

LD4588809

## HOUSE BILL NO. 1974

Offered January 20, 1995

*A BILL to amend and reenact §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, 58.1-3712, 58.1-3712.1, 58.1-3713.2, 58.1-3717, 58.1-3728, 58.1-3731, and 58.1-3732 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 58.1-3700.1, 58.1-3703.1 and 58.1-3706.1; to repeal, effective January 1, 1996, § 58.1-3707 of the Code of Virginia; and to repeal, effective July 1, 2001, §§ 58.1-3701, 58.1-3702, 58.1-3703, 58.1-3704, 58.1-3705, 58.1-3706, 58.1-3708 through 58.1-3711, 58.1-3714 through 58.1-3730.1, and 58.1-3732 through 58.1-3735 of the Code of Virginia, relating to business, professional and occupational license tax.*

Patrons—Watkins, Albo, Baker, Callahan, Cantor, Cox, Crouch, Dudley, Forbes, Giesen, Hamilton, Hargrove, Harris, Katzen, Kidd, Kilgore, May, McClure, McDonnell, Morgan, Nelms, Newman, Nixon, O'Brien, Orrock, Parrish, Purkey, Reid, Rollison, Ruff, Sherwood, Tata, Wagner, Wardrup, Way and Wilkins; Senators: Benedetti, Chichester, Stosch and Wampler

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, 58.1-3712, 58.1-3712.1, 58.1-3713.2, 58.1-3717, 58.1-3728, 58.1-3731, and 58.1-3732 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-3700.1, 58.1-3703.1 and 58.1-3706.1 as follows:**

§ 58.1-3700. License requirement; requiring evidence of payment of business license, business personal property, meals and admissions taxes.

A. Whenever a license is required by law and whenever the General Assembly shall levy a license ~~tax on ordinance adopted pursuant to this chapter to engage in~~ any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without first obtaining the required license. The governing body of any county, city or town may require that no business license under this chapter shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the county, city or town have been paid which have been properly assessed against the applicant by the county, city or town.

B. The local governing body imposing such tax may by ordinance designate the streets or other public places on or in which all licensed peddlers or itinerant merchants may sell or offer for sale their goods, wares and merchandise.

C. It shall be unlawful for any circus, carnival or show giving performances in this Commonwealth in the open air or in a tent or tents to publish or post advertising of the exhibition of such circus, carnival or show in any county, city or town, within fifteen days prior to the holding of an agricultural fair in such county, city or town.

The governing body of any county, city or town is hereby authorized to levy and collect a fine not to exceed \$2,000 for each offense of any person, firm, company or corporation violating any provision of this subsection. The provisions of this subsection shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in any county, city or town.

§ 58.1-3700.1. Definitions.

For the purpose of this chapter and any local ordinances adopted pursuant to this chapter and unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if (i) stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations and (ii) the common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includible corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock

INTRODUCED

HB1974

60 possessing: (i) at least eighty percent of the total combined voting power of all classes of stock entitled  
61 to vote or at least eighty percent of the total value of shares of all classes of the stock of each  
62 corporation and (ii) more than fifty percent of the total combined voting power of all classes of stock  
63 entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each  
64 corporation, taking into account the stock ownership of each such person only to the extent such stock  
65 ownership is identical with respect to each such corporation.

66 When one or more of the includible corporations, including the common parent corporation is a  
67 nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation  
68 membership or membership voting rights, as is appropriate to the context.

69 "Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate  
70 is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An  
71 assessment shall include a written assessment made pursuant to notice by the assessing official or a  
72 self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice.  
73 Assessments shall be deemed made by an assessing official when a written notice of assessment is  
74 delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to  
75 the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or  
76 if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed  
77 by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day  
78 specified for the filing of a return or the payment of tax, as the case may be.

79 "Assessor" and "assessing official" mean the Commissioner of the Revenue, Director of Finance,  
80 Supervisor of Assessments, or other official charged with the administration of the Business,  
81 Professional and Occupational License (BPOL) taxes.

82 "Base year" means the calendar year preceding the license year, except for contractors subject to the  
83 provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the  
84 gross receipts of a business, such as for beginning businesses or to allow an option to use the same  
85 fiscal year as for federal income tax purposes.

86 "Business" means a course of dealing which requires the time, attention and labor of the person so  
87 engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of  
88 dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one  
89 business. The following acts shall create a rebuttable presumption that a person is engaged in a  
90 business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular  
91 business; (ii) filing tax returns, schedules and documents that are required only of persons engaged in a  
92 trade or business.

