

Chapter 22 TAXATION¹

ARTICLE I. IN GENERAL

Secs. 22-1—22-18. Reserved.

ARTICLE II. AD VALOREM TAXES

DIVISION 1. GENERALLY

Sec. 22-19. Annual collections.

All real property taxes shall become due, in their entirety, on December 5 of the year for which assessed.
(Code 1988, § 12-4; Ord. of 12-4-2000; Ord. of 5-5-2003; Ord. of 12-31-2003; Ord. of 5-10-2021)

Secs. 22-20—22-41. Reserved.

DIVISION 2. LAND USE ASSESSMENT

Sec. 22-42. Legislative findings.

The town finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and having heretofore adopted a land use plan hereby ordains that such real estate shall be taxed in accordance with the provisions of Code of Virginia, title 58.1, chapter 32, article 4 (Code of Virginia, § 58.1-3229 et seq.) and of this division. The council further finds that because the county has made similar provisions in its ordinances, and the town makes use of the county's property assessments in levying its real estate tax, the town should defer to the county, to the extent possible, in the administration of this division.

(Code 1988, § 12-1; Ord. of 12-4-2000)

Sec. 22-43. Application.

- (a) Any owner of land in the town may apply to the town under Code of Virginia, § 58.1-3234, for use value assessment for real estate devoted to agricultural use, real estate devoted to horticultural use, real estate

¹State law reference(s)—Business, profession, occupational license tax, Code of Virginia, § 58.1-3700 et seq.; certain excise taxes permitted, Code of Virginia, § 58.1-3840; transient occupancy tax, Code of Virginia, § 58.1-3819.

devoted to forest use, or real estate devoted to open-space use, within the meaning of Code of Virginia, § 58.1-3230.

- (b) Upon request, the treasurer shall supply appropriate forms. Alternatively, such an owner may make a similar application to the county under section 7-33 et seq., of the county code. Subject to section 22-44(b), the town will deem such an application to be an application for town tax relief as well.

(Code 1988, § 12-2; Ord. of 12-4-2000)

Sec. 22-44. Approval; town authority.

- (a) Subject to subsection (b) of this section, the county's approval of the application shall ipso facto allow use value assessment for town taxes.
- (b) The town, not the county, is ultimately responsible for determining eligibility for use value assessment for town taxes. Any approval (or denial) of an application by the county shall be subject to review and reversal by the town (insofar as town taxes are concerned). Further, the treasurer may require that a separate application be filed. With respect to an application filed with the town, the county's procedures, as they are currently set forth in section 7-33 et seq., of the county code, shall apply to the process, mutatis mutandis.

(Code 1988, § 12-3; Ord. of 12-4-2000)

Secs. 22-45—22-61. Reserved.

ARTICLE III. MEALS TAX²

Sec. 22-62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cater means the furnishing of food, beverages, or both on the premises of another, for compensation.

Food means all food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food establishment means any place in or from which food or food products are prepared, packaged, sold or distributed in the town, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater; delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal means any prepared food or drink which is offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein, shall be included, whether

²State law reference(s)—Tax on meals authorized, Code of Virginia, § 58.1-3840.

intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Treasurer means the treasurer and any duly designated deputies, assistants, inspectors or other employees.

(Code 1988, § 13-1; Ord. of 6-1-2003; Ord. of 6-9-2003)

State law reference(s)—Tax authority, Code of Virginia, § 58.1-3840.

Sec. 22-63. Levy.

There is hereby imposed and levied by the town on each person a tax at the rate of five percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

(Code 1988, § 13-2; Ord. of 6-1-2003; Ord. of 6-9-2003; Ord. of 6-11-2007; Ord. of 7-1-2007)

Sec. 22-64. Collection of tax by seller.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collection shall be deemed to be held in trust for the town.

(Code 1988, § 13-3; Ord. of 6-1-2003; Ord. of 6-9-2003)

Sec. 22-65. Exemptions; limits on application.

- (a) No such taxes on meals may be imposed on food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the state special supplemental food program for women, infants, and children.
- (b) No such taxes on meals may be imposed when sold or provided by:
 - (1) Restaurants, as such term is defined in Code of Virginia, § 35.1-1, to their employees as part of their compensation when no charge is made to the employee;
 - (2) Volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on the first \$100,000.00 of gross receipts per calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes;
 - (3) Churches that serve meals for their members as a regular part of their religious observances;
 - (4) Public or private elementary or secondary schools or institutions of higher education to their students or employees;
 - (5) Hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof;

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- (6) Day care centers;
 - (7) Homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;
 - (8) Age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees; or
 - (9) Sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500.00. For the exemption described in this subsection, the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the town.
- (c) Exemptions.
- (1) The tax shall not be levied on meals:
 - a. When used or consumed and paid for by the commonwealth, any political subdivision of the commonwealth, or the United States;
 - b. Provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or
 - c. Provided by private establishments that contract with the appropriate agency of the commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.
 - (2) In addition, as set forth in Code of Virginia, § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the state department for the blind and vision impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.
- (d) Notwithstanding any other provision of this section, no tax shall be levied under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 USC 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

(Code 1988, § 13-4; Ord. of 6-1-2003; Ord. of 6-9-2003; Ord. of 10-14-2013)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3840.

Sec. 22-66. Gratuities and service charges.

No such taxes on meals may be imposed on:

- (1) That portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal;
- (2) That portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price.

