

HOUSE BILL NO. 1685

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on _____)

(Patron Prior to Substitute--Delegate Greenhalgh)

A BILL to amend and reenact §§ 58.1-3703.1 and 58.1-3916 of the Code of Virginia, relating to local business taxes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3703.1 and 58.1-3916 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3703.1. Uniform ordinance provisions.

A. Every ordinance levying a license tax pursuant to this chapter shall include provisions substantially similar to this subsection. As they apply to license taxes, the provisions required by this section shall override any limitations or requirements in Chapter 39 (§ 58.1-3900 et seq.) to the extent that they are in conflict.

1. License requirement. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to § 58.1-3715, or public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (a) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (b) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and

27 (c) the taxpayer agrees to supply such information as the assessor may require concerning the nature of
28 the several businesses and their gross receipts.

29 Notwithstanding the foregoing, the governing body of any county, city, or town with a population
30 greater than 50,000 may waive the license requirements provided herein for businesses with gross receipts
31 of \$200,000 or less.

32 2. Due dates and penalties.

33 a. Each person subject to a license tax shall apply for a license prior to beginning business if he
34 was not subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than
35 March 1 of the license year if he had been issued a license for the preceding year. Any locality is authorized
36 to adopt a later application date that is on or before May 1 of the license year. The application shall be on
37 forms prescribed by the assessing official.

38 b. The tax shall be paid with the application in the case of any license not based on gross receipts.
39 If the tax is measured by the gross receipts of the business, the tax shall be paid on or before the locality's
40 fixed due date for filing license applications or a later date, including installment payment dates, or 30 or
41 more days after beginning business, at the locality's option.

42 c. The assessing official may grant an extension of time in which to file an application for a license,
43 for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate
44 of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension,
45 together with interest from the due date until the date paid and, if the estimate submitted with the extension
46 is found to be unreasonable under the circumstances, with a penalty of 10 percent of the portion paid after
47 the due date.

48 d. A penalty of 10 percent of the tax may be imposed upon the failure to file an application or the
49 failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the
50 assessing official if both the application and payment are late; however, both penalties may be assessed if
51 the assessing official determines that the taxpayer has a history of noncompliance. In the case of an
52 assessment of additional tax made by the assessing official, if the application and, if applicable, the return
53 were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional

54 disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional
55 tax. If any assessment of tax by the assessing official is not paid within 30 days, the treasurer or other
56 collecting official may impose a 10 percent late payment penalty. If the failure to file or pay was not the
57 fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who
58 assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and
59 that the failure was due to events beyond his control.

60 "Acted responsibly" means that (i) the taxpayer exercised the level of reasonable care that a
61 prudent person would exercise under the circumstances in determining the filing obligations for the
62 business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as
63 requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment,
64 acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment
65 was removed or the failure discovered.

66 "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records
67 due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person
68 with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon
69 erroneous written information from the assessing official who was aware of the relevant facts relating to
70 the taxpayer's business when he provided the erroneous information.

71 e. Interest shall be charged on the late payment of the tax from the due date until the date paid
72 without regard to fault or other reason for the late payment. Whenever an assessment of additional or
73 omitted tax by the assessing official is found to be erroneous, all interest and any penalties charged and
74 collected on the amount of the assessment found to be erroneous shall be refunded together with interest
75 on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the
76 refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to
77 an amended return or other reason. Interest on any refund shall be paid at the same rate charged under §
78 58.1-3916.

79 No interest shall accrue on an adjustment of estimated tax liability to actual liability at the
80 conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the

81 refund or the late payment is made not more than 30 days from the date of the payment that created the
82 refund or the due date of the tax, whichever is later.

83 f. Upon the imposition on any taxpayer of a penalty pursuant to subdivision c or d or interest
84 pursuant to subdivision e, the assessing or collecting official, as applicable, shall provide notice to such
85 taxpayer of the amount of such penalty, any interest assessed, and the total amount of tax owed. Such
86 notice shall separately state the amount of penalty, interest, and tax owed.

87 3. Situs of gross receipts.

