

CHAPTER 28

LICENSE TAXES

SECTION 28-1. DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following respective meanings, except where the context clearly indicates a different or contrary meaning or there is an express provision to the contrary:

(a) *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:
 - (i) Stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) 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
 - (ii) The common parent corporation directly owns stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) 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 (2) or more corporations if five (5) or fewer persons who are individuals, estates or trusts own stock possessing:
 - (i) At least eighty (80) percent of the total combined voting power of all classes of stock entitled to vote or at least eighty (80) percent of the total value of shares of all classes of the stock of each corporation, and

Editor's note--Ord. No. 029-96 adopted on November 12, 1996 revised this chapter, effective January 1, 1997.

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- (ii) More than fifty (50) percent of the total combined voting power of all classes of stock entitled to vote or more than fifty (50) 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.

- (b) *AMUSEMENTS*. The term amusements shall include every person providing any type of entertainment or show for which compensation is received and which is not specifically provided for or exempt under another provision of this chapter.
- (c) *ASSESSMENT*. The term 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 Commissioner 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 the Commissioner when a written notice of assessment is delivered to the taxpayer by the Commissioner or an employee of the Commissioner, 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 this chapter 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.
- (d) *BASE YEAR*. The term base year means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715 of the Code of Virginia.
- (e) *BROKER*. The term 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.
- (f) *BUSINESS*. The term 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,

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schedules and documents that are required only of persons engaged in a trade or business.

- (g) *BUSINESS SERVICE*. The term business service shall mean any service rendered for compensation to any business, trade, occupation or governmental agency unless such service is provided for under provision of this chapter.
- (h) *COMMISSIONER*. The term Commissioner shall be the Commissioner of the Revenue for the City of Winchester, Virginia.
- (i) *COMMODITY*. The term commodity shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.
- (j) *CONTRACTOR*. The term 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.
- (k) *DEALER*. The term dealer for the purposes of this chapter 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.
- (l) *DEFINITE PLACE OF BUSINESS*. The phrase 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.
- (m) *DIRECT SELLER*. The term direct seller means any person who:
 - (i) Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences, and maintains no public location for the conduct of such business; and
 - (ii) Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked; and
 - (iii) Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed, and such

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contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

- (n) *FINANCIAL SERVICES.* The term 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 chapter.

Those engaged in rendering financial services include, but without limitation, the following:

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

- (o) *GROSS EXPENDITURES.* The term gross expenditures shall mean all expenditures incurred in connection with the acquisition or lease of real property, including cash, credits, fees, commissions, brokerage charges and rentals, and all expenditures incurred in connection with the improvement or development of such property by force account, including all costs of labor involved in such improvement or development, cost of materials and supplies, equipment rental or an equivalent charge. Therefore if equipment is owned by the builder or developer, and any other expenditure of whatever description incurred in connection with the improvements or developments by force account of such property shall be part of gross expenditures. The term gross expenditures shall not include amounts expended for interest on or payment of principal of debt incurred in connection with such improvement or development work.
- (p) *GROSS RECEIPTS.* The term 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. Further, subject to the conditions, exceptions, deductions and exemptions set out below, the term gross receipts shall mean the compensation from any business, profession, trade, occupation, vocation, calling or activity, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind, nature or description, from either sales made or services rendered without any deduction

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therefrom on account of cost of the property sold, the cost of material, labor or services, rentals, royalties, taxes, interest or discounts paid or any expense whatsoever, and shall include in the case of merchants, the amount of the sale, price of supplies and goods furnished to or used by the licensee or his family or other person for which no charge is made or for which a charge less than the prevailing fair market value is made.

- (q) *LICENSE YEAR*. The term license year means the calendar year for which a license is issued for the privilege of engaging in business.
- (r) *PERSON*. The word person shall include individuals, firms, partnerships, corporations, companies, associations or joint stock associations and any combination of individuals of whatever form or character. It shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative appointed by a court to liquidate assets for immediate distribution, or a sergeant or a sheriff, or any deputy, selling under authority of process or writ of a court of justice.
- (s) *PERSONAL SERVICES*. The term 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 chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by Title 58.1 of the Code of Virginia.
- (t) *PROFESSIONAL SERVICES*. The term 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 "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.
- (u) *PURCHASES*. The word 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 any wholesaler or wholesale merchant and sold or

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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.