(Code 1988, § 13-5; Ord. of 6-1-2003; Ord. of 6-9-2003)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3840.

Sec. 22-67. Report of taxes collected; remittance; preservation of records.

- (a) It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article.
- (b) Reports and tax payments for the months of January, February and March shall be made on or before the following April 20. Reports and tax payments for the months of April, May and June shall be made on or before the following July 20. Reports and tax payments for the months of July, August and September shall be made on or before the following October 20. Reports and tax payments for the months of October, November and December shall be made on or before the following January 20.
- (c) Further, every such person shall maintain records supporting the reports required by subsection (a) of this section. Such records shall be kept and preserved for a period of five years. The treasurer shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.

(Code 1988, § 13-6; Ord. of 6-1-2003; Ord. of 6-9-2003)

Sec. 22-68. Penalty.

- (a) *General assessment.* Should any tax due under this article not be paid when due, the treasurer shall assess a penalty according to the following schedule:
 - (1) Ten percent of the tax due, if payment is made within one month of the due date;
 - (2) 15 percent of the tax due, if payment is made more than one month after the due date, but not more than two months afterward;
 - (3) 20 percent of the tax due, if payment is made more than two months after the due date, but not more than three months afterward;
 - (4) 25 percent of the tax due, if payment is made more than three months afterward.
- (b) *Interest.* In addition to the penalties provided for in subsection (a) of this section, interest shall accrue on any delinquent taxes at the annual rate of ten percent, beginning on the day after the due date. Likewise, any meals taxes paid on an erroneous assessment shall be refunded with interest at the rate of ten percent per annum.
- (c) *Exemption.* Penalties and interest shall not be imposed if the failure to pay the tax was not the fault of the taxpayer, as determined by the treasurer.
- (d) *Attorney's fees.* Should the town consult an attorney with respect to the collection of delinquent meals taxes, the taxpayer shall also be responsible for the town's attorney's fees, in a reasonable amount not to exceed 20 percent of the taxes collected by, or upon the advice of, the attorney.
- (e) *Criminal sanctions.* Any person willfully failing or refusing to file a return or under this article or failing to collect or pay over the tax imposed hereby, shall, upon conviction thereof, be guilty of a Class 1 misdemeanor; provided, however, that if the assessed tax is \$1,000.00 or less, such violation shall be a Class 3 misdemeanor.

(Code 1988, § 13-7; Ord. of 6-1-2003; Ord. of 6-9-2003; Ord. of 7-1-2003; Ord. of 6-12-2006; Ord. of 7-1-2006)

State law reference(s)—Similar provisions, Code of Virginia, §§ 58.1-3906, 58.1-3907, 58.1-3916.

Sec. 22-69. Regulations.

The treasurer is authorized, but not required to, adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection, and remittance of the tax levied by this article. A copy of those rules and regulations shall be on file and available for public examination in the treasurer's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this article.

(Code 1988, § 13-8; Ord. of 6-1-2003; Ord. of 6-9-2003)

Secs. 22-70—22-96. Reserved.

ARTICLE IV. BUSINESS, PROFESSIONAL, OCCUPATIONAL LICENSE TAXES³

Sec. 22-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliated group means:

- (1) One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:
 - a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includable corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and
 - b. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this definition, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "corporation subject to inclusion" 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 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and
 - b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 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.

³State law reference(s)—Business, profession, occupational license tax, Code of Virginia, § 58.1-3700 et seq.

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

- (3) Two or more entities if such entities satisfy the requirements in subsection (1) or (2) of this definition as if they were corporations and the ownership interests therein were stock.

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.

Assessor or assessing official means the town treasurer.

Base year means the calendar year preceding the license year, subject to the provisions of section 22-105(c).

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: advertising or otherwise holding oneself out to the public as being engaged in a particular business; or filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Contractor shall have the meaning prescribed in Code of Virginia, § 58.1-3714(B), as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for 30 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 subject to licensure as a peddler or itinerant merchant.

Entity means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the commonwealth or another state.

Financial services.

- (1) 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 article.

Broker means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

Commodity means staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

Dealer means, for purposes of this article, 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.

Security means, for purposes of this article, the same as in the Securities Act (Code of Virginia, § 13.1-501 et seq.), or in similar laws of the United States regulating the sale of securities.

(2) Those engaged in rendering financial services include, without limitation, the following:

- a. Buying installment receivables;
- b. Chattel mortgage financing;
- c. Consumer financing;
- d. Credit card services;
- e. Credit unions;
- f. Factors;
- g. Financing accounts receivable;
- h. Industrial loan companies;
- i. Installment financing;
- j. Inventory financing;
- k. Loan or mortgage brokers;
- l. Loan or mortgage companies;
- m. Safety deposit box companies;
- n. Security and commodity brokers and services;
- o. Stockbrokers; and
- p. Working capital financing.

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.

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

Personal services means rendering for compensation any repair, personal, business or other services not specifically classified as financial, real estate or professional service under this article, or rendered in any other business or occupation not specifically classified in this article unless exempted from local license tax by Code of Virginia, title 58.1.

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 state department of taxation may list in the business, professional and occupational license guidelines promulgated pursuant to Code of Virginia, § 58.1-3701. 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 term "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.

Purchases means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term "purchases" shall also include the cost of manufacture of all goods, wares and merchandise manufactured by 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 (Code of Virginia, § 58.1-3700.1).