93 "Carnival" means an aggregation of shows, amusements, concessions, eating places and riding  
94 devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving  
95 from place to place, whether or not the same are owned and actually operated by separate persons,  
96 firms or corporations.

97 "Definite place of business" means an office or a location at which occurs a regular and continuous  
98 course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in  
99 business may include a location leased or otherwise obtained from another person on a temporary or  
100 seasonal basis; and real property leased to another. A person's residence shall be deemed to be a  
101 definite place of business if there is no definite place of business maintained elsewhere and the person is  
102 not licensable as a peddler or itinerant merchant.

103 "Financial services" means buying, selling, handling, managing, investing, and providing advice  
104 regarding money, credit, securities, or other investments.

105 "Gross receipts" means the whole, entire, total receipts, without deduction.

106 "Itinerant merchant" means any person who engages in or transacts any temporary or transient  
107 business in any county, city or town and who, for the purpose of carrying on such business, occupies  
108 any location for a period of less than one year.

109 "License year" means the calendar year for which a license is issued for the privilege of engaging in  
110 business.

111 "Peddler" means any person who carries from place to place any goods, wares or merchandise and  
112 offers to sell or barter the same, or actually sells or barter the same.

113 "Professional services" means services performed by architects, attorneys-at-law, certified public  
114 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing  
115 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of  
116 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations as  
117 the Department of Taxation may list in the BPOL Guidelines promulgated pursuant to § 58.1-3701. The  
118 Department shall identify and list each occupation or vocation in which a professed knowledge of some  
119 department of science or learning, gained by a prolonged course of specialized instruction and study is  
120 used in its practical application to the affairs of others, either advising, guiding, or teaching them, and  
121 in serving their interests or welfare in the practice of an art or science founded on it. The word

"profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of every wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

"Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

§ 58.1-3701. Department to promulgate guidelines.

The Department of Taxation shall promulgate guidelines ~~defining and explaining the categories listed in subsection A of § 58.1-3706~~ for the use of local governments in administering the taxes imposed under authority of this chapter. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia ~~for guidelines promulgated on or before July 1, 2001~~, but shall cooperate with and seek the counsel of local officials and interested groups and shall not promulgate such guidelines without first conducting a public hearing. Such guidelines shall be updated during the 1994 taxable year and available for distribution to local governments on July 1, 1995. Thereafter, the guidelines shall be updated triennially. ~~After July 1, 2001, guidelines shall be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205.~~

The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this ~~section~~ chapter and the guidelines issued pursuant to this ~~subsection~~ section; provided, however, that the Tax Commissioner shall not be required to interpret any local ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

§ 58.1-3703. Counties, cities and towns may impose local license taxes; limitation of authority.

A. The governing body of any county, city or town may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations provided in subsection B of this section. ~~The ordinance levying such license taxes shall include the provisions of § 58.1-3703.1. Whenever the local governing body shall levy a license tax on any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without first obtaining the required license. Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by the ordinance.~~

B. No county, city, or town shall levy any license tax:

1. On any public service corporation except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town; provided, such products are grown or produced by the person offering such products for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

183 8. Upon a wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis  
184 for the benefit of the Virginia Independence Bicentennial Commission or any local bicentennial  
185 commission;

186 9. On or measured by receipts for management, accounting, or administrative services provided on a  
187 group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural  
188 cooperative association under the provisions of Chapter 3, Article 2 (§ 13.1-312 et seq.), Title 13.1, or a  
189 member or subsidiary or affiliated association thereof, to other members of the same group. This  
190 exemption shall not exempt any such corporation from such license or other tax measured by receipts  
191 from outside the group;

192 10. On or measured by receipts or purchases by a corporation which is a member of an affiliated  
193 group of corporations from other members of the same affiliated group. This exclusion shall not exempt  
194 affiliated corporations from such license or other tax measured by receipts or purchases from outside the  
195 affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's  
196 license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated  
197 person, company, or corporation, notwithstanding the fact that the wholesale merchant's license tax  
198 would be based upon purchases from an affiliated corporation. Such tax shall be based on the purchase  
199 price of the goods sold to the nonaffiliated person, company, or corporation. As used in this subdivision  
200 the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" shall  
201 mean sales by the affiliated corporation to a nonaffiliated person, company or corporation where goods  
202 sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to  
203 their delivery to the nonaffiliated person, company or corporation.