- (v) *REAL ESTATE SERVICES.* The term 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 chapter, and such services include, but are not limited to, the following:

Appraisers of real estate	Real estate agents, brokers and managers
Escrow agents, real estate	Real estate selling agents
Fiduciaries, real estate	Rental agents for real estate
Lessors of real property	

- (w) *RETAILER or RETAIL MERCHANT.* The term 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.

- (x) *SECURITY.* The term security for purposes of this chapter 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.

- (y) *SERVICES.* The term services shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

- (z) *TREASURER.* The term Treasurer shall be the Treasurer for the City of Winchester, Virginia.

- (aa) *WHOLESALE or WHOLESALE MERCHANT.* The term wholesaler 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. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-1, Va. Code §58.1-3700.1

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SECTION 28-2. PURPOSE OF ARTICLE.

It is the purpose and policy of the City Council, in enacting this article imposing a license tax for the privilege of conducting business and engaging in certain professions, trades, and occupations in the City, to equalize as far as practicable the burden of such license taxation amount upon those liable thereto, by adopting for general application, but subject to exceptions or restrictions imposed by state or federal law (or to any restrictions or exceptions as may be imposed specifically hereafter), a system of license taxes measured by the gross receipts of the business, profession, trade or occupation on which the tax is levied. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-2.

SECTION 28-3. LICENSE DEEMED PERSONAL PRIVILEGE.

Every license issued under the provisions of this chapter shall be a personal privilege to transact, carry on or conduct the business, profession, trade or occupation which is the subject of the license and shall not be exercised except by the person licensed. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-3.

SECTION 28-4. BUSINESSES, ETC., SUBJECT TO TAX.

Each and all of the taxes hereinafter imposed are imposed upon the privilege of doing business or engaging in a profession or occupation in the City, including all phases of the business, profession, trade or occupation conducted in the City. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-4.

SECTION 28-5. LICENSE REQUIREMENT.

- (a) Every person engaging in the City in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this chapter, unless otherwise exempted by law, shall apply for and obtain, prior to conducting business, a license for each such business if
1. such person maintains a definite place of business in the City,
 2. such person does not maintain a definite office anywhere but does maintain an abode in the City, which abode for the purposes of this chapter shall be deemed a definite place of business, or

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3. 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. A separate license shall be required for each definite place of business.

A separate license shall be required for each definite place of business and for each business. One or more licenses may be issued on the same form. The taxpayer may, instead, comply with subsection (b).

- (b) 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:
 1. 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;
 2. 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
 3. the taxpayer agrees to supply such information as the Commissioner may require concerning the nature of the several businesses and their gross receipts.
- (c) 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 jurisdiction 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 Commissioner.
- (d) The Commissioner 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.
(Ord. No. 029-96, 11-12-96; Ord. No.2010-08, 4-13-10)

Source--Va. Code §58.1-3703.1.

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SECTION 28-6. PAYMENT OF TAX.

- (a) The tax shall be paid with the application in the case of any license not based on gross receipts.
- (b) The tax on a business beginning prior to January 1, if measured by gross receipts, shall be paid on or before March 1. The tax on a business beginning after January 1, if measured by gross receipts, shall be due thirty days after the application is submitted.
- (c) No business license shall be issued to an applicant until the applicant has produced satisfactory evidence that all current and delinquent business license, personal property, meals, transient occupancy and admissions taxes owed by the business to the City have been paid. However, if the Treasurer has entered into a payment plan for any such delinquent taxes with the taxpayer, the Commissioner may issue a license on a quarterly basis, upon payment of the quarter's tax. (Ord. No. 029-93, 10-12-93; Ord. No. 029-96, 11-12-96; Ord. No. 019-2000, 09-12-00; Ord. No. 2010-08; 4-13-10)

Source--Va. Code §58.1-3703.1.A.

SECTION 28-7. BEGINNING LICENSE.

Every person beginning a business, profession, trade or occupation which is subject to a license tax under the provisions of this article based in whole or in part on gross receipts, gross expenditures or gross purchases, shall estimate the amount of gross receipts he will receive or the gross expenditures on the gross purchases he will incur between the date of beginning business and the end of the then current license year, and his license tax shall be computed on such estimates. (Ord. No. 029-96, 11-12-96)

Source--Former §28-6(a).

