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HOUSE BILL NO. 2679

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 2, 2005)

(Patrons Prior to Substitute—Delegates Lingamfelter and Ware, R. Lee, Jr. [HB 2373 and 2374])

A BILL to amend and reenact §§ 58.1-3703.1 and 58.1-3983.1 of the Code of Virginia, relating to local business taxes; appeals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3703.1 and 58.1-3983.1 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.) of this title 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 (c) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

Notwithstanding the foregoing, the governing body of any county, city or town with a population greater than 50,000 may waive the license requirements provided herein for businesses with gross receipts of less than \$100,000.

2. Due dates and penalties.

a. Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. The application shall be on forms prescribed by the assessing official.

b. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1 or a later date, including installment payment dates, or ~~thirty~~ 30 or more days after beginning business, at the locality's option.

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

d. A penalty of ~~ten~~ 10 percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within ~~thirty~~ 30 days, the treasurer or other collecting official may impose a ~~ten~~ 10 percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show

that he acted responsibly and that the failure was due to events beyond his control.

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

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

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

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

3. Situs of gross receipts.

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

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

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

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

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

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

c. Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of

business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

4. Limitations and extensions.

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

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

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

5. Administrative Appeals and rulings to Local Commissioner of the Revenue or Other Assessing Official.

a. Definitions. For purposes of this section:

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

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

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

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

"Substantial economic hardship to the locality" means a finding, based on specific facts, that nonpayment of the tax, penalties, or interest placed in dispute by an application for judicial review during the pendency of the proceeding would result in revenue losses of sufficient magnitude as to pose a substantial likelihood of disruption of the locality's ability to provide governmental services on an ongoing basis or to meet its obligations as they come due without resort to extraordinary borrowing or similar measures the purpose of which is to offset the revenue losses in question. For the purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

b. Filing and Contents of Administrative Appeal. Any person assessed with a local license tax as a

183 result of an appealable event as defined in this section may *file an administrative appeal of the*
184 *assessment* within one year from the last day of the tax year for which such assessment is made, or
185 within one year from the date of the appealable event, whichever is later, ~~to with the commissioner of~~
186 ~~the revenue or other local assessing official~~ *assessor for a correction of the assessment.* The *application*
187 *appeal* must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the
188 challenged assessments, the remedy sought, each alleged error in the assessment, the grounds upon
189 which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may
190 hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional
191 information and documents, an audit or further audit, or other evidence deemed necessary for a proper
192 and equitable determination of the ~~application~~ *appeal.* The *assessment placed at issue in the appeal* shall
193 be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and
194 issue a *written* determination to the taxpayer setting forth *the facts and arguments in support of his*
195 *decision its position.*

196 c. *Notice of Appeal Right and Procedures.* Every assessment made by a local commissioner of the
197 revenue or other assessing official pursuant to an appealable event shall *include or be accompanied by a*
198 *written explanation of the taxpayer's right to seek correction* *file an administrative appeal* and the
199 specific ~~procedure~~ *procedures* to be followed in the jurisdiction, *including (e.g., the name and address to*
200 *which an application the appeal should be directed), a nontechnical explanation of the required content*
201 *of the appeal, and the deadline for filing the appeal.*

202 bd. *Suspension of Collection Activity during Pendency of Appeal.* Provided a timely and complete
203 ~~application is made~~ *administrative appeal is filed*, collection activity with respect to the amount of any
204 tax placed at issue in the appeal shall be suspended until a final determination is issued by the local
205 commissioner of the revenue or other assessing official assessor, unless the ~~assessor~~ *treasurer or other*
206 *official responsible for the collection of such tax (i) determines that collection would be jeopardized by*
207 *delay as defined in this section or (ii) is advised by the local commissioner of the revenue or other*
208 *assessing official that the taxpayer has not responded to a request for relevant information after a*
209 *reasonable time. Interest shall accrue in accordance with the provisions of subdivision 2. e. of this*
210 *subsection, but no further penalty shall be imposed while collection action is suspended. The term*
211 *"jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to*
212 *(i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his*
213 *property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially*
214 *ineffectual, proceedings to collect the tax for the period in question.*