204 For purposes of this exclusion, the term "affiliated group" means

205 (a) One or more chains of includible corporations connected through stock ownership with a common  
206 parent corporation which is an includible corporation if:

207 (i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least  
208 eighty percent of each class of the nonvoting stock of each of the includible corporations, except the  
209 common parent corporation, is owned directly by one or more of the other includible corporations; and

210 (ii) The common parent corporation directly owns stock possessing at least eighty percent of the  
211 voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at  
212 least one of the other includible corporations. As used in this subdivision, the term "stock" does not  
213 include nonvoting stock which is limited and preferred as to dividends. The term "includible  
214 corporation" means any corporation within the affiliated group irrespective of the state or country of its  
215 incorporation; and the term "receipts" includes gross receipts and gross income.

216 (b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own  
217 stock possessing:

218 (i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote  
219 or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

220 (ii) More than fifty percent of the total combined voting power of all classes of stock entitled to vote  
221 or more than fifty percent of the total value of shares of all classes of stock of each corporation; taking  
222 into account the stock ownership of each such person only to the extent such stock ownership is  
223 identical with respect to each such corporation.

224 When one or more of the includible corporations, including the common parent corporation is a  
225 nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation  
226 membership or membership voting rights, as is appropriate to the context;

227 11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title  
228 or on any agent of such company;

229 12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this  
230 title;

231 13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for  
232 which the taxicab driver operates;

233 14. On any blind person operating a vending stand or other business enterprise under the jurisdiction  
234 of the Department for the Visually Handicapped, or a nominee of the Department, as set forth in  
235 § 63.1-164;

236 15. (Expires July 1, 1997) On any hospital, college, university, or other institution of learning not  
237 organized or conducted for pecuniary profit which by reason of its purposes or activities is exempt from  
238 income tax under the laws of the United States unless such tax was enacted by the local governing body  
239 prior to January 15, 1991. The provisions of this subdivision shall expire on July 1, 1997;

240 16. Upon any person who is authorized to celebrate the rites of marriage under §§ 20-23 and 20-25  
241 and any person who is authorized to solemnize a marriage under § 20-26 provided such gross annual  
242 receipts total no more than \$500; or

243 17. On an accredited religious practitioner in the practice of the religious tenets of any church or  
244 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely

in praying for others upon accreditation by such church or religious denomination; or

18. Nonprofit organizations.

a. On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from any trade or business the conduct of which is not substantially related to the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption. When determining whether a trade or business is substantially related to the exempt purpose of a nonprofit organization, the determination shall be based solely on the relationship of the business activities to the exempt purpose. The fact that profits derived from the trade or business may be used for an exempt purpose shall not be considered. For the purpose of this subdivision, the term "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

b. On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a licensable business. For the purpose of this subdivision, the term "nonprofit organization" shall mean an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations.

§ 58.1-3703.1. Uniform ordinance provisions.

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

1. License requirement.

Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, a peddler, carnival, circus or contractor subject to § 58.1-3715, or a 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: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions in the ordinances of this jurisdiction; (ii) 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 (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

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 licensable in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he has 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 or more days after beginning business, at the locality's option.

c. The assessing official may grant an extension of time for reasonable cause in which to file an application for a license. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, 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, a penalty of ten percent of the portion paid after the due date.

d. A penalty of ten 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 days the

306 *Treasurer or other collecting official may impose a ten percent late payment penalty. The penalties shall*  
307 *not be imposed, or if imposed shall be abated by the official who assessed them, if the failure to file or*  
308 *pay was not the fault of the taxpayer. In order to demonstrate lack of fault the taxpayer must show that*  
309 *he acted responsibly and that the failure was due to events beyond his control.*

