

# **Review of the Impact of the Re-Enactment of HB 680 (2018) upon the Commonwealth's Transportation Funds**

2018 Report

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Virginia Department of Motor Vehicles

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## **Executive Summary**

The Motor Vehicle Sales and Use Tax (SUT) is charged upon the titling of a vehicle, including a trailer, in Virginia. The tax is levied either at 4.15% of the gross sales price or a minimum of \$75, whichever is greater. Virginia law has levied a minimum SUT since 1986, when it was set at \$35; it was raised to \$75 by House Bill (HB) 2313 in the 2013 General Assembly Session, a move that aligned the minimum SUT to match inflation.

In the 2018 session, Delegate Pogge introduced HB 680, which would have lowered the minimum SUT for trailers weighing less than 2,000 lbs. to \$35. The Department of Motor Vehicles (DMV) was directed to review the impact on the Commonwealth's transportation funds of lowering the minimum SUT to \$35 for those trailers. DMV consulted with the Virginia Department of Transportation (VDOT) and Virginia Department of Taxation (TAX) in completing the review. DMV's review identified three benefits of lowering the minimum SUT: individuals buying lightweight trailers would benefit by saving up to \$40 when titling a lightweight trailer, DMV would benefit by saving up to \$10,000 per year in credit card fees and decreasing the amount of compensation paid to DMV Select offices.

Nonetheless, DMV estimates that lowering the minimum SUT would negatively affect the Commonwealth's transportation funds by decreasing the collection of SUT revenue. Lowering the minimum SUT would result in an annual reduction of approximately \$800,000 per year for the Highway Maintenance and Operating Fund (HMOF). A bill such as HB 680, if re-enacted, could establish a precedent for further such legislation in the future. This could lead to the loss of transportation revenue from both the SUT and other taxes, potentially putting funding for Virginia's transportation needs at risk. Finally, many of Virginia's current transportation funding sources were created or augmented by HB 2313 (2013), and are subject to an enactment clause providing for the expiration or reduction of those funding sources if money is appropriated for a non-transportation use. If the precedent set by re-enacting HB 680 leads to the passage of bills in conflict with that enactment clause, it may be necessary for the General Assembly to re-examine its transportation funding policies in HB 2313.

Although lowering the minimum SUT has some benefits, its costs – and the potential for further costs in the future – far outweigh those benefits. DMV recommends that HB 680 should not be re-enacted.

## **The Motor Vehicle Sales and Use Tax**

*Va. Code* § 58.1-2402 provides that SUT is charged at one of two rates. For most vehicles, the SUT is 4.15% of the gross sales price of the vehicle. However, *Va. Code* § 58.1-2402 also levies a minimum tax, which must be paid if the SUT calculated at 4.15% is less than that minimum. The SUT is only paid upon the titling of a vehicle; therefore, once the vehicle owner pays the SUT, he will not need to pay it again for the same vehicle. When the vehicle is sold, however, the new owner will need to pay the tax when he titles the vehicle.

The minimum SUT was first established by HB 1 of the 1986 Special Session (Chapter 11 of the Acts of Assembly for the 1986 special session). The minimum tax established by HB 1 was \$35, while the regular SUT rate was 3%. Both rates remained unchanged until the passage of HB 2313 in the 2013 General Assembly Session (Chapter 766 of the Acts of Assembly for the 2013 session). HB 2313 raised the regular SUT rate to 4% effective July 1, 2013, then raised it in .05% increments every year until it reached 4.15% in 2016. Today, the regular SUT rate is 4.15%.

HB 2313 also raised the minimum SUT to \$75. Like the regular SUT rate, the minimum SUT had not been changed since 1986. Due to the effects of inflation, the purchasing power of \$35 in 1986 dollars was \$74.12 in 2013 dollars. Therefore, by increasing the minimum SUT in an amount that almost exactly matched inflation, the General Assembly ensured that funds paid into Virginia's transportation funds retained the same purchasing power as they had when the minimum tax was passed.