SECTION 28-8. APPLICATION OR PROCEDURE FOR OBTAINING A LICENSE.

- (a) Every person liable to pay a license tax under the provisions of this chapter shall make application in writing to the Commissioner. The Commissioner shall furnish license application forms, which forms shall be properly and fully executed by the applicant, and shall contain such information as may be required by the Commissioner, in order to properly assess the tax liability.
- (b) The application shall contain at least the following information:

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1. Name
2. Trade Name
3. Nature of Business
4. Business Address
5. Mailing Address of applicant
6. Phone Number
7. Certification/Registration number, if any
8. Federal Identification Number or Social Security Number, for a sole proprietor
9. Date began
10. Whether Individual, Partnership or Corporation, etc.
11. Gross Receipts or Gross Purchases, as applicable
12. Signature
13. Date

- (c) Any such person who willfully subscribes any such return or application which is not true and correct as to every material matter shall be guilty of a Class 2 misdemeanor. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 039-93, 11-09-93; Ord. No. 029-96, 11-12-96)

Source--Former §28-7(a)-(c).

State Law Reference--Code of Virginia §58.1-3700.

SECTION 28-9. SITUS OF GROSS RECEIPTS.

- (a) General rule. Whenever the tax imposed by this chapter 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 of the Code of Virginia.

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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 to 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 and the affected jurisdictions are unable to reach an apportionment agreement, 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 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 Commissioner 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

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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 one hundred percent (100%) of its gross receipts from all locations in the affected jurisdictions, the Commissioner shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.3.

SECTION 28-10. DISPLAY OF LICENSE; MAINTENANCE OF RECORDS AND SEPARATE ACCOUNTS; REPORT TO THE COMMISSIONER OF THE REVENUE.

- (a) Each licensee shall display his license in the following manner:
1. If the license is for conducting business at a fixed place of business, the license shall be posted in a conspicuous place upon the business premises;
 2. If the license is for conducting business which has no fixed place of business, the license shall be kept available for immediate inspection at all times while conducting business.
- (b) Every person who is assessable with a license tax shall keep sufficient records to enable the Commissioner to verify the correctness of the tax paid for the license years assessable and to enable the Commissioner 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 Commissioner in order to allow the Commissioner to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The Commissioner 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 Commissioner's office upon demand.
- (c) If any licensee shall fail to maintain the records required in this section, regularly supported by customary vouchers, the Commissioner is hereby authorized and directed to estimate the taxpayer's gross receipts or gross purchases or other license basis from the best evidence he can obtain, and the Commissioner shall make an assessment based on such determination.

(Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96; Ord. No. 2010-08, 4-13-10)

Source--Former §28-9(d); Va. Code §58.1-3703.1.A.6.

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SECTION 28-11. CALCULATION OF GROSS RECEIPTS OR GROSS PURCHASES.

The calculation of gross receipts, gross expenditures or gross purchases for license tax purposes, shall be either a cash or accrual method; provided, that the method used must coincide with the system of accounts used by the taxpayer and the method employed by the taxpayer for federal and state income tax purposes. The preceding year's gross receipts, gross expenditures or gross purchases must coincide with the fiscal year of the business used for federal and state income tax purposes. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-10.

SECTION 28-12. PRORATING.

In the event a person ceases to engage in a business, trade, profession, or calling within the City during a year for which a license tax has already been paid, the taxpayer shall be entitled upon application to a refund for that portion of a license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the City. There shall be, however, no prorating based on beginning business estimates. The City may elect to remit any refunds in the ensuing fiscal year, and may offset against such refund any amount of past due taxes owed by the same taxpayer. In no event shall the City be required to refund any part of a minimum flat tax or the flat portion of the fee which is not based upon the gross receipts of the taxpayer. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-12.

SECTION 28-13. TRANSFER OF LICENSE.

- (a) No City license shall be transferred from any person to another person, except for the continuation of the same business for which the license was originally issued.
- (b) No City license shall be transferred from one location or stand to another location or stand except for the continuation of the same business for which the license was originally used.
- (c) Upon application, any license that meets the exceptions of (a) or (b) above may be transferred for the unexpired term thereof. Upon presentment to the Commissioner of such license, such official shall transfer the license. The assignee shall have the same privileges and be subject to the same regulations and penalties as an original licensee, unless herein otherwise expressly provided.

