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HOUSE BILL NO. 1366

Offered January 11, 2006

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A BILL to amend and reenact §§ 58.1-3703.1 and 58.1-3983.1 of the Code of Virginia, relating to the suspension of collection activities on local tax assessments during administrative appeals.

 Patron—Hull

 Referred to Committee on Finance

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 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 10 percent of the portion paid after the due date.

d. A penalty of 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 30 days, the treasurer or other collecting official may impose a 10 percent late payment penalty. If the failure to file or pay

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59 was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by
60 the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he
61 acted responsibly and 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 prudent
63 person would exercise under the circumstances in determining the filing obligations for the business and
64 (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting
65 appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to
66 remove an impediment once it occurred, and promptly rectifying a failure once the impediment was
67 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
79 to an amended return or other reason. Interest on any refund shall be paid at the same rate charged
80 under § 58.1-3916.

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

85 3. Situs of gross receipts.

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

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

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

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

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

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

"~~Jeopardize~~ Jeopardized by delay" means a finding, based ~~on~~ upon specific facts, that a taxpayer ~~desires~~ designs 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.

b. Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the 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 the appealable event, whichever is later, with the commissioner of the revenue or other local assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the 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. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or

182 further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal.
183 The assessment placed at issue in the appeal shall be deemed prima facie correct. The assessor shall
184 undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting
185 forth the facts and arguments in support of his decision.

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

191 d. Suspension of collection activity during appeal. Provided a timely and complete administrative
192 appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final
193 determination is issued by the commissioner of the revenue or other assessing official, unless the
194 treasurer or other official responsible for the collection of such tax (i) determines that collection would
195 be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or
196 other assessing official that the taxpayer has not responded to a request for relevant information after a
197 reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official that
198 the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions
199 of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is
200 suspended.

201 e. Procedure in event of nondecision. Any taxpayer whose administrative appeal to the commissioner
202 of the revenue or other assessing official pursuant to the provisions of subdivision 5 of this subsection
203 has been pending for more than one year without the issuance of a final determination may, upon not
204 less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to
205 treat the appeal as denied and appeal the assessment to the Tax Commissioner in accordance with the
206 provisions of subdivision 6 of this subsection. The Tax Commissioner shall not consider an appeal filed
207 pursuant to the provisions of this subsection if he finds that the absence of a final determination on the
208 part of the commissioner of the revenue or other assessing official was caused by the willful failure or
209 refusal of the taxpayer to provide information requested and reasonably needed by the commissioner or
210 other assessing official to make his determination.

211 6. Administrative appeal to the Tax Commissioner.

212 a. Any person assessed with a local license tax as a result of a determination, upon an administrative
213 appeal to the commissioner of the revenue or other assessing official pursuant to subdivision 5 of this
214 subsection, that is adverse to the position asserted by the taxpayer in such appeal may appeal such
215 assessment to the Tax Commissioner within 90 days of the date of the determination by the
216 commissioner of the revenue or other assessing official. The appeal shall be in such form as the Tax
217 Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the commissioner
218 of the revenue or other assessing official. The Tax Commissioner shall permit the commissioner of the
219 revenue or other assessing official to participate in the proceedings, and shall issue a determination to
220 the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing
221 official are notified that a longer period will be required. The appeal shall proceed in the same manner
222 as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an order correcting such
223 assessment pursuant to § 58.1-1822.

224 b. Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to
225 the Tax Commissioner under subdivision 6 a of this subsection, collection activity with respect to the
226 amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner,
227 unless the treasurer or other official responsible for the collection of such tax (i) determines that
228 collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner
229 of the revenue or other assessing official, or the Tax Commissioner, that the taxpayer has not responded
230 to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of
231 the revenue or other assessing official that the appeal is frivolous as defined in this section. Interest shall
232 accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty
233 shall be imposed while collection action is suspended. The requirement that collection activity be
234 suspended shall cease unless an appeal pursuant to subdivision 6 a of this subsection is filed and served
235 on the necessary parties within 30 days of the service of notice of intent to file such appeal.

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

242 (1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the
243 commissioner of the revenue or other assessing official shall certify the 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 the 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 Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the 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 shall promptly 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, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. 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 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 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 shall promptly 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, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. 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.

7. Judicial review of determination of Tax Commissioner.

a. Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to subdivision 6 a of this subsection, the taxpayer or 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 a of this subsection, 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. For 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.

(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 identify with particularity the amount in dispute.

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

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

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

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

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

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

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

329 8. Rulings.

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

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

351 B. Transitional provisions.

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

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

362 3. Every locality shall adopt a March 1 due date for applications no later than the 2001 license year.

