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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Taxation ("TAX")
<b>Virginia Administrative Code (VAC) citation</b>	23VAC10-500
<b>Regulation title</b>	Business, Professional and Occupational License Tax
<b>Action title</b>	Promulgation of Business, Professional and Occupational License ("BPOL") Tax Regulations from the 2000 BPOL Guidelines
<b>Date this document prepared</b>	April 4, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This regulatory action will promulgate Business, Professional and Occupational License ("BPOL") Tax Regulations interpreting Chapter 37 of Title 58.1 of the *Va. Code*, which is the authority for local governments to impose local business license taxes and fees.

*Va. Code* § 58.1-3701 mandates that TAX issue guidelines for the BPOL tax and update the guidelines triennially. *Va. Code* § 58.1-3701 also provides that "(a)fter July 1, 2001, the guidelines shall be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205." The BPOL Guidelines were last updated January 1, 2000. The proposed regulation is based on the January 1, 2000 BPOL Guidelines. The only changes to the January 1, 2000 BPOL Guidelines made by this regulatory action are those necessary to conform to legislative changes subsequent to January 1, 2000 and changes in style or form or corrections of technical errors.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Tax Commissioner approved the promulgation of the Business, Professional and Occupational License Tax regulations on October 14, 2005.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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Va. Code § 58.1-3701 mandates that TAX issue guidelines for the BPOL tax and update the guidelines triennially. Va. Code § 58.1-3701 provides that "(a)fter July 1, 2001, the guidelines shall be subject to the Administrative Process Act." As the BPOL Guidelines were last updated January 1, 2000, the authority for the current regulatory action is mandatory.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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Government must have predictable and adequate revenue to provide for the health, safety and welfare of its citizens. Tax regulations enhance customer service and voluntary compliance. The interpretations, examples, and other guidance in tax regulations ensure uniform application of the tax laws to taxpayers. Business taxpayers in particular find regulations essential in predicting the tax consequences of transactions and avoiding unanticipated tax assessments as the result of audits. Tax regulations also ensure that audits and other compliance activity cause the assessment and collection of the correct amount of tax.

The promulgation of the new BPOL regulation is necessary to comply with the mandate of Va. Code § 58.1-3701 that TAX issue guidelines for the BPOL tax, update the guidelines triennially and after July 1, 2001, the guidelines be subject to the Administrative Process Act ("APA") (Chapter 40 of Title 2.2).

To date, TAX has fulfilled this mandate by issuing BPOL Guidelines on July 1, 1995, January 1, 1997 and January 1, 2000. Although Va. Code § 58.1-3701 provides that BPOL Guidelines issued prior to July 1, 2001 are not subject to the APA, TAX was required to "cooperate with and seek the counsel of local officials and interested groups and . . . not promulgate such guidelines without first conducting a public hearing." TAX complied with this requirement by holding public hearings and consulting with working groups composed of representatives from local governments and businesses each time it revised the Guidelines. As a result, taxpayers, tax practitioners and local government officials have become very familiar with the Guidelines and have accept the Guidelines as established policy. Moreover, Va. Code § 58.1-3701 provides that after July 1, 2001, the guidelines shall be accorded the weight of a regulation under Va. Code § 58.1-205.

As the revisions to the 2000 BPOL Guidelines set forth in this regulatory action are limited to those necessary to conform to legislative changes and to changes in style or form or corrections of technical errors, they would qualify for exemption from the APA and the Virginia Register Act (Chapter 41 of Title 2.2) under Va. Code § 2.2-4006 A 3 and 4 if the 2000 BPOL Guidelines had been promulgated in accordance with the APA and the Register Act. As the BPOL Guidelines are currently accorded the weight of a regulation and because the revisions to the 2000 BPOL Guidelines set forth in this regulatory action are the type of changes that would qualify for exemption from the APA and the Virginia Register Act if they were made to an existing regulation, TAX expects this regulatory action to be non-controversial.