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

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

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

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

333 *3. Situs of gross receipts.*

334 *a. Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts*  
335 *included in the taxable measure shall be only those gross receipts attributed to the exercise of a*  
336 *licensable privilege at a definite place of business within this jurisdiction. In the case of activities*  
337 *conducted outside of a definite place of business, such as during a visit to a customer location, the*  
338 *gross receipts shall be attributed to the definite place of business from which such activities are*  
339 *initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall*  
340 *be attributed to one or more definite places of business or offices as follows: (i) the gross receipts of a*  
341 *contractor shall be attributed to the definite place of business at which his services are performed, or if*  
342 *his services are not performed at any definite place of business, then the definite place of business from*  
343 *which his services are directed or controlled, unless the contractor is subject to the provisions of*  
344 *§ 58.1-3715; (ii) the gross receipts of a retailer or wholesaler shall be attributed to the definite place of*  
345 *business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any*  
346 *definite place of business, then the definite place of business from which sales solicitation activities are*  
347 *directed or controlled; provided, however, that a wholesaler subject to a license tax measured by*  
348 *purchases shall determine the situs of its purchases by the definite place of business at which or from*  
349 *which deliveries of the purchased goods, wares and merchandise are made to customers, and any*  
350 *wholesaler subject to license tax in two or more localities who is subject to multiple taxation because*  
351 *the localities use different measures may apply to the Department of Taxation for a determination as to*  
352 *the proper measure of purchases and gross receipts subject to license tax in each locality; (iii) the gross*  
353 *receipts of a business renting tangible personal property shall be attributed to the definite place of*  
354 *business from which the tangible personal property is rented or, if the property is not rented from any*  
355 *definite place of business, then the definite place of business at which the rental of such property is*  
356 *managed; or (iv) the gross receipts from the performance of services shall be attributed to the definite*  
357 *place of business at which the services are performed or, if not performed at any definite place of*  
358 *business, then the definite place of business from which the services are directed or controlled.*

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

367 *c. The assessor may enter into agreements with any other political subdivision in the Commonwealth*

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 the jurisdiction's 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 the business' 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 which 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. When prior to 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 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 a date two years after the date of the assessment, two years after the final determination of an administrative appeal pursuant to § 58.1-3980, or two years after the final decision in a court application pursuant to § 58.1-3984 or similar law, whichever is later.

#### 5. Appeals and rulings.

a. Any person assessed with a tax as a result of an audit may apply within ninety days from the date of such assessment to the assessor for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, 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, further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

b. Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the assessor, 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. Interest shall accrue in accordance with subdivision 2e, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the period in question.

c. Any person assessed with a license tax as a result of an audit may apply within ninety days of the determination by the assessing official on an application pursuant to subdivision 5a to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821 and the Tax Commissioner may issue an order correcting such assessment pursuant to § 58.1-1822. Following such an order either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application



429 to correct an assessment merely because the Tax Commissioner has ruled on it.

430 d. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision 5c,  
431 the assessing official shall further suspend collection activity until a final determination is issued by the  
432 Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that  
433 the taxpayer has not responded to a request for relevant information after a reasonable time. Interest  
434 shall accrue in accordance with subdivision 2e, but no further penalty shall be imposed while collection  
435 action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in  
436 subdivision 5b.

437 e. Any taxpayer may request a written ruling regarding the application of the tax to a specific  
438 situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for  
439 the situation and may present a rationale for the basis of an interpretation of the law most favorable to  
440 the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as  
441 presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked  
442 or amended prospectively if (i) there is a change in the law, a court decision, or guidelines issued by  
443 the Department of Taxation upon which the ruling was based, or (ii) the assessor notifies the taxpayer  
444 of a change in the policy or interpretation upon which the ruling was based. However, any person who  
445 acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during  
446 the period in which such ruling is in effect.

447 6. Recordkeeping and audits.

448 Every person who is assessable with a license tax shall keep sufficient records to enable the assessor  
449 to verify the correctness of the tax paid for the license years assessable and to enable the assessor to  
450 ascertain what is the correct amount of tax that was assessable for each of those years. All such  
451 records, books of accounts and other information shall be open to inspection and examination by the  
452 assessor in order to allow the assessor to establish whether a particular receipt is directly attributable  
453 to the taxable privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with  
454 the option to conduct the audit in the taxpayer's local business office, if the records are maintained  
455 there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books  
456 and records shall be sent to the assessor's office upon demand.

457 B. Transitional provisions.

458 1. A locality which changes its license year from a fiscal year to a calendar year and adopts March  
459 1 as the due date for license applications shall not be required to prorate any license tax to reflect a  
460 license year of less than twelve months, whether the tax is a flat amount or measured by gross receipts,  
461 provided that no change is made in the base year for measuring gross receipts.

462 2. The provisions of this section relating to penalties, interest, and administrative and judicial review  
463 of an assessment shall be applicable to assessments made on and after January 1, 1996, even if for an  
464 earlier license year. The provisions relating to agreements extending the period for assessing tax shall  
465 be effective for agreements entered into on and after July 1, 1995. The provisions permitting an  
466 assessment of license tax for up to six preceding years in certain circumstances shall not be construed  
467 to permit the assessment of tax for a license year beginning before January 1, 1996.