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

225 6. *Administrative Appeal to the Tax Commissioner.*

226 ea. *Appeal to Tax Commissioner.* Any person assessed with a local license tax as a result of a
227 determination, upon an ~~application for correction~~ *administrative appeal to the local commissioner of the*
228 *revenue or other assessing official* pursuant to subdivision 5 a, that is adverse to the position asserted by
229 the taxpayer in such ~~application~~ *appeal* may *apply appeal such assessment to the Tax Commissioner*
230 *within ninety 90 days of the date of the determination by the local commissioner of the revenue or other*
231 *assessing official to the Tax Commissioner for a correction of such assessment.* The Tax Commissioner
232 shall issue a determination to the taxpayer within ~~ninety~~ 90 days of receipt of the taxpayer's application,
233 unless the taxpayer and the assessing official are notified that a longer period will be required. The
234 ~~application~~ *appeal* shall be *treated as proceed in the same manner as* an application pursuant to
235 § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to
236 § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the
237 appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be on the party making the
238 application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax
239 Commissioner nor the Department of Taxation shall be made a party to an application to correct an
240 assessment merely because the Tax Commissioner has ruled on it.

241 b. *Implementation of Determination of Tax Commissioner.* Promptly upon receipt of the final
242 *determination of the Tax Commissioner with respect to an appeal pursuant to this subdivision, the local*
243 *commissioner of the revenue or other assessing official shall take those steps necessary to calculate the*
244 *amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's*

determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subdivision. (1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner. (2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner. (3) If the determination of the State Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the local commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the commissioner of the revenue or other assessing official promptly shall commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the State Tax Commissioner. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount of tax due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment. (4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the local commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the commissioner of the revenue or other assessing official promptly shall commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision 5 e, the assessing official shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time.

7. Judicial Review of Determination of the Tax Commissioner.

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

b. *Suspension of Payment of Disputed Amount of Tax Due upon Taxpayer's Notice of Intent to Initiate Judicial Review.*

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subdivision 6, and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality, as defined in this section.

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

(3) No suspension of collection activity shall be required if the application for judicial review fails to

306 identify with particularity that portion of the tax claimed due that is disputed.

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

310 c. Suspension of Payment of Disputed Amount of Refund Due upon Locality's Notice of Intent to
311 Initiative Judicial Review.

312 (1) Payment of any refund determined to be due pursuant to a determination of the State Tax
313 Commissioner shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60
314 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application
315 for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the
316 amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall
317 remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after
318 notice and an opportunity to be heard, determines that the locality's application for judicial review is
319 frivolous, as defined in this section.

320 (2) No suspension of refund activity shall be permitted if the locality's application for judicial review
321 fails to identify with particularity that portion of the refund claimed due that is disputed.

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

325 d. Accrual of Interest on Unpaid Amount of Tax. Interest shall accrue in accordance with the
326 provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection
327 action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in
328 subdivision 5 b above.

329 8. Rulings and advisory opinions.

330 ea. Written Ruling from Local Commissioner of the Revenue or Other Assessing Official. Any
331 taxpayer, prospective taxpayer, or representative of a taxpayer or prospective taxpayer may request a
332 written ruling regarding the application of a local license tax to a specific situation from the
333 commissioner of the revenue or other assessing official. ~~assessor~~. Any person requesting such a ruling
334 must provide all the facts relevant to the situation placed at issue ~~relevant facts for the situation~~ and
335 may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any
336 misrepresentation or change in the applicable law or the factual situation as presented in the ruling
337 request shall invalidate any such ruling issued. A written ruling may be revoked or amended
338 prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the
339 Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a
340 change in the policy or interpretation upon which the ruling was based. However, any person who acts
341 on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the
342 period in which such ruling was in effect.

343 f. For purposes of this section, "appealable event" means an increase in the assessment of a local
344 license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where
345 none previously was assessed, arising out of the local assessing official's (i) examination of records,
346 financial statements, books of account or other information for the purpose of determining the
347 correctness of an assessment, (ii) determination regarding the rate or classification applicable to the
348 licensable business, (iii) assessment of a local license tax when no return has been filed by the taxpayer,
349 or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an
350 amended application for license.

