

## TITLE 3

*(Repealed by the passage of superseding provisions, November 4, 1996)*

### TITLE 3.1

*(Enacted November 4, 1996)*

## TOWN OF DAYTON

### LICENSE TAXES

#### *Section*

- 3.1-1. Overriding Conflicting Ordinances.
- 3.1-2. Definitions.
- 3.1-3. License Requirement.
- 3.1-4. Due Dates and Penalties.
- 3.1-5. Situs of Gross Receipts.
- 3.1-6. Limitations and Extensions.
- 3.1-7. Appeals and Rulings.
- 3.1-8. Recordkeeping and Audits.
- 3.1-9. Exclusions and Deductions from “Gross Receipts.”
- 3.1-10. License Fee and Tax.

**§ 3.1-1. Overriding Conflicting Ordinances.** Except as may be otherwise provided by the law of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this council, whether or not compiled in the Town Code, to the extent of any conflict, the following provisions shall be applicable to the levy, Assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within the Town.

**§ 3.1-2. Definitions.** For the purposes of this ordinance, unless otherwise required by the context:

“Affiliated Group” means:

- (1) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable 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 includable corporations, except the common parent corporation, is owned directly by one or more of the other includable 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 includable corporations. As used in this subdivision, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends. The term “includable 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 includable 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.

(Va. Code, § 58.1-3700.1)

- (3) “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 the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. (Va. Code, § 58.1-3700.1)
- (4) “Assessor” or “Assessing Official” means the Town Treasurer.
- (5) “Base Year” means the calendar year preceding the License Year, subject to the provisions of § 3.1- 10(c). (Va. Code, § 58.1-3700.1)
- (6) “Business” means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one Business. The following acts shall create a rebuttable presumption that a person is engaged in a Business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular Business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or Business. (Va. Code, § 58.1-3700.1)
- (7) “Contractor” shall have the meaning prescribed in § 58.1-3714(B) of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.
- (8) “Definite Place of Business” means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A Definite Place of Business for a person engaged in Business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased

to another. A person's residence shall be deemed to be a Definite Place of Business if there is no Definite Place of Business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

- (9) "Financial Services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a Broker or Dealer in Securities and Commodities or a Security or Commodity exchange, unless such service is otherwise provided for in this ordinance.
- (a) "Broker" shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or Services, usually on a commission basis.
- (b) "Commodity" shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.
- (c) "Dealer" for purposes of this ordinance shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular Business.
- (d) "Security" for purposes of this ordinance shall have the same meaning as in the Securities Act (13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering Financial Services include, but without limitation, the following:

Buying installment receivables,  
Chattel mortgage financing,  
Consumer financing,  
Credit card Services,  
Credit Unions,  
Factors,  
Financing accounts receivable,  
Industrial loan companies,  
Installment financing,  
Inventory financing,  
Loan or mortgage brokers,  
Loan or mortgage companies,  
Safety deposit box companies,  
Security and commodity brokers and Services,  
Stockbroker, and  
Working capital financing.

(Va. Code, § 58.1-3700.1)

- (10) "Gross Receipts" means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia. (Va. Code, § 58.1-3700.1)
- (11) "License Year" means the calendar year for which a license is issued for the privilege of engaging in Business. (Va. Code, § 58.1-3700.1)

- (12) “Personal Services” shall mean rendering for compensation any repair, personal, business or other Services not specifically classified as “financial, real estate or professional service” under this ordinance, or rendered in any other Business or occupation not specifically classified in this ordinance unless exempted from local license tax by Title 58.1 of the Code of Virginia.
- (13) “Professional Services” means Services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701 of the Code of Virginia. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word “professional” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit. (Va. Code, § 58.1-3700.1)
- (14) “Purchases” shall mean all goods, wares and merchandise received for sale at each Definite Place of Business of a Wholesale Merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by a any Wholesaler or Wholesale Merchant and sold or offered for sale. Such merchant may elect to report the Gross Receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture. (Va. Code, § 58.1-3700.1)
- (15) “Real Estate Services” shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this ordinance, and such Services include, but are not limited to, the following:
- Appraisers of real estate,
  - Escrow agents, real estate,
  - Fiduciaries, real estate,
  - Real estate agents, brokers and managers,
  - Real estate selling agents, and
  - Rental agents for real estate,
- (Va. Code, § 58.1-3700.1) (Effective January 1, 2014)
- (16) “Retailer” or “Retail Merchant” shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.
- (17) “Services” shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.
- (18) “Wholesale” or “Wholesale Merchant” shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods,

wares and merchandise will be incorporated into goods and Services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