468 3. Every locality shall adopt a March 1 due date for applications no later than the 1998 license  
469 year.

470 § 58.1-3706. Limitation on rate of license taxes.

471 A. ~~Except~~ On and after December 1, 1994, no ordinance imposing a new local license tax or  
472 increasing any local license tax rate in an existing ordinance may be adopted unless specifically  
473 authorized by an Act of the General Assembly enacted subsequent to December 1, 1994. In addition,  
474 except as specifically provided in this section, no local license tax imposed pursuant to the provisions of  
475 this chapter, except §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of this title or any  
476 charter, shall be imposed on any person whose gross receipts from a licensable business, profession or  
477 occupation are \$4,000 or less annually. No such tax in excess of fifty dollars shall be imposed on a  
478 person whose gross receipts from a licensable business, profession or occupation are more than \$4,000  
479 and less than \$10,000 annually. For a person whose gross receipts from a licensable business,  
480 profession or occupation are \$10,000 or more annually, such tax shall not be greater than ~~thirty~~ fifty  
481 dollars or the rate set forth below, whichever is higher, for the class of enterprise listed, ~~whichever~~ is  
482 higher:

483 1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of  
484 gross receipts;

485 2. For retail sales, twenty cents per \$100 of gross receipts;

486 3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

487 4. For repair, personal and business services, and all other businesses and occupations not specifically  
488 listed or excepted in this section, thirty-six cents per \$100 of gross receipts. The rate limitations  
489 prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be  
490 governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii)



carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings and loan associations, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on ~~January 1, 1978;~~ *December 1, 1994*, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on ~~January 1, 1978;~~ *December 1, 1994*, subject to the following conditions:

1. ~~A and such~~ locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in § 58.1-3510 shall be classified in the category of retail sales for license tax rate purposes.

D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subsection D 1 above, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subsection D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences may be separately classified by any such county and subject to tax at a license tax rate not to exceed the limits set forth in subsections A through C above as to such federal funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

*§ 58.1-3706.1. BPOL Repeal Distributions and revenue reduction.*

A. A locality shall lower its revenue from license taxes imposed pursuant to this chapter for any license year in an amount at least equal to the locality's share of the "Distribution for Repeal of Business, Profession, and Occupation License Tax" (hereafter referred to as "BPOL Repeal Distribution") for the state's fiscal year that ends during such license year. The revenue reduction shall be in a manner determined by the locality and may consist of rate reductions, caps on tax liability, exemptions, thresholds, or any combination thereof. A locality shall have satisfied its revenue reduction requirement for a license year if its revenue reduction changes satisfy either of the following: (i) the

revenue reduction changes for the current license year, when applied to the gross receipts reported in each affected category for the preceding license year, would have produced revenue from such categories that would have been lower than actual revenue by an amount at least equal to the locality's share of the BPOL Repeal Distribution; or (ii) the cumulative revenue reduction changes from September 30, 1995, through the current license year, when applied to the gross receipts reported in each affected category for the 1995 license year, would have produced revenue from such categories that would have been lower than actual revenue by an amount at least equal to the locality's cumulative share of the BPOL Repeal Distribution. For the purpose of making such computations, specific items or classes of revenue shall be included or excluded as provided in subdivision B1 below.

B. The BPOL Repeal Distribution shall be distributed among localities in the following manner:

1. On or before August 1, 1995, the governing body of each and every county, city, and town imposing a license tax pursuant to this chapter, which tax was imposed pursuant to an ordinance adopted on or before December 1, 1994, shall certify to the Comptroller its revenue from such tax for the fiscal year ending June 30, 1995. The following revenue shall not be included in the revenue certified to the Comptroller: revenue from a tax on the severance of coal, gas, and oil imposed pursuant to § 58.1-3712 through § 58.1-3713.4; revenue from license taxes imposed on certain public service corporations pursuant to § 58.1-3731; revenue from a daily rental property tax imposed pursuant to § 58.1-3510.1; and revenue from or connected with a license issued pursuant to any other provision of state law such as, by way of example and not limitation, alcoholic beverage control licenses authorized by any provision of Title 4.1, franchise fees on cable television companies authorized by any provision of Title 15.1, and audit or other fees in connection with bingo games authorized by any provision of Title 18.2.