351 g. Any taxpayer whose application for correction pursuant to the provisions of subdivision 5 a has
352 been pending for more than two years without the issuance of a final determination may, upon not less
353 than thirty days' written notice to the assessor, elect to treat the application as denied and appeal the
354 assessment to the Tax Commissioner in accordance with the provisions of subdivision 5 c. The Tax
355 Commissioner shall not consider an appeal filed pursuant to the provisions of this subdivision if he finds
356 that the absence of final determination on the part of the assessor was caused by the willful failure or
357 refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make
358 his determination.

359 b. Advisory Opinion by Tax Commissioner. The as requested to interpret a local license tax and
360 matters related to the administration thereof. Opinions issued pursuant to this section shall not be
361 applicable as an interpretation of any other tax law.

362 69. Record-keeping and audits.

363 Every person who is assessable with a local license tax shall keep sufficient records to enable the
364 assessor to verify the correctness of the tax paid for the license years assessable and to enable the
365 assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All
366 such records, books of accounts and other information shall be open to inspection and examination by
367 the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable

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

B. Transitional provisions.

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

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

3. Every locality shall adopt a March 1 due date for applications no later than the 2001 license year. § 58.1-3983.1. Appeals and rulings of local taxes.

A. Definitions. For purposes of this section:

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

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

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

"Local business tax" means machinery and tools tax, business tangible personal property tax (including, without limitation, computer equipment), ~~and~~ merchant's capital tax, ~~and~~ a consumer utility tax where the amount in dispute exceeds \$2,500.

"Local mobile property tax" means the tangible personal property tax on airplanes, boats, campers, recreational vehicles, and trailers.

"Substantial economic hardship to the locality" means a finding, based on specific facts, that nonpayment of the tax, penalties, or interest placed in dispute by an appeal during the pendency of the appeal would result in revenue losses of sufficient magnitude as to pose a substantial likelihood of disruption of the locality's ability to provide existing governmental services on an ongoing basis or to meet its obligations as they come due without resort to extraordinary borrowing or similar measures the purpose of which is to offset the revenue losses in question. For the purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals within the locality filed by different taxpayers that allege common claims or theories of relief.

"Taxpayer" includes a business required to collect a local consumer utility tax to the extent that the business is charged with such tax.

B. Administrative Appeal to Local Commissioner of the Revenue or Other Assessing Official.

1. Any person assessed with any local mobile property tax or local business tax as defined in this section may ~~apply~~ appeal such assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of such assessment, whichever is later, to the commissioner of the revenue or other official responsible for assessment for a correction of the assessment assessing official.

2. The ~~application~~ appeal shall be filed in good faith and sufficiently identify the taxpayer, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention.

3. The commissioner of the revenue or other assessing official may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents or other evidence deemed necessary for a proper and equitable determination of the application.

4. The assessment shall be deemed prima facie correct.

5. The commissioner of the revenue or other assessing official shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth his position the facts

429 *and arguments in support of his decision within 90 days after such application appeal is filed. Such*
430 *determination shall be accompanied by a written explanation of the taxpayer's right to seek correction*
431 *and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an*
432 *application should be directed) file an administrative appeal of the determination with the Tax*
433 *Commissioner pursuant to subsection D.*

434 6. Any taxpayer whose administrative appeal to the local commissioner of the revenue or other
435 assessing official pursuant to this subsection has been pending for more than one year without the
436 issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of
437 the revenue or other assessing official, elect to treat the application as denied and appeal the
438 assessment to the Tax Commissioner in accordance with the provisions of subsection D. The Tax
439 Commissioner shall not consider an appeal filed pursuant to the provisions of this subdivision if he finds
440 that the absence of a final determination on the part of the commissioner of the revenue or other
441 assessing official was caused by the willful failure or refusal of the taxpayer to provide information
442 requested and reasonably needed by the assessor to make his determination.