363 § 58.1-3983.1. Appeals and rulings of local taxes.

364 A. Definitions. For purposes of this section:

365 "Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically
366 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 upon 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 upon specific facts, that a taxpayer ~~desires~~ *designs* 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), merchant's capital tax, and a consumer utility tax where the amount in dispute exceeds \$2,500 other than the tax collected on mobile telecommunication service as defined in § 58.1-3812.

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

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

B. Administrative appeal to 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 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 assessing official.

2. The appeal shall be filed in good faith and sufficiently identify the taxpayer, the tax period covered by the challenged assessment, the amount in dispute, the 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, an audit or further audits, 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 the facts and arguments in support of his decision within 90 days after such appeal is filed. Such determination shall be accompanied by a written explanation of the taxpayer's right to file an administrative appeal of the determination to the Tax Commissioner pursuant to subsection D.

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

C. Suspension of collection activity pending administrative appeal to commissioner of the revenue or other assessing official. Provided a timely and complete appeal is filed pursuant to subsection B, collection activity shall be suspended by the treasurer or other official responsible for the collection of such tax until a final determination is issued by the commissioner of the revenue or other assessing official, 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 of the revenue 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.

D. Administrative appeal to Tax Commissioner.

1. Any person whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to subsection B has been denied in whole or in part may appeal the determination of the commissioner of the revenue or other assessing official by filing an appeal with the Tax Commissioner and serving a copy of the appeal upon the commissioner of the revenue or other assessing official within 90 days of the date of the determination of the commissioner of the revenue or

other assessing official. The appeal shall include a copy of the written determination of the commissioner of the revenue or other assessing official that is challenged, together with a statement of the facts and grounds upon which the taxpayer relies.

2. The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the taxpayer's appeal.

3. If the Tax Commissioner determines that he has jurisdiction, he shall provide the commissioner of the revenue or other assessing official with an opportunity to respond to the appeal and permit the commissioner of the revenue or other assessing official to participate in the proceedings. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's appeal, unless the taxpayer and the commissioner of the revenue or other assessing official are notified that a longer period will be required. Such longer period of time shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time. If the Tax Commissioner is unable to issue a determination within the 60-day extension period due to the failure of an affected party to supply the Tax Commissioner with necessary information, the Tax Commissioner shall certify this fact in writing prior to the expiration of the extension period. The Tax Commissioner shall then issue his determination within 60 days of receipt of such necessary information.

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

5. The Tax Commissioner shall not make a determination regarding the valuation or the method of valuation of property subject to any local tax other than a local business tax.

E. Suspension of collection activity during 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. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subsection D is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such appeal.

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 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 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 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 shall promptly 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, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. 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 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 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 shall promptly 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, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. 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 Tax Commissioner. Following the issuance of a final determination of the Tax Commissioner pursuant to subsection D, the taxpayer or 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.

H. 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 subsection D, 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. For 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.

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 identify with particularity the amount in dispute.

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

5. The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local business tax or local mobile property tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subsections B and D.

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

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

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

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

J. Rulings and advisory opinions.

1. Written rulings from commissioner of the revenue or other assessing official. Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local

551 mobile property tax or a local business tax to a specific situation from the commissioner of the revenue
552 or other assessing official. Any taxpayer requesting such a ruling shall provide all facts relevant to the
553 situation and may present a rationale for the basis of an interpretation of the law most favorable to the
554 taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in
555 the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended
556 prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the
557 Department of Taxation upon which the ruling was based or (ii) the commissioner of the revenue or
558 other assessing official notifies the taxpayer of a change in the policy or interpretation upon which the
559 ruling was based. However, any taxpayer who acts on a written ruling which later becomes invalid shall
560 be deemed to have acted in good faith during the period in which such ruling was in effect.

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

566 K. Record-keeping and audits. Every person who is assessable with a local mobile property tax or a
567 local business tax shall keep sufficient records to enable the commissioner of the revenue or other
568 assessing official to verify the correctness of the tax paid for the taxable years assessable and to enable
569 the commissioner of the revenue or other assessing official to ascertain the correct amount of tax
570 assessable for each of those years. All such records, books of accounts and other information shall be
571 open to inspection and examination by the commissioner of the revenue or other assessing official in
572 order to allow him to establish whether the tax is due within this jurisdiction. The commissioner of the
573 revenue or other assessing official shall provide the taxpayer with the option to conduct the audit in the
574 taxpayer's local business office, if the records are maintained there. In the event the records are
575 maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the
576 commissioner's or assessor's office upon demand.