

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, which forms and accompanying communications shall clearly
38 set out the due date for the application and the amount of any penalty to be charged for late filing of the
39 application, the underpayment of estimated tax, and late payment of tax.

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

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

50 d. A penalty of 10 percent of the tax may be imposed upon the failure to file an application or the
51 failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the
52 assessing official if both the application and payment are late; however, both penalties may be assessed if
53 the assessing official determines that the taxpayer has a history of noncompliance. In the case of an

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

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

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

73 e. Interest shall be charged on the late payment of the tax from the due date until the date paid
74 without regard to fault or other reason for the late payment. Whenever an assessment of additional or
75 omitted tax by the assessing official is found to be erroneous, all interest and any penalties charged and
76 collected on the amount of the assessment found to be erroneous shall be refunded together with interest
77 on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the
78 refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to
79 an amended return or other reason. Interest on any refund shall be paid at the same rate charged under §
80 58.1-3916.

81 No interest shall accrue on an adjustment of estimated tax liability to actual liability at the
82 conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the
83 refund or the late payment is made not more than 30 days from the date of the payment that created the
84 refund or the due date of the tax, whichever is later.

85 f. Any bill issued by the treasurer or other collecting official that includes, and any communication
86 from the assessing official that imposes, a penalty pursuant to subdivision c or d or interest pursuant to
87 subdivision e shall separately state the total amount of tax owed, the amount of any interest assessed, and
88 the amount of the penalty imposed.

89 3. Situs of gross receipts.

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

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

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

108 different measures, may apply to the Department of Taxation for a determination as to the proper measure
109 of purchases and gross receipts subject to license tax in each locality;

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

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

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

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

135 pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the
136 provisions of § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political
137 subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within
138 the meaning of § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may
139 be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not
140 then known which assessment is correct and which is erroneous.

141 4. Limitations and extensions.

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

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

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

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

157 a. Definitions. For purposes of this section:

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

161 "Appealable event" means an increase in the assessment of a local license tax payable by a
162 taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was
163 assessed, arising out of the local assessing official's (i) examination of records, financial statements, books
164 of account, or other information for the purpose of determining the correctness of an assessment; (ii)
165 determination regarding the rate or classification applicable to the licensable business; (iii) assessment of
166 a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for
167 correction of erroneous assessment attendant to the filing of an amended application for license.

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

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

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

181 b. Filing and contents of administrative appeal. Any person assessed with a local license tax as a
182 result of an appealable event as defined in this section may file an administrative appeal of the assessment
183 within one year from the last day of the tax year for which such assessment is made, or within one year
184 from the date of the appealable event, whichever is later, with the commissioner of the revenue or other
185 local assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the
186 tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged
187 error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the

188 taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer,
189 or require submission of additional information and documents, an audit or further audit, or other evidence
190 deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue
191 in the appeal shall be deemed prima facie correct. The assessor shall undertake a full review of the
192 taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments
193 in support of his decision.

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

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

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

210 d. Suspension of collection activity during appeal. Provided a timely and complete administrative
211 appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the
212 commissioner of the revenue or other assessing official shall be suspended until a final determination is
213 issued by the commissioner of the revenue or other assessing official, unless the treasurer or other official
214 responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as

215 defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official that
216 the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is
217 advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as
218 defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of this
219 subsection, but no further penalty shall be imposed while collection action is suspended.

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

230 6. Administrative appeal to the Tax Commissioner.

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

242 The appeal shall proceed in the same manner as an application pursuant to § 58.1-1821, and the Tax
243 Commissioner pursuant to § 58.1-1822 may issue an order correcting such assessment or correcting the
244 license classification or subclassification of the business and the related license tax or fee liability.

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

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

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

269 (2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the
270 commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other
271 official responsible for collection, and the treasurer or other official responsible for collection shall issue
272 a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section,
273 within 30 days of the date of the determination of the Tax Commissioner.

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

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

296 a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the
297 date of the new assessment or determination of the amount of the refund.

298 7. Judicial review of determination of Tax Commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

353 8. Rulings.

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

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

368 9. ~~Record-keeping~~ Recordkeeping and audits. Every person who is assessable with a local license
369 tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the
370 license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was
371 assessable for each of those years. All such records, books of accounts and other information shall be open
372 to inspection and examination by the assessor in order to allow the assessor to establish whether a
373 particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The

374 assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business
375 office, if the records are maintained there. In the event the records are maintained outside this jurisdiction,
376 copies of the appropriate books and records shall be sent to the assessor's office upon demand.

377 B. Transitional provisions.

378 1. A locality which changes its license year from a fiscal year to a calendar year and adopts a due
379 date for license applications between March 1 and May 1, inclusive, shall not be required to prorate any
380 license tax to reflect a license year of less than 12 months, whether the tax is a flat amount or measured
381 by gross receipts, provided that no change is made in the taxable year for measuring gross receipts.

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

388 3. Every locality shall adopt a fixed due date for license applications between March 1 and May
389 1, inclusive, no later than the 2007 license year.

390 **§ 58.1-3916. Counties, cities, and towns may provide dates for filing returns and set penalties,**
391 **interest, etc.**

392 Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915, and
393 58.1-3918, the governing body of any county, city, or town may provide by ordinance the time for filing
394 local license applications and annual returns of taxable tangible personal property, machinery and tools,
395 and merchants' capital. The governing body may also by ordinance establish due dates for the payment of
396 local taxes; may provide that payment be made in a single installment or in two equal installments; may
397 offer options, which may include coupon books and payroll deductions, which allow the taxpayer to
398 determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or
399 semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may
400 provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time;

401 may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable
402 attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent
403 taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes
404 shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to
405 the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the
406 refund is \$10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds
407 that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award
408 interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the
409 requirements of this section.

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

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

424 Interest may commence not earlier than the first day following the day such taxes are due by
425 ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest
426 at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of
427 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of

428 delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past
429 due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past
430 due on property classified pursuant to subdivision A 15, ~~A~~ 16, or ~~A~~ 20 of § 58.1-3506, which remains
431 unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose
432 a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax
433 due and owing with respect to such property and the tax that would have been due and owing if the
434 property in question had been classified as general tangible personal property pursuant to § 58.1-3503;
435 (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the
436 tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes
437 on meals, lodging, or admissions collected from consumers, 10 percent for the first month the taxes are
438 past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected
439 but not remitted; or (v) \$10, whichever is greater, provided, however, that the penalty shall in no case
440 exceed the amount of the tax assessable. No penalty for failure to file a return shall be greater than 10
441 percent of the tax assessable on such return or \$10, whichever is greater; ~~2~~ provided, however, that the
442 penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not
443 be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be
444 required by law or ordinance. Penalty for failure to file an application or return may be assessed on the
445 day after such return or application is due; penalty for failure to pay any tax may be assessed on the day
446 after the first installment is due. Any such penalty when so assessed shall become a part of the tax. Any
447 bill issued by the treasurer imposing a penalty or interest for taxes owed on machinery and tools or tangible
448 personal property owned by a business shall separately state the total amount of tax owed, the amount of
449 any interest assessed, and the amount of the penalty imposed.

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

453 In the event a transfer of real property ownership occurs after January 1 of a tax year and a real
454 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other appropriate

455 local official designated by ordinance of the local governing body in jurisdictions not having a treasurer,
456 upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and
457 reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to pay any tax for
458 any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

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

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

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

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