443 C. *Suspension of Collection Activity Pending Administrative Appeal to Local Commissioner of the*
444 *Revenue or Other Assessing Official.* Provided a timely and complete application appeal is made filed
445 pursuant to subsection B, collection activity shall be suspended by the treasurer or other official
446 responsible for the collection of such tax until a final determination is issued by the commissioner of the
447 revenue or other assessing official, unless the treasurer or other collection official (i) determines that
448 collection would be jeopardized by delay as defined in this section or (ii) is advised by the
449 commissioner of the revenue or other assessing official that the taxpayer has not responded to a request
450 for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions
451 of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is
452 suspended.

453 D. *Administrative Appeal to Tax Commissioner.*

454 1. Any person whose application for a correction of assessment administrative appeal to the local
455 commissioner of the revenue or other assessing official pursuant to subsection B has been denied in
456 whole or in part may apply within 90 days of appeal the determination by of the commissioner of the
457 revenue or other assessing official to the Tax Commissioner for a correction of such assessment by filing
458 an appeal with the Tax Commissioner and serving a copy of the appeal upon the local commissioner of
459 the revenue or other assessing official within 90 days of the date of the determination of the
460 commissioner of the revenue or other assessing official. The appeal shall include a copy of the written
461 determination of the commissioner of the revenue or other assessing official that is challenged, together
462 with a statement of the facts and grounds upon which the taxpayer relies.

463 2. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30
464 days of receipt of the taxpayer's application for correction of an assessment appeal.

465 3. If the Tax Commissioner determines that he has jurisdiction, he shall provide the commissioner of
466 the revenue or other assessing official with an opportunity to respond to the appeal, and shall issue a
467 determination to the taxpayer within 90 days of receipt of the taxpayer's application appeal, unless the
468 taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period
469 will be required. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall
470 notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner
471 is unable to issue a determination within the 60-day extension period due to the failure of an affected
472 party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify
473 this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then
474 issue his determination within 60 days of receipt of such necessary information. The person making such
475 request for correction to the Tax Commissioner must in all cases have filed with the affected
476 commissioner of the revenue or other local assessing official a copy of such person's application for
477 correction to the Tax Commissioner. The Tax Commissioner shall furnish a copy of such person's
478 request for correction to the affected commissioner of the revenue or other local assessing official within
479 14 working days of the receipt of the request for correction and shall allow the local assessing official
480 to participate in the proceedings.

481 4. The application appeal shall be treated as an application pursuant to § 58.1-1821, and the Tax
482 Commissioner may issue an order correcting such assessment of such property pursuant to § 58.1-1822,
483 if the taxpayer has met the burden of proof provided in § 58.1-3987.

484 5. The Tax Commissioner shall not make a determination regarding the valuation or the method of
485 valuation of property subject to any local tax other than a local business tax. Following such an order,
486 either the taxpayer or the commissioner of the revenue or other assessing official may apply to the
487 appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be on the party making the
488 application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax
489 Commissioner nor the Department of Taxation shall be made a party to an application to correct an
490 assessment merely because the Tax Commissioner has ruled on it.

2. Any taxpayer whose application for correction pursuant to subsection B has been pending for more than two years without the issuance of a final determination may, upon not less than 30 days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subdivision D 1. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subdivision if he finds that the absence of a final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.

E. Suspension of Collection Activity During Pendency of Administrative Appeal to Tax Commissioner. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection D, the treasurer or other official responsible for the collection of such tax shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the treasurer or other collection official (i) determines that collection would be jeopardized by delay as defined in this section or (ii) is advised by the commissioner or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subdivision A 2 e of § 58.1-3703.1, but no further penalty shall be imposed while collection action is suspended.

F. Implementation of Determination of Tax Commissioner. Promptly upon receipt of a final determination of the Tax Commissioner, the commissioner of the revenue or other local assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subsection.

1. If the determination of the Tax Commissioner sets forth a specific amount of tax due, the local commissioner of the revenue or other assessing official shall certify this amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination of the Tax Commissioner.