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Estimated licenses may not be transferred. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-13.

SECTION 28-14. ADDITIONAL LICENSE TAXES; NOTICE OF INCREASED AMOUNT; PENALTY FOR NONPAYMENT, OVERPAYMENT TO BE CREDITED.

If the Commissioner ascertains, through a correct audit and computation of license tax, that any person assessed with a license tax levied under the provisions of this chapter for any license tax year during the last three (3) years, or including the current license tax year, shall be assessed an increased amount, he shall furnish written notice thereof to the taxpayer. If the assessment of the additional tax or taxes is not paid to the Treasurer within thirty (30) days after written notice to the taxpayer of such additional assessment, there shall be assessed a penalty and interest pursuant to this chapter. The Treasurer shall collect such penalty along with the tax in the same manner as the tax may be collected. Any overpayment of license taxes imposed under the terms of this chapter shall be credited to the amount of license tax due the following year or shall be refunded in case the licensee does not engage in a business, profession, trade or occupation subject to license by the City the following year. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-15.

SECTION 28-15. ASSESSMENT OF OMITTED LICENSE TAXES.

If the Commissioner ascertains that any person has not been assessed with a license tax levied under the terms of this chapter for any license tax year during the last three (3) years or for the current license tax year, and that the absence of such assessment was not due to the fraudulent intent to evade taxes on the part of such person, it shall be the duty of the commissioner to assess such person with the proper license tax for the year or years omitted, adding thereto the penalty and interest set forth in this chapter. If the tax was omitted due to fraud by the taxpayer, the Commissioner shall assess the omitted tax for

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the current license year and the six (6) preceding years. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-15.

State Law Reference--Code of Virginia, §58.1-3903.

SECTION 28-16. LIMITATIONS AND EXTENSIONS.

- (a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the Commissioner 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) 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 (2) 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 section 28-17(b) or 28-17(d) of this chapter, or two (2) 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. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.4.

SECTION 28-17. APPEALS AND RULINGS.

- (a) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within ninety (90) days from the date of the assessment to the Commissioner 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 Commissioner may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The Commissioner 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 City, including the name and address to which an application should be directed.

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- (b) Provided an application is made within ninety (90) days of an assessment, collection activity shall be suspended until a final determination is issued by the Commissioner, unless the Commissioner 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 section 28-20 of this chapter, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.
- (c) Any person assessed with a license tax under this chapter as a result of an audit may apply within ninety (90) days of the determination by the Commissioner on an application pursuant to subsection (a) above to the Commissioner for a correction of such assessment. The Commissioner shall issue a determination to the taxpayer within ninety (90) days of receipt of the taxpayer's application, unless the taxpayer and the Commissioner are notified that a longer period will be required. The application shall be treated as an application pursuant to §58.1-1821 of the Code of Virginia, and the Commissioner may issue an order correcting such assessment pursuant to §58.1-1822 of the Code of Virginia. Following such an order, either the taxpayer or the Commissioner may apply to the appropriate circuit court pursuant to §58.1-3984 of the Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the Commissioner is erroneous. Neither the Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Commissioner has ruled on it.
- (d) On receipt of a notice of intent to file an appeal to the Commissioner under subsection (c) above, the Commissioner shall further suspend collection activity until a final determination is issued by the Commissioner, unless the Commissioner 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 section 28-20, 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 subsection (b).
- (e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Commissioner. 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

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law, a court decision, or (ii) the Commissioner 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. (Ord. No 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.5.

SECTION 28-18. 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 excise 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.

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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 (2) 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. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3732.

SECTION 28-19. PENALTIES.

A penalty of ten (10) percent of the tax shall 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 Commissioner if both the application and payment are late; however, both penalties may be assessed if the Commissioner determines that the taxpayer has a history of noncompliance.

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In the case of an assessment of additional tax made by the Commissioner, 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 Commissioner is not paid within thirty (30) days the treasurer shall impose a ten (10) percent late payment penalty. Any penalty, when so assessed, shall become a part of the tax due.

The penalties shall not be imposed, or if imposed, shall be abated by the Treasurer, 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.