Real estate services means rendering a service with respect to the purchase, sale, lease, rental, or appraisal of real property. Such services include, but are not limited to, the following:

- (1) Appraisers of real estate;
- (2) Escrow agents, real estate;
- (3) Fiduciaries, real estate;
- (4) Real estate agents, brokers and managers;
- (5) Real estate selling agents; and
- (6) Rental agents for real estate.

Retailer or retail merchant means 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.

Security broker means a "broker," as such term is defined under the Securities Exchange Act of 1934 (15 USC 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

Security dealer means a "dealer" as such term is defined under the Securities Exchange Act of 1934 (15 USC 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

Services means things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

Wholesale or wholesale merchant means 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.

(Code 1988, § 3.1-2; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997; Ord. of 3-11-2013; Ord. of 1-1-2014)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3700.1.

Sec. 22-98. License requirement.

- (a) Every person engaging in any business, trade, profession, occupation or calling (collectively hereinafter "a business"), as defined in this article, in the town, unless otherwise exempted by law, shall apply for a license for each such business if such person maintains a definite place of business in this town, such person does not maintain a definite place of business anywhere, but does reside in this town, which for the purposes of this article, shall be deemed a definite place of business, or there is no definite place of business but such person operates amusement machines, or is classified as a peddler or itinerant merchant, carnival or circus

as specified in Code of Virginia, § 58.1-3717, 58.1-3718, or 58.1-3728, respectively, or is a contractor subject to Code of Virginia, § 58.1-3715, or is a public service corporation subject to Code of Virginia, § 58.1-3731.

- (b) A separate license shall be required for each definite place of business and for each 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:
 - (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 the town;
 - (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 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 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.

(Code 1988, § 3.1-3; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997; Ord. of 10-14-2013; Ord. of 6-8-2015)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(1).

Sec. 22-99. 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.
- (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.
- (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.
- (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 30 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. For the purposes of this subsection, the following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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

- (e) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later, interest shall be paid on the refund of any tax paid under this article 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 Code of Virginia, § 58.1-3916.
- (f) 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 30 days from the date of the payment that created the refund, or the due date of the tax, whichever is later.

(Code 1988, § 3.1-4; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(2).

Sec. 22-100. Situs of gross receipts.

- (a) *General rule.* Whenever the tax imposed by this article 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 Code of Virginia, § 58.1-3715.
 - (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler 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, 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 the 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.
- (c) *Agreements.* The assessor may enter into agreements with any other political subdivision of the state 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 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the department of taxation pursuant to Code of Virginia, § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of Code of Virginia, § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of the state have assessed taxes on gross receipts that may create a double assessment within the meaning of Code of Virginia, § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

(Code 1988, § 3.1-5; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(3).

Sec. 22-101. Limitations and extensions.

- (a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, 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.

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- (b) Notwithstanding Code of Virginia, § 58.1-3903, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.
- (c) The period for collecting any local license tax shall not expire prior to the period specified in Code of Virginia, § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to section 22-102(b) or (d), or two years after the final decision in a court application pursuant to Code of Virginia, § 58.1-3984, or similar law for which collection has been stayed, whichever is later.

(Code 1988, § 3.1-6; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(4).

Sec. 22-102. Appeals and rulings.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Amount in dispute means, when used with respect to taxes due or assessed, 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 was previously assessed, arising out of the local assessing official's:

- (1) Examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment;
- (2) Determination regarding the rate or classification applicable to the licensable business;
- (3) Assessment of a local license tax when no return has been filed by the taxpayer; or
- (4) Denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

The term "appealable event" includes a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the town, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the town.

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:

- (1) Not well grounded in fact;
- (2) Not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (3) 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
- (4) Otherwise frivolous.

Jeopardize by delay means a finding, based on specific facts, that a taxpayer desires to:

- (1) Depart quickly from the locality;

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- (2) Remove his property therefrom;
 - (3) Conceal himself or his property; or
 - (4) 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.*
 - a. 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.
 - b. The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality. However, the appeal of the classification of the business shall not apply to any license year for which the tax commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.
 - (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. For purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's business, the town shall maintain on its website the specific procedure to be followed in the town with regard to such appeal and the name and address to which the appeal should be directed.
 - (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 relating to any assessment by the treasurer shall be suspended until a final determination is issued by the treasurer, unless the treasurer determines that collection would be jeopardized by delay, as defined in this section; the taxpayer has not responded to a request for relevant information after a reasonable time; or the appeal is frivolous as defined in subsection (a) of this section. Interest shall accrue in accordance with the provisions of section 22-99(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 or classification of the taxpayer's business to the tax commissioner in accordance with the provisions of subsection (c) of this section. The tax commissioner shall not consider an appeal filed pursuant to the

provisions of this subsection 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 or that has received a determination with regard to the person's appeal of the license classification applicable to the person's business, upon an administrative appeal to the treasurer pursuant to subsection (b) of this section, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination 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 Code of Virginia, § 58.1-1821, and the tax commissioner pursuant to Code of Virginia, § 58.1-1822, may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.
- (2) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the tax commissioner under subsection (c)(1) of this section, collection activity with respect to the amount in dispute relating to any assessment by the treasurer shall be suspended until a final determination is issued by the tax commissioner, unless the treasurer determines that collection would be jeopardized by delay, as defined in this section; 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 determines that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of section 22-99(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 subsection (c)(1) of this section 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 subsection (c)(1) of this section, 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 subsection.
- (4) 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. 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.
- (5) 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 certify the new assessment and 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.