88 a. General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the
89 gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise
90 of a privilege subject to licensure at a definite place of business within this jurisdiction. In the case of
91 activities conducted outside of a definite place of business, such as during a visit to a customer location,
92 the gross receipts shall be attributed to the definite place of business from which such activities are
93 initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall
94 be attributed to one or more definite places of business or offices as follows:

95 (1) The gross receipts of a contractor shall be attributed to the definite place of business at which
96 his services are performed, or if his services are not performed at any definite place of business, then the
97 definite place of business from which his services are directed or controlled, unless the contractor is
98 subject to the provisions of § 58.1-3715;

99 (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business
100 at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite
101 place of business, then the definite place of business from which sales solicitation activities are directed
102 or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases
103 shall determine the situs of its purchases by the definite place of business at which or from which deliveries
104 of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to
105 license tax in two or more localities and who is subject to multiple taxation because the localities use
106 different measures, may apply to the Department of Taxation for a determination as to the proper measure
107 of purchases and gross receipts subject to license tax in each locality;

108 (3) The gross receipts of a business renting tangible personal property shall be attributed to the
109 definite place of business from which the tangible personal property is rented or, if the property is not
110 rented from any definite place of business, then to the definite place of business at which the rental of such
111 property is managed; and

112 (4) The gross receipts from the performance of services shall be attributed to the definite place of
113 business at which the services are performed or, if not performed at any definite place of business, then to
114 the definite place of business from which the services are directed or controlled.

115 b. Apportionment. If the licensee has more than one definite place of business and it is impractical
116 or impossible to determine to which definite place of business gross receipts should be attributed under
117 the general rule, the gross receipts of the business shall be apportioned between the definite places of
118 businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business
119 unless some activities under the applicable general rule occurred at, or were controlled from, such definite
120 place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall
121 not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross
122 receipts attributable to the definite place of business in such other jurisdiction.

123 c. Agreements. The assessor may enter into agreements with any other political subdivision of
124 Virginia concerning the manner in which gross receipts shall be apportioned among definite places of
125 business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total
126 gross receipts attributable to all of the definite places of business affected by the agreement. Upon being
127 notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the
128 method of one or more political subdivisions in which the taxpayer is licensed to engage in business and
129 that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from
130 all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an
131 apportionment agreement with the other political subdivisions involved. If an agreement cannot be
132 reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation
133 pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the
134 provisions of § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political

135 subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within
136 the meaning of § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may
137 be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not
138 then known which assessment is correct and which is erroneous.

139 4. Limitations and extensions.

140 a. Where, before the expiration of the time prescribed for the assessment of any license tax imposed
141 pursuant to this ordinance, both the assessing official and the taxpayer have consented in writing to its
142 assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed
143 upon. The period so agreed upon may be extended by subsequent agreements in writing made before the
144 expiration of the period previously agreed upon.

145 b. Notwithstanding § 58.1-3903, the assessing official shall assess the local license tax omitted
146 because of fraud or failure to apply for a license for the current license year and the six preceding license
147 years.

148 c. The period for collecting any local license tax shall not expire prior to the period specified in §
149 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant
150 to this subdivision ~~of the ordinance~~, two years after the final determination of an appeal for which
151 collection has been stayed pursuant to subdivision 5 b or ~~5 d of this ordinance~~, or two years after the final
152 decision in a court application pursuant to § 58.1-3984 or a similar law for which collection has been
153 stayed, whichever is later.

154 5. Administrative appeals to commissioner of the revenue or other assessing official.

155 a. Definitions. For purposes of this section:

156 "Amount in dispute," when used with respect to taxes due or assessed, means the amount
157 specifically identified in the administrative appeal or application for judicial review as disputed by the
158 party filing such appeal or application.

159 "Appealable event" means an increase in the assessment of a local license tax payable by a
160 taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was
161 assessed, arising out of the local assessing official's (i) examination of records, financial statements, books

162 of account, or other information for the purpose of determining the correctness of an assessment; (ii)
163 determination regarding the rate or classification applicable to the licensable business; (iii) assessment of
164 a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for
165 correction of erroneous assessment attendant to the filing of an amended application for license.