2. On or before September 30, 1995, the Comptroller shall certify to each locality its share of the BPOL Repeal Distribution computed in the following manner: the BPOL Repeal Distribution shall be multiplied by a fraction, the numerator of which is the revenue reported to the Comptroller pursuant to subdivision B1 and the denominator of which is the total revenue reported by all localities pursuant to subdivision B1. Subsequent annual BPOL Repeal Distributions shall be certified on September 30 in the same manner and using the same fractions based on revenue for the fiscal year ended June 30, 1995, (subject to correction) with the amount of each locality's share certified by September 30 and distributed pursuant to subdivision B4 in the fiscal year for which the General Assembly appropriates it. The Comptroller shall review the locality's application of methodology applied as specified in this subdivision in a manner and time which is appropriate in his judgment and may correct the numerator and denominator of the fraction as appropriate; however no changes to a locality's share of any annual BPOL Repeal Distribution shall be made after the Comptroller certifies the amount of the locality's share for the year.

3. On or before January 31, 1996, and every January 31 thereafter the governing body of the locality shall certify to the Comptroller that it has taken action to reduce its revenue from BPOL taxes in compliance with subsection A by at least the amount certified by the Comptroller pursuant to subdivision B2. The certification shall contain a detailed explanation of the action taken and the computations showing compliance with the appropriate revenue reduction target and a copy shall be available for public inspection and copying in the locality.

4. On or before March 1, 1996, and every March 1 thereafter the Comptroller shall distribute the share of the annual BPOL Repeal Distribution to the localities that have certified their compliance with subsection A of this subsection. The Annual BPOL Repeal Distributions shall total \$30 million in fiscal year 1996; \$75 million in fiscal year 1997; \$135 million in fiscal year 1998; \$210 million in fiscal year 1999; and \$300 million annually thereafter.

C. The failure of any locality to reduce correctly its revenue as required in subsection A shall not create any private cause of action for refund, but the amount by which such locality failed to reduce its revenue shall be added to the subsequent year's revenue reduction amount or may, if elected by the governing body, be returned to business taxpayers in such other manner as the governing body, in its sole discretion, may determine.

D. Any county, city, or town which fails to report its revenue as required by subdivision B1 by August 31, 1995, shall reduce its revenue pursuant to subsection A by an amount equal to ten percent of the revenue that was required to be reported, and shall receive no share of the BPOL Repeal Distribution for the fiscal year ending June 30, 1996. Unless the reporting failure is corrected in a time and manner acceptable to the Comptroller prior to the annual certification of distribution amounts, revenue for each subsequent license year shall be reduced by an additional twenty percent each year even though the locality receives no share of the BPOL Repeal Distribution for such year.

E. Whenever any county, city or town that imposed a BPOL tax on merchants on December 1, 1994, receives a share of the BPOL Repeal Distribution, such share shall be in lieu of a tax on the capital of merchants, as defined by § 58.1-3509.

§ 58.1-3708. Situs for local license taxation of businesses, professions, occupations, etc.

A. Except as otherwise provided by law and except as to public service corporations, the situs for the local license taxation for any licensable business, profession, trade, occupation or calling, shall be the county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of business ~~or maintains his office~~. If any such person has a definite place of business ~~or maintains an office~~ in any other locality, then such other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax with respect thereto.

B. Where a local license tax imposed by any ~~such other~~ locality is measured by volume, the volume on which the tax may be computed shall be the volume attributable to *all definite places of business of* the business, profession, trade, occupation or calling in such ~~other~~ locality. All volume attributable to *any definite places of business of* the business, profession, trade, occupation or calling in any ~~such~~ other locality ~~which levies a local license tax thereon~~ shall be deductible from the base in computing any local license tax measured by volume imposed on him by the locality in which the first-mentioned definite place ~~or office~~ is located.

C. If any such person has no definite place of business or office within the Commonwealth, the situs for the local license taxation of such a person shall be each locality in which he engages in such business, trade, occupation or calling, with respect to what is done in each such locality.

D. The word "volume," as used in this section, means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

E. This section shall not be construed as prohibiting any locality from requiring a separate license for each definite place of business ~~or each office~~ located in such locality.

F. Where a local license tax, or any portion thereof, is measured other than by volume, the tax, or such portion, shall first be computed for each locality as if the entire business were done within such locality and the amount so determined shall be multiplied by a fraction, the numerator of which is the volume of business done in such locality and the denominator of which is the volume of business done in this Commonwealth.

§ 58.1-3712. Counties and cities authorized to levy severance tax on coal and gases.