Given the voluminous nature of the guidelines, TAX is not attempting in this regulatory action to address the policy developed in the hundreds of BPOL ruling letters and advisory opinions issued by TAX in the last decade. TAX will, where appropriate, amend the BPOL regulation to incorporate these policies in subsequent regulatory actions.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The promulgation of the new BPOL regulation is necessary to comply with the mandate of *Va. Code* § 58.1-3701 that TAX issue guidelines for the BPOL tax, update the guidelines triennially and after July 1, 2001, the guidelines be subject to the Administrative Process Act (“APA”) (Chapter 40 of Title 2.2).

To date, TAX has fulfilled this mandate by issuing BPOL Guidelines on July 1, 1995, January 1, 1997 and January 1, 2000. Although *Va. Code* § 58.1-3701 provides that BPOL Guidelines issued prior to July 1, 2001 are not subject to the APA, TAX was required to “cooperate with and seek the counsel of local officials and interested groups and . . . not promulgate such guidelines without first conducting a public hearing.” TAX complied with this requirement by holding public hearings and consulting with working groups composed of representatives from local governments and businesses each time it revised the Guidelines. As a result, taxpayers, tax practitioners and local government officials have become very familiar with the Guidelines and have accept the Guidelines as established policy. Moreover, *Va. Code* § 58.1-3701 provides that after July 1, 2001, the guidelines shall be accorded the weight of a regulation under *Va. Code* § 58.1-205.

As the revisions to the 2000 BPOL Guidelines set forth in this regulatory action are limited to those necessary to conform to legislative changes and to changes in style or form or corrections of technical errors, they would qualify for exemption from the APA and the Virginia Register Act (Chapter 41 of Title 2.2) under *Va. Code* § 2.2-4006 A (3) and (4) if the 2000 BPOL Guidelines had been promulgated in accordance with the APA and the Register Act. As the BPOL Guidelines are currently accorded the weight of a regulation and because the revisions to the 2000 BPOL Guidelines set forth in this regulatory action are the type of changes that would qualify for exemption from the APA and the Virginia Register Act if they were made to an existing regulation, TAX expects this regulatory action to be non-controversial and is thus using the Fast Track process.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

The proposed BPOL Regulation is based on the 2000 BPOL Guidelines. Given the voluminous nature of the proposed regulation, and because the BPOL Guidelines are currently accorded the weight of a regulation, TAX has prepared a draft copy of the proposed regulation that shows with editing marks all changes that have been made to the 2000 BPOL Guidelines.

The vast majority of the amendments are non-substantive changes in style or form required by the Virginia Register Form, Style and Procedure Manual (the Manual) issued by the Virginia Code Commission. Additionally, other non-substantive changes in style or form were made to enhance readability. Virtually all of these amendments are self-evident. However, where necessary, an explanation is provided below the regulation. Examples of non-substantive changes in style or form include the following:

- The regulation numbering scheme has been adopted.
- Usage and grammar has been conformed to the requirements of the Manual.
- Definitional sections have been consolidated into the first section of the Regulations, 23VAC10-500-10.
- Citations have been conformed to the requirements of the Manual.
- Text contained in the footnotes of the Guidelines has been moved into the body of the Regulations.
- The Guidelines appendices have been incorporated into the text:
  - Appendix A have been moved to 23VAC10-500-10 and 23VAC10-500-60.
  - Appendix B has been moved to 23VAC10-500-520.
  - The first paragraph of Appendix D is now located in Subsection B of 23VAC10-500-20. The second paragraph of Appendix D is now located in 23VAC10-500-50. The definitions of “nonprofit organization” and “charitable nonprofit organization” formerly located in Appendix D are now located in 23VAC10-500-10. The remainder of Appendix D is now located in 23VAC10-500-50.

Additionally, the Guidelines have been amended to reference changes in Virginia statutory law. As the amendments simply highlight rather than interpret the legislative changes, no agency discretion was involved. These amendments are noted in the text through underlining and strikeouts. Additionally, a brief explanation is set forth after each regulation.