166 An appealable event shall include a taxpayer's appeal of the classification applicable to a business,
167 including whether the business properly falls within a business license subclassification established by the
168 locality, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination,
169 audit, or any other action taken by the locality.

170 "Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely
171 to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing
172 law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed
173 for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund,
174 or to create needless cost from the litigation; or (iv) otherwise frivolous.

175 "Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i)
176 depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property
177 therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual,
178 proceedings to collect the tax for the period in question.

179 b. Filing and contents of administrative appeal. Any person assessed with a local license tax as a
180 result of an appealable event as defined in this section may file an administrative appeal of the assessment
181 within one year from the last day of the tax year for which such assessment is made, or within one year
182 from the date of the appealable event, whichever is later, with the commissioner of the revenue or other
183 local assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the
184 tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged
185 error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the
186 taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer,
187 or require submission of additional information and documents, an audit or further audit, or other evidence
188 deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue

189 in the appeal shall be deemed prima facie correct. The assessor shall undertake a full review of the
190 taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments
191 in support of his decision.

192 The taxpayer may at any time also file an administrative appeal of the classification applicable to
193 the taxpayer's business, including whether the business properly falls within a business license
194 subclassification established by the locality. However, the appeal of the classification of the business shall
195 not apply to any license year for which the Tax Commissioner has previously issued a final determination
196 relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition,
197 any appeal of the classification of a business shall in no way affect or change any limitations period
198 prescribed by law for appealing an assessment.

199 c. Notice of right of appeal and procedures. Every assessment made by a commissioner of the
200 revenue or other assessing official pursuant to an appealable event shall include or be accompanied by a
201 written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to
202 be followed in the jurisdiction, the name and address to which the appeal should be directed, an
203 explanation of the required content of the appeal, and the deadline for filing the appeal.

204 For purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's
205 business, each locality imposing a tax or fee under this chapter shall maintain on its website the specific
206 procedures to be followed in the jurisdiction with regard to such appeal and the name and address to which
207 the appeal should be directed.

208 d. Suspension of collection activity during appeal. Provided a timely and complete administrative
209 appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the
210 commissioner of the revenue or other assessing official shall be suspended until a final determination is
211 issued by the commissioner of the revenue or other assessing official, unless the treasurer or other official
212 responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as
213 defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official that
214 the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is
215 advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as

216 defined in this section. Interest shall accrue in accordance with the provisions of subdivision ~~2 e~~ of this
217 subsection, but no further penalty shall be imposed while collection action is suspended.

218 e. Procedure in event of nondecision. Any taxpayer whose administrative appeal to the
219 commissioner of the revenue or other assessing official pursuant to the provisions of this subdivision ~~5~~ of
220 ~~this subsection~~ has been pending for more than one year without the issuance of a final determination may,
221 upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official,
222 elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to
223 the Tax Commissioner in accordance with the provisions of subdivision ~~6~~ of ~~this subsection~~. The Tax
224 Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds
225 that the absence of a final determination on the part of the commissioner of the revenue or other assessing
226 official was caused by the willful failure or refusal of the taxpayer to provide information requested and
227 reasonably needed by the commissioner or other assessing official to make his determination.

228 6. Administrative appeal to the Tax Commissioner.

229 a. Any person assessed with a local license tax as a result of a determination or that has received a
230 determination with regard to the person's appeal of the license classification or subclassification applicable
231 to the person's business, upon an administrative appeal to the commissioner of the revenue or other
232 assessing official pursuant to subdivision ~~5~~ of ~~this subsection~~, that is adverse to the position asserted by
233 the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within
234 90 days of the date of the determination by the commissioner of the revenue or other assessing official.
235 The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a
236 copy of the appeal upon the commissioner of the revenue or other assessing official. The Tax
237 Commissioner shall permit the commissioner of the revenue or other assessing official to participate in
238 the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's
239 application, unless the taxpayer and the assessing official are notified that a longer period will be required.
240 The appeal shall proceed in the same manner as an application pursuant to § 58.1-1821, and the Tax
241 Commissioner pursuant to § 58.1-1822 may issue an order correcting such assessment or correcting the
242 license classification or subclassification of the business and the related license tax or fee liability.

