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SENATE BILL NO. 283

Offered January 19, 1996

A *BILL to amend and reenact §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, and 58.1-3732 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 58.1-3700.1 and 58.1-3703.1; and to repeal §§ 58.1-3707 and 58.1-3725 of the Code of Virginia, relating to the local business, professional, and occupational license tax.*

Patron—Stosch

Referred to the 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, 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 and 58.1-3703.1 as follows:

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

Whenever a license is required by ~~law~~ *ordinance adopted pursuant to this chapter* and whenever the ~~General Assembly~~ *local governing body* shall impose a license fee or 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. 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.

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.

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, 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:

a. 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

b. 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 possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

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

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to

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60 the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or
61 if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed
62 by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day
63 specified for the filing of a return or the payment of tax, as the case may be.

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

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

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

81 "Financial services" means the buying, selling, handling, managing, investing, and providing of
82 advice regarding money, credit, securities, or other investments.

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

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

86 "Professional services" means services performed by architects, attorneys-at-law, certified public
87 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing
88 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of
89 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and
90 no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to
91 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed
92 knowledge of some department of science or learning, gained by a prolonged course of specialized
93 instruction and study is used in its practical application to the affairs of others, either advising, guiding,
94 or teaching them, and in serving their interests or welfare in the practice of an art or science founded
95 on it. The word "profession" implies attainments in professional knowledge as distinguished from mere
96 skill, and the application of knowledge to uses for others rather than for personal profit.

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

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

105 § 58.1-3701. Department to promulgate guidelines.

106 The Department of Taxation shall promulgate guidelines defining and explaining the categories listed
107 in subsection A of § 58.1-3706 for the use of local governments in administering the taxes imposed
108 under the authority of this chapter. In preparing such guidelines, the Department shall not be subject to
109 the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia for
110 guidelines promulgated on or before July 1, 2001, but shall cooperate with and seek the counsel of local
111 officials and interested groups and shall not promulgate such guidelines without first conducting a public
112 hearing. Such guidelines shall be updated during the 1994 taxable year and available for distribution to
113 local governments on July 1, 1995. Thereafter, the guidelines shall be updated triennially. After July 1,
114 2001, the guidelines shall be subject to the Administrative Process Act and accorded the weight of a
115 regulation under § 58.1-205.

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

121 § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of

authority.

A. The governing body of any county, city or town *may charge a fee for issuing a license in an amount not to exceed fifty dollars and 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 imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.*

B. No county, city, or town shall *impose a license fee or* 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. *Without limiting or restricting the meaning of the term "manufacturing" as otherwise provided by law, for purposes of this section, "manufacturing and selling" shall include the design, development or other creation of computer software for lease, sale or license, and "manufacturing" shall include the assembly of materials or components to produce an integrated system or other different product ;*

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;

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

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

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

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

(a) 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.

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

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

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

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

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

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

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

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

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

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

17. On an accredited religious practitioner in the practice of the religious tenets of any church or 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;

18. (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, "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, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations; or

19. On any venture capital fund which means a debt or equity investment fund providing capital to a business enterprise at any stage of its development prior to any public offering of stock.

§ 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: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of 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 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 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 in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten 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 treasurer or other collecting official may impose a ten percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them.. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

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

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

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

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the

conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than thirty days from the date of the payment that created the refund or the due date of the tax, whichever is later.

3. Situs of gross receipts.

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

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

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

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

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

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

c. Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100% 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 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. For purposes of this subdivision and subdivision 6 of this section, "local business tax" means any one or more of the following: (i) business, professional and occupational license tax, (ii) machinery and tools tax, (iii) business tangible personal property tax, and (iv) merchant's capital tax.

a. Any person assessed with a local business 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, a 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 the provisions of subdivision 2e of this subsection, 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 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.

c. Any person assessed with a local business 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 to correct an assessment merely because the Tax Commissioner has ruled on it.

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

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

6. Recordkeeping and audits.

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

B. Transitional provisions.

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

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

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

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

A. Except as specifically provided in this section, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of this title or any charter, shall be ~~greater than thirty dollars or~~ imposed on any person whose gross receipts from a licensable business, profession or occupation are \$100,000 or less annually. Any business with gross receipts of more than \$100,000, shall be subject to the tax at the rate set forth below for the class of enterprise listed, ~~whichever is higher~~:

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

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

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

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be 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 *and credit unions*, 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, 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, subject to the following conditions:

1. A 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.

§ 58.1-3708. 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. D. 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.

§ 58.1-3732. 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

552 any federal or state excise taxes on motor fuels ~~or any~~.

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

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

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

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

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

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

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

575 B. The following shall be deducted from gross receipts or gross purchases that would otherwise be
576 taxable:

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

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

587 2. That, effective January 1, 1997, §§ 58.1-3707 and 58.1-3725 of the Code of Virginia are
588 repealed.

589 3. That the transitional provisions of § 58.1-3703.1 B shall be effective as stated in such subsection.

590 4. That the remaining provisions of this act shall be effective for license years beginning on and
591 after January 1, 1997, but any provision, except the imposition of a license fee pursuant to
592 § 58.1-3703, may, at the locality's election, be adopted and applied to an earlier license year.