
evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the
certification of title of each vehicle in the amount equal to
five percent of the value of the motor vehicle at the time of
the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or
consideration to the purchaser of the vehicle is the value of
the vehicle. If the vehicle is a used or secondhand vehicle,
the present market value at time of transfer or purchase is the
value of the vehicle for the purposes of this section:
Provided, That so much of the purchase price or
consideration as is represented by the exchange of other
vehicles on which the tax imposed by this section has been
paid by the purchaser shall be deducted from the total actual
price or consideration paid for the vehicle, whether the
vehicle be new or secondhand. If the vehicle is acquired
through gift or by any manner whatsoever, unless specifically
exempted in this section, the present market value of the
vehicle at the time of the gift or transfer is the value of the
vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to
any applicant unless the applicant has paid to the Division of
Motor Vehicles the tax imposed by this section which is five
percent of the true and actual value of the vehicle whether the
vehicle is acquired through purchase, by gift or by any other
manner whatsoever, except gifts between husband and wife
or between parents and children: Provided, That the husband
or wife, or the parents or children, previously have paid the
tax on the vehicles transferred to the State of West Virginia.

(3) The Division of Motor Vehicles may issue a
certificate of registration and title to an applicant if the
applicant provides sufficient proof to the Division of Motor
Vehicles that the applicant has paid the taxes and fees
required by this section to a motor vehicle dealership that has
gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the Division of Motor Vehicles.

(4) The Division of Motor Vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the
commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: 

*Provided, however,* That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the State Road Fund and expended by the Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: *Provided,* That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate and need not be renewed annually, or any other
(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid to the Division of Motor Vehicles on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than one dollar nor more than one dollar and fifty cents for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the senior services bureau existing under the provisions of article five, chapter sixteen of this code.

(13) The tax imposed by this section does not apply to the titling of any vehicle operated by an urban mass transit
authority as defined in article twenty-seven, chapter eight of
this code or a nonprofit entity exempt from federal and state
income tax under the Internal Revenue Code and whose
purpose is to provide mass transportation to the public at
large designed for the transportation of persons and being
operated for the transportation of persons in the public
interest.

(14) The tax imposed by this section does not apply to the
transfer of a title to a vehicle owned and titled in the name of
a resident of this state if the applicant:
(A) Was not a resident of this state at the time the applicant
purchased or otherwise acquired ownership of the vehicle;
(B) Presents evidence as the commissioner may require of
having titled the vehicle in the applicant's previous state of residence;
(C) Has relocated to this state and can present such evidence
as the commissioner may require to show bona-fide residency
in this state;
(D) Presents an affidavit, completed by the assessor of the
applicant's county of residence, establishing that the vehicle
has been properly reported and is on record in the office of
the assessor as personal property; and
(E) Makes application to the division for a title and
registration, and pays all other fees required by this chapter
within thirty days of establishing residency in this state as
prescribed in subsection (a), section one-a of this article:
Provided, That a period of amnesty of three months be
established by the commissioner during the calendar year two
thousand seven, during which time any resident of this state,
having titled his or her vehicle in a previous state of
residence, may pay without penalty any fees required by this
chapter and transfer the title of his or her vehicle in
accordance with the provisions of this section.

(c) Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers, recreational
vehicles and other vehicles not subject to the certificate of
title tax prior to the enactment of this chapter are subject to
the privilege tax imposed by this section: Provided, That the
certification of title of any recreational vehicle owned by the
applicant on the thirtieth day of June, one thousand nine
Provided, however, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Beginning on the first of July, two thousand and eight, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-b, article fifteen, chapter eleven of this code.

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not
more than five thousand dollars or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(f) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(g) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than one hundred dollars nor more than one thousand dollars, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.

(h) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer
of ownership and storage of information in an electronic format.

(i) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (I), section two, article fifteen, chapter thirty-seven of this code and built to the State Building Code as established by legislative rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairs
Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 23rd day of March, 2007.

Governor