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HOUSE BILL NO. 1785

Offered January 8, 1997

A BILL to amend and reenact § 58.1-3703.1 of the Code of Virginia, relating to the filing date for the business, professional, and occupational licensing tax.

Patrons—Nixon, Cox, Ingram, Reid and Watkins; Senators: Benedetti, Marsh and Martin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3703.1 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3703.1. Uniform ordinance provisions.

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

1. License requirement. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to § 58.1-3715, or public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (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 subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than ~~March~~ *April 15* 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~~ *April 15* 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

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60 (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting
61 appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to
62 remove an impediment once it occurred, and promptly rectifying a failure once the impediment was
63 removed or the failure discovered.

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

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

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

81 3. Situs of gross receipts.

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

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

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

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

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

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

117 c. Agreements. The assessor may enter into agreements with any other political subdivision of
118 Virginia concerning the manner in which gross receipts shall be apportioned among definite places of
119 business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total
120 gross receipts attributable to all of the definite places of business affected by the agreement. Upon being
121 notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the

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

4. Limitations and extensions.

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

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

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

5. Appeals and rulings.

a. Any person assessed with a local license 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 2 e 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 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 5 a 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 5 c, the assessing official shall further suspend collection activity until a final determination is issued by the

183 Tax Commissioner, unless the assessor determines that collection would be jeopardized by delay or that
184 the taxpayer has not responded to a request for relevant information after a reasonable time. Interest
185 shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further
186 penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall
187 have the same meaning as set forth in subdivision 5 b above.

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

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

208 B. Transitional provisions.

209 1. A locality which changes its license year from a fiscal year to a calendar year and adopts ~~March~~
210 ~~1 April 15~~ as the due date for license applications shall not be required to prorate any license tax to
211 reflect a license year of less than twelve months, whether the tax is a flat amount or measured by gross
212 receipts, provided that no change is made in the taxable year for measuring gross receipts.

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

219 3. Every locality shall adopt a ~~March 1~~ ~~April 15~~ due date for applications no later than the 2001
220 license year.