*Va. Code* § 58.1-2425 provides that the proceeds of the SUT are "allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose." Proceeds of the minimum tax, however, are further allocated to specific funds. Additional proceeds raised pursuant to HB 1 are allocated to the Transportation Trust Fund (TTF) and are available to the Commonwealth Transportation Board for transportation needs. The net additional revenues of the minimum tax raised as a result of the increase of the minimum tax to \$75 by HB 2313 (2013) are allocated to the HMOF. Thus, on a minimum SUT transaction, \$35 will go to the transportation trust fund and \$40 to the HMOF.

## **HB 680 of the 2018 Session**

Delegate Pogge introduced HB 680 in the 2018 session. The bill would have amended *Va. Code* § 58.1-2402 to lower the minimum SUT from \$75 to \$35 for trailers, as that term is defined in *Va. Code* § 46.2-100, with a registered gross weight of 2,000 lbs. or less. The Department of Planning and Budget released a fiscal impact statement indicating that the passage of the bill would lead to a reduction in the collection of SUT revenues of \$797,758 annually, based on calendar year 2017 data.

HB 680 passed the House of Delegates 59-41 and the Senate 40-0. Recognizing the potential impact to the Commonwealth's transportation funds, Governor Northam offered an amendment to the bill, which proposed two additions. The first was to provide that the bill would only become effective if it was reenacted by the General Assembly in the 2019 session.

The second was to direct DMV, in conjunction with VDOT, to review the impact of passage of the bill, including the impact upon Commonwealth transportation funds, and to report back to the General Assembly by December 1, 2018. The General Assembly agreed to these amendments, and the bill became Chapter 826 of the 2018 Acts of Assembly. This report is submitted in accordance with the Act.

### **Study Process**

Pursuant to the Act, DMV worked with VDOT to obtain information necessary to complete the report. Additionally, DMV consulted with TAX to obtain information regarding the passage of HB 2313 during the 2013 General Assembly session. A draft of the report was sent to VDOT and TAX for their review.

### **Benefits of Lowering the Minimum SUT**

#### *Lower Taxes*

Lowering the minimum SUT would lower taxes for customers titling a trailer with a registered gross weight of 2,000 lbs. or less. Currently, DMV collects a \$75 minimum SUT on all trailers, regardless of weight, when the application of the 4.15% tax rate to the trailer's sales price results in a tax of less than \$75. The minimum tax currently applies when the price of the trailer is less than \$1,807.23. HB 680 proposed lowering the minimum tax to \$35 for all trailers with a registered gross registered weight 2,000 lbs. or less. This means that trailers with a gross registered weight of 2,000 lbs. or less would pay a \$35 minimum tax when the sales price is less than approximately \$843.37, and the 4.15% tax rate when the sales price is over \$843.37. However, trailers weighing more than 2,000 lbs. would continue to have to pay minimum tax at the \$75 rate unless application of the 4.15% tax rate would result in a higher tax.

#### *Savings on DMV Credit Card Processing Fees*

As with other vehicle transactions, DMV allows customers to pay their SUT with major credit and debit cards. While this is a convenience to customers, it also comes at a cost for the agency: a fee averaging 2% is charged for each card transaction. For example, if a customer who owes the \$75 minimum SUT pays it with a credit card, an average of \$1.50 will be billed to DMV for the transaction, to be paid to the credit card company. The actual fee charged depends on the card used; for example, fees tend to be lower for debit cards, and higher for rewards credit cards. DMV remits the full amount of the transaction to the HMOF or the TTF and must pay the transaction charges from its own limited resources.

Lowering the minimum SUT would result in some savings for DMV because the resulting credit card fees would be lower. At \$35, the average credit card fee on the minimum tax would only be \$0.70, and so only that amount would need to be made up from DMV resources. If all persons paying the minimum SUT on trailers were to pay by credit card, DMV estimates that the savings to the agency on credit card fees would be approximately \$10,000 per year. DMV estimates that the actual savings from credit card fees would be less, however, because some customers would continue to pay the SUT by other means, such as cash or check.

### *Savings on Compensation to DMV Selects*

Under the DMV Select program, DMV contracts with select local governments and some private individuals to provide DMV transactions to the public. DMV Select agents are located throughout the Commonwealth, but are especially common in rural areas. DMV Select agents are compensated with a percentage of the transaction amount for providing the service. The rate of compensation paid to DMV Select agents is 4.5% of the first \$500,000 gross collections and 5% of gross collections in excess of \$500,000. In FY 2017, DMV Select offices collected 6.7% of motor vehicle SUT revenue.