The governing body of any county or city may levy *and provide for the assessment and collection of* a license tax on every person engaging in the business of severing coal or gases from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of coal or gases severed within such county. Such gross receipts shall be the fair market value measured at the time such coal or gases are utilized or sold for utilization in such county or city or at the time they are placed in transit for shipment therefrom, provided that if the tax provided herein is levied, such county or city cannot enact the provisions of § 58.1-3286 relating to a tax on gross receipts.

Any county or city enacting a license tax under this section may require producers of coal or gas and common carriers to maintain records and file reports showing the quantities of and receipts from coal or gases which they have produced or transported.

§ 58.1-3712.1. Counties and cities authorized to levy severance tax on oil.

The governing body of any county or city may levy *and provide for the assessment and collection of* a license tax on every person engaging in the business of severing oil from the earth. Such tax shall be at a rate equal to one-half of one percent of the gross receipts from the sale of oil severed in such county or city. Such gross receipts shall be the fair market value measured at the time such oil is utilized or sold for utilization in such county or city or at the time such oil is placed in transit for shipment therefrom.

Any county or city enacting a license tax pursuant to this section may require producers of oil and common carriers to maintain records and file reports showing the quantities of and receipts from oil which they have produced or transported.

§ 58.1-3713.2. Verification of local severance tax payment; local ordinances.

A. All local coal severance taxes levied pursuant to §§ ~~58.1-3703~~, 58.1-3712 or § 58.1-3713 are to be paid to the locality in which the coal is first placed in transit for shipment outside of the jurisdiction imposing the tax, unless it is certified by affidavit to the commissioner of the revenue of that locality that the coal severance tax has been paid pursuant to those laws or paid to any other state or locality in which the coal was mined pursuant to that state's coal severance tax, gross receipts tax, business license tax or other comparable tax.

B. Any county or city enacting a tax pursuant to §§ ~~58.1-3703~~, 58.1-3712 or § 58.1-3713 may require enforcement of subsection A by local ordinance.

§ 58.1-3717. Peddlers; itinerant merchants.

A. For the purpose of license taxation pursuant to § ~~58.1-3703~~, any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler.

B. For the purpose of license taxation pursuant to § ~~58.1-3703~~, the term "itinerant merchant" means any person who engages in, does, or transacts any temporary or transient business in any county, city or

675 town and who, for the purpose of carrying on such business, occupies any location for a period of less  
676 than one year.

677 C. Any tax imposed pursuant to § 58.1-3703 on peddlers and itinerant merchants shall not exceed  
678 \$500 per year. Dealers in precious metals shall be taxed at rates provided in § 58.1-3706.

679 D. B. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in  
680 person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables,  
681 fruits or other family supplies of a perishable nature or farm products grown or produced by them and  
682 not purchased by them for sale. A dairyman who uses upon the streets of any city one or more vehicles  
683 may sell and deliver from his vehicles, milk, butter, cream and eggs in such city without procuring a  
684 peddler's license.

685 E. The local governing body imposing such tax may by ordinance designate the streets or other  
686 public places on or in which all licensed peddlers or itinerant merchants may sell or offer for sale their  
687 goods, wares or merchandise.

688 § 58.1-3728. Carnivals, circuses, speedways; penalties; certain restrictions.

689 A. Pursuant to the authority granted in § 58.1-3703, the governing body of any county, city or town  
690 may levy and collect a license tax, the amount to be fixed by the governing body of such county, city  
691 or town, for each performance held in such county, city or town given by or upon carnivals, circuses or  
692 speedways which are operating within the limits of such county, city or town. Until such tax has been  
693 paid, the county, city or town shall have a lien upon the property of such carnival, circus or speedway  
694 to the extent of the unpaid tax.

695 Every person, firm, company or corporation which exhibits or gives a performance or exhibition of  
696 any of the shows, carnivals, or circuses, above described in this section, without the license required  
697 shall be fined not less than \$50 nor more than \$500 for each offense.

698 The governing body of any county, city or town may also levy and collect, in addition to any other  
699 license tax imposed by this section, a license tax not to exceed \$1,000 for each performance of a  
700 traveling circus, carnival or show giving performances in this Commonwealth in the open air or in a tent  
701 or tents, within fifteen days previous to, or during the week of, or within one week after the time of  
702 holding any agricultural fair in any such county, city or town in this Commonwealth. The license taxes  
703 provided for in this section shall be assessed and paid before any performance is permitted to be held.