- (a) "Acted responsibly" means that:
1. 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
 2. 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.
- (b) "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 Commissioner, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

The assessment of any penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. (Ord. No. 029-96, 11-12-96; Ord. No. 2011-21, 10-11-11)

Source--Former §28-17; Va. Code § 58.1-3703.1.A.2.d.

SECTION 28-20. INTEREST.

- (a) Interest at the rate of ten (10) percent per year 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 Commissioner 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

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the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this chapter 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.

- (b) 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 (30) days from the date of the payment that created the refund, or the due date of the tax, whichever is later.
(Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.2.e.

SECTION 28-21. CRIMINAL PENALTIES.

- (a) If any person commences to operate any business, profession, trade or occupation in the City without first obtaining a license, such person shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense. Any conviction under this provision shall not relieve any such person from the payment of the license tax prescribed by this chapter.
- (b) If any person shall continue to provide a business service or shall continue a business, profession, trade or occupation after the expiration date of a license previously issued therefor, without obtaining a new license, such person shall, if such failure to obtain a new license be continued for one month, be subject to the penalty provided for in this chapter. Further, such persons shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense.
- (c) Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (i) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less, or (ii) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00).
(Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 039-93, 11-09-93; Ord. No. 029-96, 11-12-96)

Source--Former §28-19; Va. Code §58.1-3916.1.

SECTION 28-22. POWER TO SUMMON TAXPAYERS AND OTHER PERSONS; PENALTIES.

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- (a) The Commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The Commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.
- (b) Any person who refuses to (i) furnish to the Commissioner access to books of account or other papers and records, (ii) furnish information to the Commissioner relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the Commissioner any subject of taxation liable to assessment by the Commissioner, shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-20.

State Law References--Code of Virginia, §§58.1-3110, 58.1-3111.

SECTION 28-23. MERCHANTS GOING OUT OF BUSINESS.

If a merchant desires to discontinue business at the close of the year for which he is licensed, and desires additional time in which to dispose of his stock then on hand at the close of the license year, he may, by filing before December 31, a sworn affidavit with the commissioner that he is going out of business, obtain a prorated license not to exceed sixty (60) days, in increments of one (1) month, but in no case shall the fee be less than thirty dollars (\$30.00). (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

SOURCE--Former §28-22.

SECTION 28-24. LICENSE FEE.

Every person or business subject to licensure under this chapter, but not subject to a license tax under this chapter, shall be assessed and required to pay annually a fee for the issuance of each such license in the amount of fifty dollars (\$50.00). (Ord. No. 029-96, 11-12-96; Ord. No. 007-98, 4-14-98; Ord. No. 2010-67, 12-28-10)

Source--Va. Code §58.1-3703.

SECTION 28-25. LICENSE TAX RATES.

Every person or business subject to licensure under this chapter with annual gross receipts of more than fifty thousand dollars (\$50,000) shall be assessed and required to

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pay annually except as may be otherwise provided in §§58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, a license tax on all the gross receipts of such persons includable as provided in this chapter at a rate set forth below for the class of enterprise listed:

- (a) For contractors and persons constructing for their own account for sale, sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts;
- (b) For retailers, twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts;
- (c) For financial, real estate and professional services, fifty-eight cents (\$0.58) per one hundred dollars (\$100.00) of gross receipts;

Each member of a partnership, firm, limited liability company or corporation whether operating as partners or employees shall pay the tax individually. In the case of employees, gross receipts shall be measured by the salary or commissions received. As to members of partnerships or firms, they shall be taxed based on the same proportion of total "gross receipts" less employee salaries as their respective share in the partnership or firm bears to the total "gross receipts".

- (d) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, thirty-six cents (\$0.36) per one hundred dollars (\$100.00) of gross receipts;
- (e) For wholesalers, purchases not exceeding ten thousand dollars (\$10,000.00) - \$50.00

Purchases over ten thousand dollars (\$10,000.00) - \$50.00 on the first ten thousand dollars (\$10,000.00) and twenty cents (\$0.20) on each one hundred dollars (\$100.00) in excess of ten thousand dollars (\$10,000.00).