243 b. Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal
244 to the Tax Commissioner under subdivision ~~6 a of this subsection~~, collection activity with respect to the
245 amount in dispute relating to any assessment by the commissioner of the revenue or other assessing official
246 shall be suspended until a final determination is issued by the Tax Commissioner, unless the treasurer or
247 other official responsible for the collection of such tax (i) determines that collection would be jeopardized
248 by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing
249 official, or the Tax Commissioner, that the taxpayer has not responded to a request for relevant information
250 after a reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official
251 that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions
252 of subdivision ~~2 e of this subsection~~, but no further penalty shall be imposed while collection action is
253 suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to
254 subdivision ~~6 a of this subsection~~ is filed and served on the necessary parties within 30 days of the service
255 of notice of intent to file such appeal.

256 c. Implementation of determination of Tax Commissioner. Promptly upon receipt of the final
257 determination of the Tax Commissioner with respect to an appeal pursuant to subdivision ~~6 a of this~~
258 ~~subsection~~, the commissioner of the revenue or other assessing official shall take those steps necessary to
259 calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's
260 determination and shall provide that information to the taxpayer and to the treasurer or other official
261 responsible for collection in accordance with the provisions of this subdivision.

262 (1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the
263 commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other
264 official responsible for collection, and the treasurer or other official responsible for collection shall issue
265 a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized
266 by this section, within 30 days of the date of the determination of the Tax Commissioner.

267 (2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the
268 commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other
269 official responsible for collection, and the treasurer or other official responsible for collection shall issue

270 a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section,
271 within 30 days of the date of the determination of the Tax Commissioner.

272 (3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due,
273 or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or
274 revised assessment that will result in an obligation to pay a tax that has not previously been paid in full,
275 the commissioner of the revenue or other assessing official shall promptly commence the steps necessary
276 to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the
277 date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of
278 any additional information requested or reasonably required under the determination of the Tax
279 Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify
280 the new assessment to the treasurer or other official responsible for collection, and the treasurer or other
281 official responsible for collection shall issue a bill to the taxpayer for the amount due, together with interest
282 accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

283 (4) If the determination of the Tax Commissioner does not set forth a specific amount of refund
284 due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new
285 or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes
286 previously paid, the commissioner of the revenue or other assessing official shall promptly commence the
287 steps necessary to undertake such new or revised assessment or to determine the amount of refund due in
288 the case of a correction to the license classification or subclassification of the business, and provide the
289 same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within
290 60 days after receipt from the taxpayer of any additional information requested or reasonably required
291 under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue
292 or other assessing official shall certify the new assessment or refund amount to the treasurer or other
293 official responsible for collection, and the treasurer or other official responsible for collection shall issue
294 a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the
295 date of the new assessment or determination of the amount of the refund.

296 7. Judicial review of determination of Tax Commissioner.

297 a. Judicial review. Following the issuance of a final determination of the Tax Commissioner
298 pursuant to subdivision 6 ~~a-of this subsection~~, the taxpayer or commissioner of the revenue or other
299 assessing official may apply to the appropriate circuit court for judicial review of the determination, or
300 any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination
301 of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax
302 Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with
303 respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be
304 made a party to an application to correct an assessment merely because the Tax Commissioner has ruled
305 on it.

306 b. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate
307 judicial review.

308 (1) On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-
309 3984, of a determination of the Tax Commissioner pursuant to subdivision 6 ~~a-of this subsection~~, and upon
310 payment of the amount of the tax relating to any assessment by the commissioner of the revenue or other
311 assessing official that is not in dispute together with any penalty and interest then due with respect to such
312 undisputed portion of the tax, the treasurer or other collection official shall further suspend collection
313 activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an
314 opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as
315 defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii)
316 suspension of collection would cause substantial economic hardship to the locality. For purposes of
317 determining whether substantial economic hardship to the locality would arise from a suspension of
318 collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the
319 locality by different taxpayers that allege common claims or theories of relief.