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- (6) 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 or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, 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 new assessment or refund amount shall be certified and 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 or determination of the amount of the refund.

(d) *Judicial review of determination of tax commissioner.*

- (1) *Judicial review.* Following the issuance of a final determination of the tax commissioner pursuant to subsection (c) of this section, the taxpayer or treasurer may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to Code of Virginia, § 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 Code of Virginia, § 58.1-3984, of a determination of the tax commissioner pursuant to subsection (c) of this section, and upon payment of the amount of the tax relating to any assessment 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 the taxpayer's application for judicial review is frivolous, as defined in this section; collection would be jeopardized by delay, as defined in this section; or 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 or the application does not relate to any assessment.
 - d. The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Code of Virginia, § 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 subsection shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to Code of

Virginia, § 58.1-3984, without prior exhaustion of the appeals provided by subsections (b) and (c) of this section.

- (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 subsection (c) of this section 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 Code of Virginia, § 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 Code of Virginia, § 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 section 22-99(e), but no further penalty shall be imposed while collection action is suspended.

(e) *Rulings.*

- (1) 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. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the town.
- (2) 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 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 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.

(Code 1988, § 3.1-7; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997; Ord. of 4-9-2007)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(5)—(8).

Sec. 22-103. 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.

(Code 1988, § 3.1-8; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3703.1(A)(9).

Sec. 22-104. 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 state retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or amounts received 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.
- (c) 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 (or its shareholders, partners or members in lieu of the taxpayer) is liable for an income or other tax based upon income.

(Code 1988, § 3.1-9; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-3732.

Sec. 22-105. License fee and tax.

- (a) Every person or business subject to licensure under this article shall be assessed and required to pay annually a fee for the issuance of such license in the amount as provided on the town fee schedule.
- (b) Except as may be specifically provided in Code of Virginia, § 58.1-3706, and except as provided in Code of Virginia, §§ 58.1-3712 and 58.1-3713, 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 article at a rate set forth as follows, for the class of enterprise listed. However, the fee imposed by subsection (a) of this section shall be credited against the tax imposed by this subsection, 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 \$100.00 of gross receipts;
 - (2) For retailers, \$0.15 per \$100.00 of gross receipts;
 - (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 \$100.00 of gross receipts;
 - (4) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, \$0.20 per \$100.00 of gross receipts;
 - (5) For wholesalers, \$0.05 per \$100.00 of purchases;
 - (6) For carnivals, circuses and speedways, \$100.00 for each performance held in this town;
 - (7) For fortune tellers, clairvoyants and practitioners of palmistry, \$1,000.00 per year;
 - (8) For itinerant merchants or peddlers, \$200.00 per year, except that there shall be no fee for festival merchants;
 - (9) For savings and loan associations and credit unions, \$50.00 per year;
 - (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), \$30.00 per year;
 - (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, \$1,000.00 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, \$1,000.00 per year;
 - c. For each brewery license, \$1,000.00 per year;

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- d. For each bottler's license, \$500.00 per year;
 - e. For each wholesale beer license, \$75.00 per year;
 - f. For each wholesale wine distributor's license, \$50.00 per year;
 - g. For each wholesale druggist's license, \$10.00 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, \$25.00 per year;
 - k. For each retail off-premises beer license, \$25.00 per year;
 - l. For each fruit distiller's license, \$1,500.00 per year;
 - m. For each hospital license, \$10.00 per year;
 - n. For each banquet license, \$5.00 per year;
- (12) Coin-operated amusement and other machines:
- a. For the operators of coin amusement machines, \$200.00 per year or \$20.00 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 subsection (b)(12)a of this section, gross receipts from machines vending merchandise shall be taxed under subsection (b)(2) of this section. gross receipts from coin-operated amusement machines shall be taxed under subsection (b)(4) of this section;
- (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;
- (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.
- (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 subsection (c)(l) of this section.
 - (3) Contractors taxed under Code of Virginia, § 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.

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- (4) Public service corporations: Corporations taxed under subsection (b)(13) or (b)(14) of this section may elect to pay a license tax based on the preceding fiscal year.

(Code 1988, § 3.1-10; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 11-4-1996; Ord. of 9-8-1997; Ord. of 12-12-2011; Ord. of 4-14-2014; Ord. of 6-8-2020)

State law reference(s)—Alcoholic beverage licenses, Code of Virginia, § 4-38; limitation on rates, Code of Virginia, § 58.1-3706; authority to levy severance tax on gas, Code of Virginia, § 58.1-3712; local gas road improvement tax, Code of Virginia, § 58.1-3713; contractors, Code of Virginia, § 58.1-3715; tax authorized on wholesalers, Code of Virginia, § 58.1-3716; tax authorized on peddlers at wholesale, limitations, Code of Virginia, §§ 58.1-3718, 58.1-3719; tax on amusement machines, etc., Code of Virginia, § 58.1-3720; tax on coin machine operations, Code of Virginia, § 58.1-3721; license tax on carnivals, circuses, etc., Code of Virginia, § 59.1-3728; rate limitations, Code of Virginia, § 58.1-3731.

Secs. 22-106—22-123. Reserved.