State Law Reference—Code of Virginia §58.1-3716

- (f) For fortune tellers, clairvoyants and practitioners of palmistry, one thousand dollars (\$1,000.00) per year;
- (g) For massage parlors or health clubs as defined in Chapter 13 of this Code, two hundred dollars (\$200.00) per year;
- (h) For photographers, thirty dollars (\$30.00) per year; subject to the provisions of Virginia Code §58.1-3727;
- (i) For savings and loan associations and credit unions where the main office is located in the City, fifty dollars (\$50.00) per year subject to the provisions of Virginia Code §58.1-3730; and

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- (j) For direct sellers as defined in §58.1-3719.1 of the Code of Virginia with total annual sales in excess of four thousand dollars (\$4,000.00), twenty cents (\$0.20) per \$100.00 of total annual retail sales or five cents (\$0.05) per \$100.00 of total annual wholesale sales, whichever is applicable. (Ord. No. 033-89, 12-12-89; Ord. No. 041-90, 12-11-90; Ord. No. 038-91, 10-08-91; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96; Ord. No. 2010-67, 12-28-10)

Source--Va. Code §58.1-3706.

SECTION 28-26. PEDDLERS; ITINERANT MERCHANTS.

- (a) For the purpose of this chapter, any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler.
- (b) For the purpose of this chapter, the term itinerant merchant means any person who engages in, does, or transacts any temporary or transient business in the City and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.
- (c) There is hereby imposed the license tax on peddlers and itinerant merchants a license tax of thirty dollars (\$30.00) or twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts, whichever is greater, but in no case shall the license tax exceed five hundred dollars (\$500.00) per year.
- (d) This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. A dairyman who uses upon the streets of the City one or more vehicles may sell and deliver from his vehicles, milk, butter cream and eggs in such city without procuring a peddler's license. (Ord. No. 018-92, 11-10-92)

Source--Former §28-32.

State Law Reference--Code of Virginia, §58.1-3716 and §58.1-3717

SECTION 28-27. LICENSE TAX ON PEDDLERS AT WHOLESALE.

- (a) For purposes of this article, any person who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or

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offers to deliver, the goods, wares or merchandise to the buyer shall be deemed a peddler at wholesale. For purposes of this section any delivery made on the day of sale shall be construed as a delivery at the time of sale.

- (b) There is hereby imposed on every peddler at wholesale in the City a license tax in the amounts specified in Section 28-25. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-33.

State Law Reference--Code of Virginia, §58.1-3718.

SECTION 28-28. LIMITATIONS ON LICENSE TAXES IMPOSED ON PEDDLERS, ITINERANT MERCHANTS AND PEDDLERS AT WHOLESALE.

- (a) The license tax imposed on peddlers or itinerant merchants or on peddlers at wholesale shall not apply to:
1. A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;
 2. A distributor or vendor of motor fuels and petroleum products;
 3. A distributor or vendor of seafood who catches seafood and sells only the seafood caught by him;
 4. A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him;
 5. A farmers' cooperative association;
 6. A manufacturer who is subject to Virginia tax on intangible personal property who peddles at wholesale, only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by this Commonwealth. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-34.

State Law Reference--Code of Virginia, §58.1-3719.

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SECTION 28-29. AMUSEMENT MACHINES; GROSS RECEIPTS TAX ON AMUSEMENT OPERATORS.

- (a) A license tax is hereby imposed on amusement machines in the City in the amount of one hundred dollars (\$100.00) for the operation of ten (10) or more coin-operated amusement machines. For the operation of less than ten (10) coin-operated amusement machines, a license tax of ten dollars (\$10.00) per machine is hereby imposed.

The term "amusement operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine in the City; however, the term "amusement operator" shall not include a person owning less than three (3) such machines and operating such machines on property owned or leased by such person.

Amusement machine operators shall also be subject to retail merchants license tax on their share of revenues.

- (b) The coin machine operator's license tax imposed by subsection (a) shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor operators of devices or machines affording rides to children or for the delivery of newspapers.
- (c) The Commissioner shall prepare and issue a license which, when signed by the commissioner issuing such license, shall evidence the payment of the license tax.

Every operator shall furnish to the Commissioner a complete list of all machines on location and the address of each location on or before January 31 of each year. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §§28-36--38.

State Law Reference--Code of Virginia, §§58.1-3720, 58.1-3722.

SECTION 28-30. PENALTY.

Any person providing any such coin machines or other devices and failing to procure a license shall be guilty of a Class 3 misdemeanor for each offense and the machine or other device shall become forfeited to the City. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96)

Source--Former §28-39.