Because DMV pays compensation based on the value of the transaction, decreasing the amount of the transaction will cause DMV to pay a lower amount of compensation. Under current law, if a trailer is titled at a DMV Select, and the \$75 minimum SUT is paid, DMV would compensate the Select agent \$3.38 at the 4.5% rate and \$3.75 at the 5% rate. At a rate of \$35, DMV would compensate the Select agent \$1.58 at the 4.5% rate and \$1.75 at the 5% rate. Assuming that Selects collect 6.7% of minimum SUT on trailers weighing less than 2,000 lbs., the annual savings to DMV would be \$2,700.

### **Drawbacks to Lowering the Minimum SUT**

#### *Loss of Revenue for Localities Operating DMV Select Offices*

Lowering the compensation to DMV Select agents means that those agents would suffer a corresponding loss of revenue. Many Select agencies are run by localities or their constitutional officers. The decrease in Select compensation may therefore reduce money available to localities. The amount of the loss to localities is unknown, but would be lower than the corresponding savings for DMV because some DMV Select agents are private individuals.

#### *Loss of Revenue*

One of the purposes of the minimum SUT is to ensure a steady stream of revenue to the HMOF. For FY 2018, the Department of Taxation estimated that revenues of \$692.8 million for the HMOF would be derived from proceeds of the SUT, and \$229.6 million for the Transportation Trust Fund.<sup>1</sup> HB 2313 (2013) dedicated the entirety of the revenue raised from the increase in the minimum SUT from \$35 to \$75 to the HMOF, so any move to reduce the minimum SUT would result in a direct reduction of HMOF annual revenue. However, shortfalls in the HMOF are made up from road construction funds. Accordingly, monies from these construction funds would be transferred to the HMOF, leaving less money available for construction.

In order to determine the estimated loss of revenue, DMV compared the amount of SUT paid for trailers less than 2,000 lbs. in FY 2017 and FY 2018 with the amount that would have been paid under the rules proposed by HB 680. In FY 2017, the difference would have amounted to \$805,202.07, while in FY 2018 the difference would have been \$790,279.69. DMV used an \$800,000 per year estimate for analyzing the potential loss of revenue to transportation funds as an approximation of the amount of money that is likely to be lost.

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<sup>1</sup> Fiscal Year 2018 Revenue Estimate; Joint Money Committee Presentation Materials, December 18, 2017, at page 27. <https://www.finance.virginia.gov/media/governorvirginiagov/secretary-of-finance/pdf/ga-members-rdb-dec-18-2017-jmc-final.pdf>

### *Loss of Projects*

The following are given as examples of the types of projects that VDOT could fund with \$800,000 in order to illustrate the impact of an \$800,000 loss in SUT revenue.

- Sign Structures - \$800,000 represents the cost of installing 940 small sign structures.
- Lane Markings - \$800,000 represents the cost of applying lane markings on approximately ten miles of a four-lane interstate, or 38 miles of an undivided two-lane primary highway.
- Guardrails – \$800,000 funds the installation of approximately three miles of guardrail.
- Litter Removal - The cost of doing one statewide cycle of litter removal is approximately \$800,000.

### *Establishing a Precedent of Reducing Transportation Funding*

HB 680 could potentially set a precedent that the General Assembly will pass bills which reduce transportation funding by, among other things, inviting other legislation to apply a reduced minimum SUT of \$35 to all classes of vehicles. In 2013, the General Assembly recognized Virginia's transportation needs and provided additional transportation funding by HB 2313 through a variety of revenue sources. In addition to changing the SUT, HB 2313 adjusted the rates for a number of government levies, including Virginia's fuels taxes, DMV fees, and portions of the Retail Sales and Use Tax.