320 (2) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay,
321 or that suspension of collection would result in substantial economic hardship to the locality, the court
322 may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment
323 of the amount in dispute in a form acceptable to the court.

324 (3) No suspension of collection activity shall be required if the application for judicial review fails
325 to identify with particularity the amount in dispute or the application does not relate to any assessment by
326 the commissioner of the revenue or other assessing official.

327 (4) The requirement that collection activity be suspended shall cease unless an application for
328 judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the
329 service of the notice of intent to file such application.

330 (5) The suspension of collection activity authorized by this subdivision shall not be applicable to
331 any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984
332 without prior exhaustion of the appeals provided by subdivisions 5 and 6 ~~of this subsection.~~

333 c. Suspension of payment of disputed amount of refund due upon locality's notice of intent to
334 initiate judicial review.

335 (1) Payment of any refund determined to be due pursuant to the determination of the Tax
336 Commissioner of an appeal pursuant to subdivision 6 ~~a of this subsection~~ shall be suspended if the locality
337 assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax
338 Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's
339 determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and
340 accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless
341 the court, upon appropriate motion after notice and an opportunity to be heard, determines that the
342 locality's application for judicial review is frivolous, as defined in this section.

343 (2) No suspension of refund activity shall be permitted if the locality's application for judicial
344 review fails to identify with particularity the amount in dispute.

345 (3) The suspension of the obligation to make a refund shall cease unless an application for judicial
346 review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service
347 of the notice of intent to file such application.

348 d. Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the
349 provisions of subdivision 2 ~~e of this subsection~~, but no further penalty shall be imposed while collection
350 action is suspended.

351 8. Rulings.

352 Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the
353 application of a local license tax to a specific situation from the commissioner of the revenue or other
354 assessing official. Any person requesting such a ruling must provide all facts relevant to the situation
355 placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to
356 the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with
357 regard to the classification applicable to the taxpayer's business, including whether the business properly
358 falls within a business license subclassification established by the locality.

359 Any misrepresentation or change in the applicable law or the factual situation as presented in the
360 ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended
361 prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department
362 of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the
363 policy or interpretation upon which the ruling was based. However, any person who acts on a written
364 ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which
365 such ruling was in effect.

366 9. ~~Record-keeping~~ Recordkeeping and audits. Every person who is assessable with a local license
367 tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the
368 license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was
369 assessable for each of those years. All such records, books of accounts and other information shall be open
370 to inspection and examination by the assessor in order to allow the assessor to establish whether a
371 particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The
372 assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business
373 office, if the records are maintained there. In the event the records are maintained outside this jurisdiction,
374 copies of the appropriate books and records shall be sent to the assessor's office upon demand.

375 B. Transitional provisions.

376 1. A locality which changes its license year from a fiscal year to a calendar year and adopts a due
377 date for license applications between March 1 and May 1, inclusive, shall not be required to prorate any

378 license tax to reflect a license year of less than 12 months, whether the tax is a flat amount or measured
379 by gross receipts, provided that no change is made in the taxable year for measuring gross receipts.

380 2. The provisions of this section relating to penalties, interest, and administrative and judicial
381 review of an assessment shall be applicable to assessments made on and after January 1, 1997, even if for
382 an earlier license year. The provisions relating to agreements extending the period for assessing tax shall
383 be effective for agreements entered into on and after July 1, 1996. The provisions permitting an assessment
384 of a license tax for up to six preceding years in certain circumstances shall not be construed to permit the
385 assessment of tax for a license year beginning before January 1, 1997.

386 3. Every locality shall adopt a fixed due date for license applications between March 1 and May
387 1, inclusive, no later than the 2007 license year.