State Law Reference--Code of Virginia, §58.1-3723.

SECTION 28-31. BONDSMEN.

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Every person who shall, for compensation, enter into any bond or bonds for others, whether as a principal or surety, shall obtain a revenue license. No such professional bondsman or his agent shall enter into any such bond or bonds in the City until he shall have obtained such license. With the exception of any bondsman or his agent who has heretofore obtained a certificate and license under this section and whose certificate license and right to act as a bondsman continues to remain in full force and effect, no such license shall be issued unless and until the applicant shall have first obtained a certificate from the judge of the Circuit Court of the City of Winchester.

Such license shall be revoked for failure to comply with the terms of this chapter and may additionally constitute a Class 2 misdemeanor. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-40.

State Law Reference--Code of Virginia, §58.1-3724, §9.1-185

SECTION 28-32. COLLECTION AGENCIES.

For purposes of this chapter, any person whose business it is to collect claims, including notes, drafts and other negotiable instruments, on behalf of others, and to render an account of the same shall be deemed a collection agency. This section shall not apply, however, to a regularly licensed attorney-at-law.

No license hereunder shall be issued to any person desiring to act as a collection agent or agency in the City unless such person exhibits a current license or other evidence showing that the applicant has been duly licensed to act as a collection agent or agency by the Virginia Collection Agency Board. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-41.

State Law Reference-- Code of Virginia, §58.1-3725

SECTION 28-33. CARNIVALS, CIRCUSES, SPEEDWAYS; PENALTIES; CERTAIN RESTRICTIONS.

- (a) A license tax of five hundred dollars (\$500.00) is hereby imposed for each performance held in the City given by or upon carnivals, circuses or speedways which are operating within the limits of the City. Until such tax has been paid, the City shall have a lien upon the property of such carnival, circus or speedway to the

extent of the unpaid tax. For the purpose of this section, a performance shall be the entire time or number of days the business is operated in the City during a calendar year.

Every person which exhibits or gives a performance or exhibition of any of the shows, carnivals, or circuses, above described in this section, without the license required shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense.

In addition to any other license tax imposed by this section, a license tax of one thousand dollars (\$1,000.00) for each performance of a traveling circus, carnival or show giving performances in the City in the open air or in a tent or tents, within fifteen (15) days previous to, or during the week of, or within one (1) week after the time of holding any agricultural fair in the City is hereby imposed. The license taxes provided for in this section shall be assessed and paid before any performance is permitted to be held.

It shall be unlawful for any circus, carnival or show to publish or post in any way, in the City at any time within fifteen (15) days prior to the holding of such fair, in the City, advertising of the exhibition of any such circus, carnival or show.

A fine not to exceed two thousand dollars (\$2,000.00) for each offense of any person violating any provision of this section shall be imposed. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in the City.

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

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

The provisions of the preceding paragraph shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable

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or benevolent purposes by a company, association or persons, or a corporation, in the business of giving such exhibitions, no matter what terms of contract may be entered into or under what auspices such exhibition is given by such company, association or persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. Such tax shall not be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of such exhibition. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-44.

State Law Reference--Code of Virginia, §58.1-3728.

SECTION 28-34. PUBLIC UTILITIES.

Unless prohibited by Section 58.1-3731 of the Code of Virginia, 1950, as amended and effective January 1, 2001, the license tax for the privilege to any person to conduct a gas business or electric light business in the City shall be one-half of one per cent of the preceding year's gross receipts for service rendered. The license tax for the privilege of conducting a telephone service business or a telegraph business within the City shall be one-half of one per cent of the preceding year's gross receipts for service rendered. (Ord. No. 043-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96; Ord. No. 001-2001, 1-9-2001)

(Note: The effective date of this Ordinance shall be January 1, 2001.)

Source--Former §28-47.

SECTION 28-35. ALCOHOLIC BEVERAGES.