When it passed HB 2313, the General Assembly protected the revenues implemented by the legislation by providing in the fourteenth enactment clause that the provisions of HB 2313 which raise additional revenue would expire on December 31 of any year in which the General Assembly appropriates revenues raised as a result of HB 2313 to a non-transportation related purpose, or transfers such additional money from the Commonwealth Transportation Fund for a non-transportation purpose. In that spirit, the General Assembly has often been reluctant to approve bills which would reduce transportation funding. For example, Senator Deeds' Senate Bill 687 (2018) proposed lowering the minimum SUT to \$35 for all vehicles, instead of just for trailers with a registered weight of 2,000 lbs. or less. DMV estimated that the fiscal impact of that bill would have led to a loss in HMOF funding of \$16.6 million annually, but this loss did not occur because SB 687 was stricken at the patron's request. Another example is Delegate Cline's HB 849 (2016), which proposed lowering the retail sales and use tax on food from 2.5% to 2% by eliminating the portion of the tax which funds the TTF. In its fiscal impact statement, TAX estimated that if the bill had passed, there would have considerable annual losses to the TTF, culminating in a loss of \$120.5 million in FY 2022. This loss did not occur because HB 849 was left in the House Appropriations committee.

Although HB 680 would only benefit a small number of customers, its re-enactment may set a precedent that the General Assembly is more willing to pass bills that reduce transportation funding. This could make it easier for bills like SB 687 and HB 849 to pass. Even if individual bills have only a modest impact, the cumulative impact of passing many bills could dramatically reduce the amount of money available for transportation projects over time, undermining the transportation funding commitments agreed to in HB 2313.

Finally, the precedent set by the re-enactment of HB 680 could lead to the passage of other bills in the future which could be in conflict with the policies established by HB 2313, including the fourteenth enactment clause. The passage of bills which would activate the fourteenth enactment clause could lead to a significant loss of transportation revenue, as the revenue increases provided for in that bill would expire. To avoid that outcome, it may be necessary for the General Assembly to re-examine the policies it established when it passed HB 2313

### **Conclusion**

Reducing the minimum SUT to \$35 for trailers weighing 2,000 lbs. or less will benefit individuals who buy lightweight, low-price trailers by allowing them to save up to \$40 in tax, and will benefit DMV by reducing money paid for credit card fees and compensation for DMV Select agents.

However, DMV estimates that the result of the tax cut will be the loss of approximately \$800,000 in transportation revenues per year. Additionally, re-enactment of HB 680 would set a precedent that the General Assembly is willing to reduce transportation funding. This could lead to the passage of other bills reducing transportation funding, both for the SUT and other funding sources, eventually leading to a significant reduction in the amount of transportation funding available. That precedent could also lead to the passage of bills which conflict with the fourteenth enactment clause of HB 2313, potentially requiring the re-examination of the policies agreed to in that bill.

Re-enacting HB 680 has the potential for considerable drawbacks; therefore, DMV recommends that the bill should not be re-enacted.



**Appendix 1**

**Chapter 826 of the 2018 Acts of Assembly**

## CHAPTER 826

*An Act to amend and reenact § 58.1-2402, as it is currently effective, of the Code of Virginia, relating to motor vehicle sales and use tax.*

[H 680]

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2402, as it is currently effective, of the Code of Virginia is amended and reenacted as follows:

§ 58.1-2402. (Contingent expiration date) Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.

2. Three percent through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning

July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, not sold in Virginia but used or stored for use in the Commonwealth; or three percent of the sale price of each manufactured home as defined in § [36-85.3](#), or two percent of the sale price of each mobile office as defined in § [58.1-2401](#), not sold in Virginia but used or stored for use in this Commonwealth. If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be \$75, except as provided by those exemptions defined in § [58.1-2403](#); *however, for a trailer, as defined in § [46.2-100](#), with a registered gross weight of 2,000 pounds or less, the minimum tax shall be \$35.*

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § [58.1-2403](#) shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § [58.1-1736](#) shall apply, subject to the exemptions provided in § [58.1-1737](#). Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § [58.1-2403](#) or §§ [46.2-663](#) through [46.2-674](#) shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § [46.2-1530](#), shall be subject to the tax.

2. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2019 Session of the General Assembly.

3. That the Commissioner of the Virginia Department of Motor Vehicles, in consultation with the Virginia Department of Transportation and any applicable stakeholder groups, shall review the impact of implementing an alternative to the minimum sales and use tax required by Chapter 766 of the Acts of Assembly of 2013 for trailers, as provided for in this act, including the impact on Commonwealth transportation funds. The Commissioner shall complete his work and shall submit to the Governor and the General Assembly an executive summary and a report of his findings and recommendations for publication as a House or Senate document no later than December 1, 2018. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.