704 It shall be unlawful for any circus, carnival or show to publish or post in any way, in any county,  
705 city or town, at any time within fifteen days prior to the holding of such fair, in such county, city or  
706 town, advertising of the exhibition of any such circus, carnival or show.

707 The governing body of any county, city or town is hereby authorized to levy and collect a fine not  
708 to exceed \$2,000 for each offense of any person, firm, company or corporation violating any provision  
709 of this section. The provisions of this section shall not apply to circuses, carnivals or shows inside the  
710 grounds of any agricultural fair held in any county, city or town.

711 For the purpose of this section a "carnival" shall mean an aggregation of shows, amusements,  
712 concessions, eating places and riding devices or any of them, operated together on one lot or street or  
713 on contiguous lots or streets, moving from place to place, whether or not the same are owned and  
714 actually operated by separate persons, firms or corporations.

715 B. A resident mechanic or artist may exhibit any production of his own art or invention without  
716 compensation and no registration, bond or license may be required of any industrial arts exhibit or of  
717 any agricultural fair or the shows exhibited within the grounds of such fair or fairs, during the period of  
718 such fair, whether an admission is charged or not. In addition, no registration, bond or license may be  
719 required of resident persons performing in a show or exhibition for charity or other benevolent purposes,  
720 or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such  
721 show, exhibition or performance is given, whether licensed or exempted by the terms of this subsection,  
722 those persons performing or acting in a show, exhibition or performance and operating under either  
723 license or exemption, shall be exempt from such tax.

724 The provisions of the preceding paragraph shall not be construed to allow, without payment of the  
725 tax imposed by this section, a performance for charitable or benevolent purposes by a company,  
726 association or persons, or a corporation, in the business of giving such exhibitions, no matter what terms  
727 of contract may be entered into or under what auspices such exhibition is given by such company,  
728 association or persons, or corporation. It is the intent and meaning of this section that every company,  
729 association, person, or corporation in the business of giving exhibitions for compensation, whether a part  
730 of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the  
731 authority of this section. Such tax shall not be imposed on a bona fide local association or corporation  
732 organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts  
733 exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such  
734 exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of such  
735 exhibition.

736 § 58.1-3731. Certain public service corporations; rate limitation.

Every county, city or town is hereby authorized to ~~impose~~ levy and provide for the enforcement and collection of a license tax, in addition to any tax levied under Chapter 26 of this title, on (i) telephone and telegraph companies, (ii) water companies and (iii) heat, light and power companies at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation.

§ 58.1-3732. Exclusions and deductions from "gross receipts."

A. Gross receipts for license tax purposes shall not include any amount *not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.*

*The following items are excluded:*

1. *Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels, or any ;*

2. *Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business);*

3. *Any amount representing returns and allowances granted by the business to its customer;*

4. *Receipts which are the proceeds of a loan transaction in which the licensee is the obligor;*

5. *Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset;*

6. *Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.*

7. *Withdrawals from inventory for which no consideration is received and the occasional sale or exchange of assets other than inventory whether or not gain or loss is recognized for federal income tax purposes.*

8. *Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.*

B. *The following shall be deducted from gross receipts that would otherwise be taxable:*

1. *Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This ~~exclusion~~ deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the ~~exclusion~~ deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.*

2. *Any receipts attributable to activities conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.*

2. That § 58.1-3706.1 shall become effective July 1, 1995, and all other provisions of this act shall become effective for license years beginning on and after January 1, 1996.

3. That § 58.1-3707 of the Code of Virginia is repealed effective for license years beginning on and after January 1, 1996.

4. That, effective July 1, 2001, §§ 58.1-3701, 58.1-3702, 58.1-3703, 58.1-3704, 58.1-3705, 58.1-3706, 58.1-3708 through 58.1-3711, 58.1-3714 through 58.1-3730.1, and 58.1-3732 through 58.1-3735 of the Code of Virginia are repealed and any provisions of ordinances imposing taxes pursuant to such sections are void; however, the taxes repealed by this enactment shall be subject to the provisions of § 58.1-10.

5. That the provisions of § 58.1-3706.1 shall cease to be effective in the event that any distribution pursuant to subdivision B4 of such section for any fiscal year beginning on or after July 1, 2000 is not appropriated by the General Assembly. In such event, a locality may enact ordinances which (i) increase business, professional, and occupational license tax rates, but not above the rates in effect on December 1, 1994; (ii) reduce thresholds, but not below a threshold in effect on December 1, 1994; or (iii) repeal exemptions enacted after December 1, 1994.