ARTICLE V. TRANSIENT OCCUPANCY TAX⁴

Sec. 22-124. Tax imposed.

There is hereby levied and imposed on each transient a tax equivalent to 4.5 percent of the total amount paid for lodging, by or for any such transient, to any lodging place.

(Code 1988, § 3.2-1; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-125. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Lodging means any room or space furnished to any transient.

Lodging place means any public or private hotel, inn, hostelry, house, townhouse, apartment, bed and breakfast, tourist cabin, camping grounds, motel, roominghouse, or any other building or facility of any kind within the town offering lodging, for compensation, to any transient.

Transient means any person who, for any period of fewer than 30 consecutive days, either at his own expense or at the expense of another, obtains lodging in any lodging place.

(Code 1988, § 3.2-2; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-126. Collection.

- (a) The transient occupancy tax must be added to the amount of the purchase, and then collected by the seller and paid by the purchaser at the time such charge is due.
- (b) All transient occupancy tax collections are to be held in trust for the town.

⁴State law reference(s)—Transient occupancy tax, Code of Virginia, § 58.1-3819 et seq.

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- (c) The wrongful and fraudulent use, disposition, or embezzlement of such collections constitutes embezzlement pursuant to Code of Virginia, § 18.2-111, as amended.

(Code 1988, § 3.2-3; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-127. Reporting.

- (a) Every person required to pay the transient occupancy tax imposed by this article must keep and maintain records of all purchases taxable under this article, for a period of five years from the date of each purchase, setting forth information as the treasurer may require, including, but not limited to, the following:
- (1) The date of all taxable purchases;
 - (2) The amount of all taxable purchases;
 - (3) The amount of tax levied on all purchases; and
 - (4) The amount of tax collected on all purchases.
- (b) The treasurer has the power to examine and duplicate all such records at reasonable times, without unreasonably interfering with any business, for the purpose of enforcing the provisions of this article.
- (c) Every person required to pay the transient occupancy tax imposed by this article must, by the 20th day of the following month, file a report with the treasurer, setting forth information as the treasurer may require, including, but not limited to, the following:
- (1) The monthly gross purchases of transient occupancy;
 - (2) The monthly gross tax levied on all purchases; and
 - (3) The monthly gross tax collected on all purchases.

(Code 1988, § 3.2-4; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-128. Payment.

- (a) The seller must pay all transient occupancy tax collections to the town as provided in this article.
- (b) The seller may deduct from transient occupancy tax collections a commission of three percent of the amount of transient occupancy taxes collected if the seller timely collects, reports, and pays the transient occupancy taxes.

(Code 1988, § 3.2-5; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-129. Interest and penalties.

Any person who willfully fails or refuses to collect, report, or pay the transient occupancy tax as required under this article within the time required must also pay a penalty in the amount of ten percent of the transient occupancy tax, or a minimum of \$10.00 if such failure is not more than 30 days in duration, and thereafter, must pay interest in the amount of ten percent annually.

(Code 1988, § 3.2-6; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-130. Enforcement.

- (a) If any person fails or refuses to timely collect, report, or pay the transient occupancy tax imposed under this article, or if the treasurer has reasonable cause to believe that an erroneous statement has been filed, the treasurer will obtain facts and information on which to base an estimate of the tax due to the town and will investigate and take testimonial and other evidence as may be necessary, provided that notice and opportunity to be heard will be given to any person who may become liable for the amount owed prior to any determination by the treasurer.
- (b) As soon as the treasurer has procured whatever facts and information as may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or pay such tax, the treasurer will proceed to determine and assess against such person the tax, penalty, and interest provided in this article, and will notify the person by certified or registered mail sent to his last known address of the amount of such tax, penalty, and interest. The total amount thereof is payable ten days after the date such notice is given.

(Code 1988, § 3.2-7; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-131. Violation.

- (a) Any person willfully failing or refusing to collect, report, or pay the transient occupancy tax as required under this article is guilty of a Class 1 misdemeanor, except that any such person is guilty of a Class 3 misdemeanor if the amount of tax lawfully assessed is \$1,000.00 or less.
- (b) Each violation of this article constitutes a separate offense, and conviction of any such violation does not relieve any person from the collection, reporting, or payment of the transient occupancy tax imposed under this article.

(Code 1988, § 3.2-8; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-132. Records to be kept by person liable for collection and payment of tax.

It is the duty of every person liable for the collection and payment to the town of any tax imposed by this article to keep and to preserve for three years such suitable records as may be necessary to determine and show accurately the amount of such tax as he may have been responsible for collecting and paying to the town. The treasurer may inspect such records at all reasonable times.

(Code 1988, § 3.2-9; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-133. Tax immediately due and payable upon cessation of business.

Whenever any person required to collect and remit the tax imposed and levied by this article goes out of business, disposes of his business or otherwise ceases to operate, all of such taxes collected, and any tax payable under this article, must then be reported and remitted to the treasurer of the town.

(Code 1988, § 3.2-10; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Sec. 22-134. Exemptions from tax.

No tax is payable under this article on charges for lodging paid to any hospital, medical clinic, convalescent home, or home for the aged.

(Code 1988, § 3.2-11; Ord. of 12-6-1993; Ord. of 7-10-1995; Ord. of 9-8-1997; Ord. of 6-8-2020)

Secs. 22-135—22-151. Reserved.