**§ 3.1-3. License Requirement.**

- (a) Every person engaging in the Town in any Business, trade, profession, occupation or calling (collectively hereinafter “a Business”) as defined in this ordinance, unless otherwise exempted by law, shall apply for a license for each such Business if (i) such person maintains a Definite Place of Business in this Town, (ii) such person does not maintain a definite office anywhere but does maintain an abode in this Town, which abode for the purposes of this ordinance shall be deemed a Definite Place of Business, or (iii) there is no Definite Place of Business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in § 58.1-3717, 3718, or 3728, respectively of the Code of Virginia, or is a Contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia.
- (b) A separate license shall be required for each Definite Place of Business.
- (c) 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 Town; (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.
- (d) No license shall be required for authorized participants in the Dayton Autumn Celebration, the Dayton Redbud Festival, the Dayton Fun Day, and other events as authorized from time to time by the Dayton Town Council, provided that such participants have paid any requisite fees to the town. These exceptions apply only to activities directly connected with the events at issue. (Amended September 8, 1997. Amended October 14, 2013. Amended June 8, 2015.)

(Virginia Code, § 58.1-3703.1(A)(1))

**§ 3.1-4. 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 licensing in this Town on or before January 1 of the License Year, or no later than March 1 of the current License Year if he had been issued a license for the preceding License Year. The application shall be on forms prescribed by the assessing official, (Virginia Code, § 58.1- 3703.1(A)(2)(a))
- (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 in the case of new businesses, not later than 30 days after beginning business. (Virginia Code, § 58.1-3703.1(A)(2)(b))
- (c) The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall 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. (Virginia Code, § 58.1- 3703.1 (A)(2)(c))

- (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 may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. 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 taxpayers 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.

(Virginia Code, § 58.1-3703.1 (A)(2)(d))

- (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 tax paid under this ordinance 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 annual rate of ten percent, or such higher rate as is allowed under Virginia Code, § 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, in event of such adjustment, provided the refund or the late payment is made not more than thirty days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

(Virginia Code, § 58.1-3703.1(A)(2)(a))

**§ 3.1-5. 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 Town. 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 of the Code of Virginia.
  - (2) The Gross Receipts of a Retailer or Wholesaler shall be attributed to the Definite Place of Business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any Definite Place of Business, then the Definite Place of Business from which sales solicitation activities are directed or controlled; however, a Wholesaler or distribution house subject to a license tax measured by Purchases shall determine the situs of its Purchases by the Definite Place of Business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any Wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of Purchases and Gross Receipts subject to license tax in each locality.
  - (3) The Gross Receipts of a business renting tangible personal property shall be attributed to the Definite Place of Business from which the tangible personal property is rented or, if the property is not rented from any Definite Place of Business, then the Definite Place of Business at which the rental of such property is managed.
  - (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 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, except as to circumstances set forth in § 58.1-3709 of the Code of Virginia, 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 Town 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. (Virginia Code, § 58.1-3703. 1(A)(3)(b))

- (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. (Virginia Code, § 58.1-3703.1(A)(3)(c))

#### **§ 3.1-6. *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. (Virginia Code, § 58.1-3703.1(A)(4)(b), 58.1-3903.1)
- (b) Notwithstanding § 58.1-3903 of the Code of Virginia, 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 years, provided that no tax shall be assessed for the 1993 License Year or earlier years. (Virginia Code, § 58.1-3703.1(A)(4)(b), 58.1-3703.1 (B)(2)).
- (c) The period for collecting any local license tax shall not expire prior to the period specified in § 58.1-3940 of the Code of Virginia, two years after the date of Assessment if the period for Assessment has been extended pursuant to this subdivision, two years after the final determination of an appeal for which collection has been stayed pursuant to § 3.1-7(b) or (d), or two years after the final decision in a court application pursuant to § 58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later. (Virginia Code, § 58, 1- 3703.1 (A)(4)(c))

#### **§ 3.1-7. *Appeals and Rulings.***

- (a) *Definitions.* For purposes of this section:
  - "*Amount in dispute*," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.
  - "*Appealable event*" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.
  - "*Frivolous*" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well



grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

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

(b) Administrative appeals to Treasurer.