388 **§ 58.1-3916. Counties, cities, and towns may provide dates for filing returns and set penalties,**
389 **interest, etc.**

390 Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, and
391 58.1-3918, the governing body of any county, city, or town may provide by ordinance the time for filing
392 local license applications and annual returns of taxable tangible personal property, machinery and tools,
393 and merchants' capital. The governing body may also by ordinance establish due dates for the payment of
394 local taxes; may provide that payment be made in a single installment or in two equal installments; may
395 offer options, which may include coupon books and payroll deductions, which allow the taxpayer to
396 determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or
397 semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may
398 provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time;
399 may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable
400 attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent
401 taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes
402 shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to
403 the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the
404 refund is \$10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds

405 that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award
406 interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the
407 requirements of this section.

408 Notwithstanding any contrary provision of law, the local governing body shall allow an automatic
409 extension on real property taxes imposed upon a primary residence and personal property taxes imposed
410 upon a qualifying vehicle, as defined in § 58.1-3523, owed by members of the armed services of the United
411 States deployed outside of the United States. Such extension shall end and the taxes shall be due 90 days
412 following the completion of such member's deployment. For purposes of this section, "the armed services
413 of the United States" includes active duty service with the regular Armed Forces of the United States or
414 the National Guard or other reserve component.

415 No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures
416 prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the
417 appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final
418 determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the
419 assessment or refund, following the final determination of such appeal, of such interest as otherwise may
420 be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during
421 the pendency of such appeal and is determined in such appeal to be properly due and owing.

422 Interest may commence not earlier than the first day following the day such taxes are due by
423 ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest
424 at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of
425 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of
426 delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past
427 due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past
428 due on property classified pursuant to subdivision A 15, ~~A 16~~, or ~~A 20~~ of § 58.1-3506, which remains
429 unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose
430 a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax
431 due and owing with respect to such property and the tax that would have been due and owing if the

432 property in question had been classified as general tangible personal property pursuant to § 58.1-3503;
433 (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the
434 tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes
435 on meals, lodging, or admissions collected from consumers, 10 percent for the first month the taxes are
436 past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected
437 but not remitted; or (v) \$10, whichever is greater, provided, however, that the penalty shall in no case
438 exceed the amount of the tax assessable. No penalty for failure to file a return shall be greater than 10
439 percent of the tax assessable on such return or \$10, whichever is greater; provided, however, that the
440 penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not
441 be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be
442 required by law or ordinance. Penalty for failure to file an application or return may be assessed on the
443 day after such return or application is due; penalty for failure to pay any tax may be assessed on the day
444 after the first installment is due. Any such penalty when so assessed shall become a part of the tax. Upon
445 the imposition on any taxpayer of a penalty or interest for taxes owed on machinery and tools or tangible
446 personal property owned by a business, the assessing or collecting official, as applicable, shall provide
447 notice to such taxpayer of the amount of such penalty, any interest assessed, and the total amount of tax
448 owed. Such notice shall separately state the amount of penalty, interest, and tax owed.

449 No penalty for failure to pay any tax shall be imposed for any assessment made later than two
450 weeks prior to the day on which the taxes are due, if such assessment is made thereafter through the fault
451 of a local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

452 In the event a transfer of real property ownership occurs after January 1 of a tax year and a real
453 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other appropriate
454 local official designated by ordinance of the local governing body in jurisdictions not having a treasurer,
455 upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and
456 reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to pay any tax for
457 any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

458 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure
459 was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as the
460 case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a medically
461 determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof
462 of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within 30 days of
463 the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the
464 individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies
465 or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such
466 fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes that
467 come due after the 120-day period. The treasurer shall make determinations of fault relating exclusively
468 to failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating
469 exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the revenue,
470 the governing body may delegate to the appropriate local tax officials the responsibility to make the
471 determination of fault.

472 The governing body may further provide by resolution for reasonable extensions of time, not to
473 exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on tangible
474 personal property, machinery and tools, and merchants' capital, and the business, professional, and
475 occupational license tax, whenever good cause exists. The official granting such extension shall keep a
476 record of every such extension. If any taxpayer who has been granted an extension of time for filing his
477 return fails to file his return within the extended time, his case shall be treated the same as if no extension
478 had been granted.

479 This section shall be the sole authority for local ordinances setting due dates of local taxes and
480 penalty and interest thereon, and shall supersede the provisions of any charter or special act.

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