ARTICLE VI. MOTOR VEHICLE LICENSE FEE⁵

Sec. 22-152. License fee imposed by town.

- (a) There is imposed by the town council a license fee upon every motor vehicle, trailer, and semitrailer regularly garaged, stored, or parked in the town, and used or intended to be used upon the streets and highways of this town.
- (b) The term "motor vehicle" includes, but is not limited to, automobiles, trucks and motorcycles. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office or commercial space shall be considered a part of a motor vehicle. For the purposes of this section, neither a bicycle nor a moped shall be deemed to be a motor vehicle. The term "moped" means as it is defined in Code of Virginia, § 46.2-100.

(Code 1988, § 2-66; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011)

State law reference(s)—Definitions, Code of Virginia, § 46.2-100; license tax or fee authorized, Code of Virginia, § 46.2-752.

Sec. 22-153. Who must procure town license.

Every firm, corporation, partnership or any other business entity, or combination thereof, or person who owns a motor vehicle, trailer, or semitrailer which is normally garaged, stored or parked in the town shall make application for and procure a motor vehicle license from the town. If it cannot be determined where the motor vehicle, trailer, or semitrailer is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

(Code 1988, § 2-67; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011)

State law reference(s)—Similar provisions, Code of Virginia, § 46.2-752.

Sec. 22-154. Exceptions.

This article shall not apply to:

- (1) Motor vehicles, trailers, or semitrailers owned by a nonresident and used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation or as a TNC partner vehicle, as defined in Code of Virginia, § 46.2-2000, and not otherwise for hire or for the conduct of any business or occupation other than that set forth in subsection (2) of this section.

⁵State law reference(s)—Authority to levy license tax or fee, Code of Virginia, § 46.2-752 et seq.

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- (2) Motor vehicles, trailers, or semitrailers owned by a nonresident and used for transporting into and within the town for sale in person or by his employees of wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale.
 - (3) Motor vehicles, trailers, or semitrailers owned by an officer or employee of the commonwealth who is a nonresident of the town and who uses the vehicle in the performance of his duties for the commonwealth under an agreement for such use.
 - (4) Motor vehicles, trailers, or semitrailers kept by a dealer or manufacturer for sale or for sales demonstration.
 - (5) Motor vehicles, trailers, or semitrailers operated by a common carrier of persons or property operating between cities and towns in the commonwealth and not in intra-city transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intra-city transportation. For purposes of this section, the term "common carrier" is defined as it is defined in Code of Virginia, § 46.2-755.
 - (6) A maximum of one motor vehicle owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran's exemption from the department of motor vehicles and has been issued a disabled veteran's motor vehicle license plate.
 - (7) Any daily rental passenger car as defined in Code of Virginia, § 58.1-2401, the rental of which is subject to the tax imposed by Code of Virginia, § 58.1-1736(A)(2).
 - (8) Motor vehicles, trailers, or semitrailers when a similar tax or fee is imposed by the county, city, or town wherein the vehicle is normally garaged, stored or parked.
 - (9) The motor vehicle, trailer, or semitrailer is inoperable and unlicensed pursuant to Code of Virginia, § 46.2-734.
 - (10) The motor vehicle, trailer, or semitrailer qualifies and is licensed as an antique vehicle pursuant to Code of Virginia, § 46.2-730.
 - (11) The motor vehicle, tractor or semitrailer is mandatorily exempted from local motor vehicle license tax by state law, once the owner has submitted acceptable documentation that the exemption applies.

(Code 1988, § 2-68; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011; Ord. of 8-13-2012)

State law reference(s)—Similar provisions, Code of Virginia, § 46.2-755.

Sec. 22-155. Payment of personal property taxes required.

No motor vehicle, trailer or semitrailer shall be licensed unless and until the applicant for such license produces before the town treasurer satisfactory evidence that all personal property taxes upon the motor vehicle, trailer or semitrailer to be licensed have been paid, which have been properly assessed or are assessable against the applicant by this town.

(Code 1988, § 2-69; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011)

State law reference(s)—Similar provisions, Code of Virginia, § 46.2-752.

Sec. 22-156. Record date; situs.

- (a) The license fee is levied and shall be collected from every person owning a motor vehicle, trailer or semitrailer ("vehicle") which is normally garaged, stored or parked within the town as of the record date (excluding vehicles which are not operated on town streets during the license year).

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- (b) The record date is January 1 of the license year.
 - (c) If it cannot be determined where the vehicle is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the vehicle is a full-time student attending an institution of higher education, the situs, for the purpose of imposing this license fee, shall be the domicile of the student, provided the student has presented sufficient evidence that he has paid a personal property tax on the vehicle in his domicile.

(Code 1988, § 2-70; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011; Ord. of 9-12-2011; Ord. of 8-13-2012)

State law reference(s)—Similar provisions, Code of Virginia, § 46.2-752.

Sec. 22-157. License year.

The license year for the licensing of vehicles under this article shall commence on January 1 of each year and shall expire on December 31 of the same calendar year.

(Code 1988, § 2-72; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011; Ord. of 8-13-2012)

Sec. 22-158. Amount of fee.

The amount of such annual license fee shall be as established by the town council from time to time.

(Code 1988, § 2-73; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011)

Sec. 22-159. Invoice for license fee; due date.