- (1) Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the Treasurer. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Treasurer may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed *prima facie* correct. The Treasurer shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.
- (2) Notice of right of appeal and procedures. Every assessment made by the Treasurer pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.
- (3) Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Treasurer, unless (i) the Treasurer determines that collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended.
- (4) Procedure in event of nondecision. Any taxpayer whose administrative appeal to the Treasurer has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Treasurer, elect to treat the appeal as denied and appeal the assessment to the

Tax Commissioner in accordance with the provisions of paragraph (c) below. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this paragraph (b)(4) if he finds that the absence of a final determination on the part of the Treasurer was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Treasurer to make his determination.

(c) Administrative appeal to the Tax Commissioner.

- (1) Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the Treasurer pursuant to paragraph (b), that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the determination by the Treasurer. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the Treasurer. The Tax Commissioner shall permit the Treasurer to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Treasurer are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Va. Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Va. Code § 58.1-1822.
- (2) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the Tax Commissioner paragraph under (c)(1) above, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) determines—or is advised by the Tax Commissioner—that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) determines that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to paragraph (c)(1) is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.
- (3) Implementation of determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to paragraph (c)(1), the Treasurer shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer in accordance with the provisions of this subdivision.
  - (A) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

- (B) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Treasurer shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.
- (C) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.
- (D) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

(d) Judicial review of determination of Tax Commissioner.

- (1) Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to (c), the taxpayer or Treasurer may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to Va. Code, § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.
- (2) Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.
  - (A) On receipt of a notice of intent to file an application for judicial review,

pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to paragraph (c), and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the Treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

- (B) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.
  - (C) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.
  - (D) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Va. Code, § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.
  - (E) The suspension of collection activity authorized by this paragraph (d)(2) shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by paragraphs (b) and (c).
- (3) Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.
- (A) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant paragraph (c) shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard,

determines that the locality's application for judicial review is frivolous, as defined in this section.

- (B) No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.
  - (C) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to Va. Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.
- (4) Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended.
- (e) Rulings. Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the Treasurer. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue 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. (4/9/2007.)

**§ 3.1-8. Recordkeeping and Audits.** Every person who is assessable with a license 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 Town. 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 Town, copies of the appropriate books and records shall be sent to the assessor's office upon demand. (Virginia Code, § 58.1-3703.1(A)(6))

**§ 3.1-9. Exclusions and Deductions from "Gross Receipts."**

- (a) *General Rule.* 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 or profession.
- (b) The following items shall be excluded from Gross Receipts:
  - (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, or for any local sales tax or any local excise tax on cigarettes, for any federal or state exercise taxes on motor fuels.

- (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 of 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 purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a 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 or gross Purchases 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 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 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 business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

**§ 3.1-10. License Fee and Tax.** Every person or Business subject to licensure under the ordinance shall be assessed and required to pay annually:

- (a) A fee for the issuance of such license in the amount of \$20; and
- (b) Except as may be otherwise provided in § 58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, every such person or Business shall be assessed and required to pay annually a license tax on all the Gross Receipts of such persons includable as provided in this ordinance at a rate set forth below for the class of enterprise listed. However, the fee imposed by paragraph (a) above shall be credited against the tax imposed by this paragraph, so if the fee is greater than the tax, no tax is due.
  - (1) For contractors and persons constructing for this own account for sale, \$0.12 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706)
  - (2) For retailers, \$0.15 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706)
  - (3) Lessors of real property are not required to pay license tax because of the act of leasing real property to another. For other providers of financial, real estate and Professional Services, \$0.30 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706. Amended 4/14/2014. )
  - (4) For repair, personal and business Services and all other businesses and occupations not specifically listed or exempted in this ordinance or otherwise by law, \$0.20 per \$100 of Gross Receipts;
  - (5) For wholesalers, \$0.05 per \$100 of Purchases;
  - (6) For carnivals, circuses and speedways, \$100 for each performance held in this Town;
  - (7) For fortune tellers, clairvoyants and practitioners of palmistry, \$1,000 per year;
  - (8) For itinerant merchants or peddlers, the greater of \$20 or \$0.15 per \$100 of Gross Receipts with a cap of \$200 per year;
  - (9) For savings and loan associations and credit unions, \$50 per year; and
  - (10) For persons having no regularly established place of business in this state and who provide photography services consisting of the taking of pictures or the making of pictorial reproductions in the Commonwealth (and every agent or canvasser for such photographer), \$30 per year. (See Va. Code, § 58.1-3728)
  - (11) *Alcoholic Beverages.* For persons engaging in the business of manufacturing, bottling, wholesaling, or retailing alcoholic beverages, the following tax schedule applies:
    - (A) For each distiller's license, \$1,000 per year. [No license shall be required of any person distilling not more than 5,000 gallons of spirits in the License Year.];

- (B) For each winery license, \$1,000 per year;
- (C) For each brewery license, \$1,000 per year;
- (D) For each bottler's license, \$500 per year;
- (E) For each wholesale beer license, \$75 per year;
- (F) For each wholesale wine distributor's license, \$50 per year;
- (G) For each wholesale druggist's license, \$10 per year;
- (H) For each retail on-premises wine and beer license for a hotel, restaurant, or club, \$37.50 per year;
- (I) For each retail off-premises wine and beer license, \$37.50 per year;
- (J) For each retail on-premises beer license for a hotel, restaurant or club, \$25 per year;
- (K) For each retail off-premises beer license, \$25 per year;
- (L) For each fruit distiller's license, \$1,500 per year;
- (M) For each hospital license, \$10 per year;
- (N) For each banquet license, \$5 per year;

(See Code of Virginia, § 4-38).

(12) *Coin Operated Amusement and Other Machines.*

- (A) For the operators of coin amusement machines, \$200 per year or \$20 per year for each such machine operated within the Town, whichever is less, provided, however, that no tax shall be owed by a person owning fewer than three coin-operated machines and operating such machines on property owned or leased by that person.
- (B) In addition to any tax owed under paragraph (b)(12)(A) above, Gross Receipts from machines vending merchandise shall be taxed under paragraph (b)(2) above. Gross Receipts from coin-operated amusement machines shall be taxed under paragraph (b)(4) above.

(13) *Heat, Light, Power and Gas Companies.* For persons furnishing heat, light, power, or gas for domestic, commercial and industrial consumption in the town, the annual license tax shall equal to one half of one percent of the Gross Receipts of such business derived from within the town during the preceding calendar or fiscal year. (See Code of Virginia, § 58.1-3731).

(14) *Telephone Companies.* For persons engaged in the business of providing telephonic communications in the town, the annual license tax shall equal one half of one percent of the Gross Receipts during the preceding year from local telephone exchange service, including flat rate service and message rate service, but excluding long distance telephone calls. (See Code of Virginia, § 58.1-3731).



- (c) For purposes of this section, Gross Receipts shall be calculated as of the Base Year, except in the following cases:
- (1) *New Businesses.* New businesses shall estimate their Gross Receipts for the License Year, and their tax shall be based on the estimate. On or before March 1 of the following year, they shall correct their estimate. If they underestimated, they shall pay the additional tax owed, without interest, If they overestimated, the Town will credit or refund the overpayment, without interest.
  - (2) *Businesses in operation for only a portion of the Base Year.* Businesses which were in operation for only a portion of the Base Year shall estimate their Gross Receipts for the License Year, according the same procedures set forth in paragraph (c)(1) above.
  - (3) *Contractors taxed under § 58.1-3715.* The tax for contractors without a Definite Place of Business in the Town shall be based on Gross Receipts for the License Year.
  - (4) *Public Service Corporations.* Corporations taxed under paragraphs (b)(13) or (b)(14) above may elect to pay a license tax based on the preceding fiscal year.