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

3. If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the local commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a tax due that has not previously been paid in full, the commissioner of the revenue or other assessing official promptly shall commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

4. If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the local commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in the determination of a refund of taxes previously paid, the commissioner of the revenue or other assessing official promptly shall commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

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

552 *H. Suspension of Payment of Disputed Amount of Tax Due upon Taxpayer's Notice of Intent to*
553 *Initiate Judicial Review.*

554 *1. On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984,*
555 *of a determination of the Tax Commissioner pursuant to subsection D, and upon payment of the amount*
556 *of the tax that is not in dispute together with any penalty and interest then due with respect to such*
557 *undisputed portion of the tax, the treasurer or other collection official shall further suspend collection*
558 *activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and*
559 *an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous,*
560 *as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or*
561 *(iii) suspension of collection would cause substantial economic hardship to the locality, as defined in*
562 *this section.*

563 *2. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or*
564 *that suspension of collection would result in substantial economic hardship to the locality, the court may*
565 *require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment*
566 *of the amount in dispute in a form acceptable to the court.*

567 *3. No suspension of collection activity shall be required if the application for judicial review fails to*
568 *identify with particularity that portion of the tax claimed due that is disputed.*

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

572 *1. Suspension of Payment of Disputed Amount of Refund Due upon Locality's Notice of Intent to*
573 *Initiate Judicial Review.*

574 *1. Payment of any refund determined to be due pursuant to a determination of the Tax Commissioner*
575 *shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date*
576 *of the determination of the Tax Commissioner, a notice of intent to file an application for judicial*
577 *review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the*
578 *refund not in dispute, including tax and accrued interest. Payment of such refund shall remain*
579 *suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and*
580 *an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as*
581 *defined in this section.*

582 *2. No suspension of refund activity shall be permitted if the locality's application for judicial review*
583 *fails to identify with particularity that portion of the refund claimed due that is disputed.*

584 *3. The requirement that the obligation to make a refund be suspended shall cease unless an*
585 *application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties*
586 *within 30 days of the service of the notice of intent to file such application.*

587 *FJ. Rulings and Advisory Opinions.*

588 *1. Written Ruling from Local Commissioner of the Revenue or Other Assessing Official.* Any
589 taxpayer, prospective taxpayer, or representative of a taxpayer or prospective taxpayer may request a
590 written ruling regarding the application of a local mobile property tax or a local business tax to a
591 specific situation from the commissioner of the revenue or other assessing official. Any taxpayer
592 requesting such a ruling shall provide all the relevant facts for relevant to the situation and may present
593 a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any
594 misrepresentation or change in the applicable law or the factual situation as presented in the ruling
595 request shall invalidate any such ruling issued. A written ruling may be revoked or amended
596 prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the
597 Department of Taxation upon which the ruling was based, or (ii) the commissioner of the revenue or
598 other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the
599 ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall
600 be deemed to have acted in good faith during the period in which such ruling was in effect.

601 *§2. Advisory Opinions of Tax Commissioner.* The Tax Commissioner shall have the authority to
602 issue advisory written opinions in specific cases as requested to interpret a local business tax and
603 matters related to the administration thereof when an assessment of that tax is subject to appeal to the
604 Tax Commissioner under this chapter. Opinions issued pursuant to this section shall not be applicable as
605 an interpretation of any other tax law.

606 *HK. Record-keeping and Audits.* Every person who is assessable with a local mobile property tax or
607 a local business tax shall keep sufficient records to enable the commissioner of the revenue or other
608 assessing official to verify the correctness of the tax paid for the taxable years assessable and to enable
609 the commissioner of the revenue or other assessing official to ascertain what is the correct amount of tax
610 that was assessable for each of those years. All such records, books of accounts and other information
611 shall be open to inspection and examination by the commissioner of the revenue or other assessing
612 official in order to allow him to establish whether the tax is due within this jurisdiction. The
613 commissioner of the revenue or other assessing official shall provide the taxpayer with the option to

614 conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event
615 the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be
616 sent to the commissioner's or assessor's office upon demand.
617 **2. That the provisions of this act shall apply to administrative appeals filed with local**
618 **commissioners of the revenue or other assessing officials, appeals filed with the Tax Commissioner,**
619 **and applications for judicial review filed in circuit courts on or after July 1, 2005.**