The treasurer will charge the license fee prescribed by this article for each motor vehicle, trailer, or semitrailer subject to the license fee. The fee will be due December 5 of the license year. Vehicle owners or lessees, who have served outside of the United States in the armed services of the United States shall have a 90-day grace period, beginning on the date they are no longer serving outside the United States, in which to pay the fee imposed by this article.

(Code 1988, § 2-74; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011; Ord. of 8-13-2012)

Sec. 22-160. Penalties.

- (a) If any license fee imposed by this article is not paid by the due date, there shall be added to such license fee a delinquent charge in the amount provided on the town fee schedule per vehicle to be assessed and paid along with the license fee.
- (b) Any violation of this article, including the failure to obtain the license as required herein, shall be punishable as a Class 4 misdemeanor.
- (c) The treasurer is authorized to enter into an agreement with the commissioner of the department of motor vehicles under which the commissioner will refuse to issue or renew any vehicle registration of any applicant who has not paid the license fee required by this section, tangible personal property tax or parking citations. Any fee charged by the commissioner shall be added to the delinquent tax bill or the amount of the parking citation.

(Code 1988, § 2-76; Ord. of 4-5-1999; Ord. of 8-8-2010; Ord. of 7-11-2011; Ord. of 8-13-2012)

State law reference(s)—Local license fee payment required before issuance of state registration and renewal, Code of Virginia, § 46.2-752(J); authority to declare unlawful for any owner or operator of a motor vehicle, trailer, or semitrailer to fail to obtain and to display the local license, Code of Virginia § 46.2-752(G).

Secs. 22-161—22-188. Reserved.

ARTICLE VII. BANK FRANCHISE TAX⁶

Sec. 22-189. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bank means any incorporated bank, banking association, savings bank that is a member of the Federal Reserve System, or trust company organized by or under the authority of the laws of the commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the commonwealth or having a charter which designates any place within the commonwealth as the place of its principal office, and any bank which establishes and maintains a branch in this commonwealth under Code of Virginia, § 6.2-836 et seq., or 6.2-849 et seq., whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the commonwealth is authorized to impose a tax. The term "bank" shall exclude all corporations organized under the laws of other states and doing business in the commonwealth, corporations organized not as banks under the laws of the commonwealth and all natural persons and partnerships.

Bank holding company means any corporation that is organized under state laws, is doing business in the commonwealth, and is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.

Net capital means a bank's net capital computed pursuant to Code of Virginia, § 58.1-1205.

(Code 1988, § 4-1)

State law reference(s)—Similar definitions, Code of Virginia, § 58.1-1201.

Sec. 22-190. Imposition of franchise tax.

Pursuant to the provisions of Code of Virginia, § 58.1-1209, there is hereby imposed upon each bank located within the boundaries of this town a tax on net capital equaling 80 per centum of the state rate of franchise tax set forth in Code of Virginia, § 58.1-1204. If such bank also has offices that are located outside the corporate limits of the town, the tax shall be apportioned as provided by Code of Virginia, § 58.1-1211.

(Code 1988, § 4-2)

Sec. 22-191. Filing of return and payment of tax.

- (a) On or after January 1 of each year, but not later than March 1 of any such year, all banks whose principal offices are located within this town shall prepare and file with the town treasurer a return, as provided by

⁶State law reference(s)—Town bank franchise tax, Code of Virginia, § 58.1-1209.

law, in duplicate which shall set forth the tax on net capital computed pursuant to Code of Virginia, § 58.1-1200 et seq. The town treasurer shall certify a copy of such filing of the bank's return and schedule and shall forthwith transmit such certified copy to the state department of taxation.

- (b) In the event that the principal office of a bank is located outside the boundaries of this town and such bank has branch offices located within this town, in addition to the filing requirements set forth in subsection (a) of this section, any bank conducting such branch business shall file with the town treasurer or appropriate assessing officer of this town a copy of the real estate deduction schedule, apportionment and other items which are required by Code of Virginia, §§ 58.1-1207, 58.1-1211 and 58.1-1212.
- (c) Each bank, on or before June 1 of each year, shall pay into the treasurer's office (or other appropriate official of the town) all taxes imposed pursuant to this article.

(Code 1988, § 4-3)

State law reference(s)—Similar provisions, Code of Virginia, § 58.1-1207.

Sec. 22-192. Penalty upon bank for failure to comply with article.

Any bank which shall fail or neglect to comply with any provision of this article shall be subject to a penalty of five percent of the tax due, which fine shall be recovered upon motion, after five days' notice in the circuit court of this town. The motion shall be in the name of the commonwealth and shall be presented by the attorney for the commonwealth of this locality.

(Code 1988, § 4-5)

State law reference(s)—Similar definitions, Code of Virginia, § 58.1-1216.

Secs. 22-193—22-222. Reserved.

ARTICLE VIII. CONSUMER UTILITY TAX⁷

DIVISION 1. GENERALLY

Sec. 22-223. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CCF means the volume of gas at standard pressure and temperature in units of 100 cubic feet.

Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas in the town.

Gas utility means a public utility authorized to furnish natural gas service in the state.

Kilowatt hours (kWh) delivered means 1,000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called "cogenerators") as defined in Code of Virginia, § 56-594. The term "kilowatt hours (kWh) delivered" means kWh

⁷State law reference(s)—Consumer utility taxes, Code of Virginia, § 58.1-3814 et seq.

supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.