- (a) Every person who shall engage in the business of manufacturing, bottling, wholesaling or retailing alcoholic beverages shall obtain a license therefore and shall pay therefor the license tax hereinafter provided:
1. For each distiller's license, five hundred dollars (\$500.00) per annum; no such local license shall be required for any person who shall manufacture not more than five thousand (5,000) gallons of alcohol or spirits or both during such license year;
 2. For each winery license, five hundred dollars (\$500.00) per annum;

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3. For each brewery license, five hundred dollars (\$500.00) per annum;
4. For each bottler's license, one hundred fifty dollars (\$150.00) per annum;
5. For each wholesale beer license, two hundred dollars (\$200.00) per annum;
6. For each wholesale wine distributor's license, fifty dollars (\$50.00) per annum, and for each wholesale druggist license, ten dollars (\$10.00) per annum;
7. For each retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, twenty dollars (\$20.00) per annum;
8. For each retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license, twenty dollars (\$20.00) per annum;
9. For each fruit distiller's license, one thousand five hundred dollars (\$1,500.00) per annum.
10. For each person operating a restaurant who holds a mixed beverage restaurant and caterer's license, including restaurants located on premises of and operated by hotels or motels:
 - (i) Two hundred dollars (\$200.00) per annum for each restaurant with a seating capacity at tables for up to 100 persons;
 - (ii) Three hundred fifty dollars (\$350.00) per annum for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons;
 - (iii) Five hundred dollars (\$500.00) per annum for each restaurant with a seating capacity at tables for more than 150 persons;
 - (iv) Five hundred dollars (\$500.00) per annum for each caterer; and
 - (v) Mixed beverage special events licenses, ten dollars (\$10.00) for each day of each event.
11. A private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars (\$350.00) per annum.

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- (b) No license tax shall be either charged or collected for the privilege of selling wine and beer, beer or mixed beverages, in passenger airplanes, dining rooms and other designated rooms of boats, and in dining cars, buffet cars and club cars of trains, when carrying passengers and in rooms designated by the Alcohol Beverage Control Board of establishments of air carriers of passengers at airports in the City for consumption on the premises only.
- (c) The aforesaid license shall be as respectively defined by the act of the General Assembly, known as The Alcoholic Beverage Control Act, and the terms alcoholic beverages, alcohol, spirits, and wine, wherever used in this section shall reflect the meanings respectively prescribed by them by such act.
- (d) No license shall be issued to any person, unless such person shall hold or shall secure simultaneously therewith the proper state license provided for in the Alcoholic Beverage Control Act, Code of Virginia §4-1, *et seq.* If any person shall hold a City license without at the same time holding the proper state license, the City license, during the period when such person does not hold the proper state license, shall confer no rights, powers or privileges under the provisions of this article upon such person.
- (e) No alcoholic beverage license shall be prorated or transferable.
- (f) This tax shall be in addition to applicable license taxes based on gross receipts or gross purchases. In imposing retail merchants' license taxes measured by gross receipts the term "gross receipts" shall be construed to include receipts from the sale of alcoholic beverages by persons licensed under this section. In computing gross receipts, alcoholic beverages shall be included in the base for measuring such license taxes, the same as if the alcoholic beverages were nonalcoholic. No alcoholic beverages license levied under this section shall be construed as exempting any license from any merchant's license tax, and such merchant's license tax shall be in addition to the alcoholic beverage taxes levied under this section. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-52.

State Law Reference--Code of Virginia, §§4.1-233; 4.1- 205

SECTION 28-36. CREDIT FOR BEER WHOLESALERS.

In ascertaining the liability of a beer wholesaler to local merchants' license taxation under this chapter, and in computing the local wholesale merchants' license tax on such beer wholesaler, purchases of beer up to eighty-five thousand dollars (\$85,000.00) shall be disregarded. In ascertaining the liability of a wholesale wine distributor to local merchants' license taxation under this chapter, and in computing the local wholesale merchants' license tax on such wholesale wine distributor, purchases of wine up to ten

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thousand dollars (\$10,000.00) shall be disregarded. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-53.

State Law References--Code of Virginia, §§4.1-205; 4.1-233

SECTION 28-37. SUBJECTS NOT MENTIONED IN CHAPTER.

Nothing contained in this chapter shall be construed to repeal any tax imposed by ordinance for any subject not mentioned herein. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-24.

SECTION 28-38. VALIDITY AND SEVERABILITY.

Each part, section, subsection, paragraph, sentence, clause and phrase of this chapter is hereby declared severable. Should any part, section, subsection, paragraph, sentence, clause or phrase of this chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this chapter in its entirety or any part thereof other than that so declared to be invalid. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-27.

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