Pipeline distribution company means a person, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

Provider of billing services means the person who bills a consumer for electric services rendered or a gas utility or pipeline distribution company which delivers natural gas to a consumer. If both the service provider and another person separately and directly bill a consumer for electricity service or a gas utility or pipeline distribution company which delivers natural gas to a consumer, then the service provider shall be considered the provider of billing services.

Residential consumer means the owner or tenant of property used primarily for residential purposes, including, but not limited to, apartment houses and other multiple-family dwellings.

Service provider means a person who delivers electricity to a consumer or a gas utility or pipeline distribution company which delivers natural gas to a consumer.

Used primarily means the larger portion of the use for which electric or natural gas utility service is furnished. (Code 1988, § 5-16; Ord. of 10-2-2000)

Sec. 22-224. Billing, collection and remittance of tax.

On a monthly basis, the service provider shall bill the consumer tax to all users who are subject to the tax and to whom it delivers services subject to this article. Such taxes shall be paid by the service provider to the town in accordance with Code of Virginia, §§ 58.1-2901 and 58.1-3814(F) and (G). If any consumer receives and pays for such services but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for service and the tax and remit the tax portion to the town. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the town.

(Code 1988, § 5-17; Ord. of 10-2-2000)

Sec. 22-225. Violations.

Any consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this article, and any officer, agent or employee of any service provider violating the provisions of this article shall, upon conviction thereof, be punished by a fine of not less than \$100.00 nor more than \$1,000.00, or by imprisonment in jail for not more than 30 days, or by both such fine and imprisonment. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this article.

(Code 1988, § 5-18; Ord. of 10-2-2000)

Sec. 22-226. Records of service providers.

Every service provider shall keep complete records showing any purchases of electricity or natural gas by consumers in the town. The records shall show the sum charged to each consumer with respect to each purchase, the date thereof, the date of payment therefore, and the amount of tax imposed hereunder. Upon reasonable

notice from the town treasurer or his designee, such records will be made available for inspection and copying at the office of the town treasurer or other reasonable location.

(Code 1988, § 5-19; Ord. of 10-2-2000)

Secs. 22-227—22-245. Reserved.

DIVISION 2. ELECTRIC UTILITY CONSUMER TAX⁸

Sec. 22-246. Levy.

In accordance with Code of Virginia, § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

- (1) *Residential consumers.* For residential consumers, such tax shall be \$0.0373 on each kWh delivered monthly by a service provider, not to exceed \$1.50 monthly.
- (2) *Nonresidential consumers.* For nonresidential consumers, such tax shall be \$0.0251 per kWh for the first 625 kWh delivered monthly by a service provider and \$0.0027 per kWh for all kWh in excess of 625 delivered monthly by a service provider.

(Code 1988, § 5-8; Ord. of 10-2-2000)

Sec. 22-247. Exemptions.

The United States of America, the commonwealth and the political subdivisions thereof, including this town, are exempt from the tax imposed by section 22-246.

(Code 1988, § 5-8; Ord. of 10-2-2000)

Sec. 22-248. Computation of bills not on monthly basis.

Bills shall be considered as monthly bills for the purposes of this division, if submitted 12 times per year with an interval of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows:

- (1) The kWh will be divided by two;
- (2) A monthly tax will be calculated using the rates set forth above;
- (3) The tax determined by subsection (1) of this section shall be multiplied by two;
- (4) The tax in subsection (3) of this section may not exceed twice the monthly maximum tax.

(Code 1988, § 5-10; Ord. of 10-2-2000)

Secs. 22-249—22-274. Reserved.

⁸State law reference(s)—Tax on water and heat, light and power companies, Code of Virginia, § 58.1-3814.

PART II - CODE OF ORDINANCES
Chapter 22 - TAXATION
ARTICLE VIII. - CONSUMER UTILITY TAX
DIVISION 3. NATURAL GAS UTILITY CONSUMER TAX

DIVISION 3. NATURAL GAS UTILITY CONSUMER TAX⁹

Sec. 22-275. Levy.

In accordance with Code of Virginia, § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers," as such term is defined in Code of Virginia, § 58.1-3814(J), as follows:

- (1) *Residential consumers.* Such tax on residential consumers of natural gas shall be at the rate of \$0.0240 per CCF delivered monthly by a service provider to residential consumers, not to exceed \$1.50 per month.
- (2) *Nonresidential consumers.* Such tax on nonresidential consumers shall be at the rate of \$0.0170 per CCF delivered monthly by a service provider, not to exceed \$15.00 per month.

(Code 1988, § 5-12; Ord. of 10-2-2000)

Sec. 22-276. Exemptions.

The United States of America, the commonwealth and the political subdivisions thereof, including this jurisdiction, shall be exempt from the tax imposed by section 22-275.

(Code 1988, § 5-13; Ord. of 10-2-2000)

Sec. 22-277. Computation of bills not on monthly basis.

Bills shall be considered as monthly bills for the purposes of this division, if submitted 12 times per year with an interval of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows:

- (1) The CCF will be divided by two;
- (2) A monthly tax will be calculated using the rates set forth above;
- (3) The tax determined by subsection (1) of this section shall be multiplied by two;
- (4) The tax in subsection (3) of this section may not exceed twice the monthly maximum tax.

(Code 1988, § 5-14; Ord. of 10-2-2000)

⁹State law reference(s)—Tax on water and heat, light and power companies, Code of Virginia, § 58.1-3814.