Certain materials published with the 2000 BPOL Guidelines have been omitted from the regulations because these materials do not meet the definition of a “regulation.” Section 2.2-4001 of the *Va. Code* provides that “‘regulation’ means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws (emphasis added).” On this basis, the following items have been omitted from the BPOL Regulations:

- Commissioner’s transmittal letter (the first page of the 2000 BPOL Guidelines).
- Table of Contents (pages i and ii of the 2000 BPOL Guidelines).
- Introduction: A Brief History of the BPOL Tax (pages iii and iv of the 2000 BPOL Guidelines). This material was historical in nature.
- Comment Boxes (located throughout the Guidelines). This material consisted of annotations, which do not have the force of law.
- “Appendix E: Public Documents” (pages 79 through 81 of the 2000 BPOL Guidelines). This material consisted of an index, which does not have the force of law.
- “Appendix : BPOL Related Attorney General Opinions by Subject Matter in Chronological Sequence” (page 82 of the 2000 BPOL Guidelines). This material consisted of an index, which does not have the force of law.

Certain materials that provide an overview or history of the BPOL laws have been omitted because they cannot fairly be considered to have the force of law. Additionally, these materials simply repeat text found throughout the Guidelines and their deletion may be considered a change in style or form exempt from the regulatory process under *Code of Virginia* § 2.2-4006 A 3. On these bases, the following items have been omitted from the BPOL Regulations:

- “Applicability and Operation of the BPOL Tax” chart.
- BPOL Appeal Process Diagram Chart (page 50 of the 2000 BPOL Guidelines).
- “Appendix C: Legislative and Administrative History of the Tax” (pages 73 through 76 of the 2000 BPOL Guidelines).

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage of this regulatory action to taxpayers, tax practitioners, local governments and TAX is that the BPOL Guidelines, an important guidance document, will be updated to reflect legislative changes effective since the last time the Guidelines were updated on January 1, 2000. Additionally, this regulatory action will bring TAX in compliance with the mandate of *Va. Code* § 58.1-3701 that it update the BPOL guidelines triennially.

Otherwise, as the BPOL regulation is based on the 2000 BPOL Guidelines, which are currently accorded the weight of a regulation by *Va. Code* § 58.1-3701, this regulatory action would have no advantages or disadvantages to the public, TAX or the Commonwealth.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

## Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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Approximately 39 cities, 120 towns, and 45 counties impose some form of business license tax or fee. Counties, cities and towns reported a total of \$561 million in BPOL tax and fee revenue in Fiscal Year 2005, the most recent year for which data is available from the Auditor of Public Accounts (“APA”).

As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, no locality will be particularly affected by the proposed regulation.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposed BPOL Regulation serves as an interpretation of the statutory and case law relevant to the BPOL tax and fee. The regulation does not 1) establish compliance or reporting requirements; 2) establish schedules or deadlines for compliance or reporting requirements; 3) impose compliance or reporting requirements; 4) establish design or operational standards; or 5) impose requirements on small businesses that are materially different than those imposed by statutory law, local ordinance or case law.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the cost to the state to implement and enforce the BPOL Regulation is anticipated to be <i>de minimis</i>.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the cost to localities of the BPOL Regulation is anticipated to be <i>de minimis</i>.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the regulation is not likely to affect any individuals, businesses or other entities.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than</p>	<p>As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the regulation would have no affect on any individuals,</p>

500 full-time employees or has gross annual sales of less than \$6 million.	businesses or other entities.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the regulation is not anticipated to cause any individuals, businesses, or other entities to incur any costs.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

As this regulatory action is required by Code of Virginia § 58.1-3701, there is no viable alternative to this regulatory action short of seeking legislation to eliminate the statutory mandate.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

As the proposed regulation is substantively identical to the 2000 BPOL Guidelines (except as mandated by subsequent legislative changes), which are currently accorded the weight of a regulation by Va. Code § 58.1-3701, the regulation would have no impact on the institution of the family and family stability.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

Given the voluminous nature of the proposed regulation, and because the BPOL Guidelines are currently accorded the weight of a regulation, TAX has prepared a draft copy of the proposed regulation that shows with editing marks all changes that have been made to the 2000 BPOL Guidelines. This draft (that is included and begins on page 10 of this document) is hereby incorporated by reference.

The vast majority of the amendments are non-substantive changes in style or form required by the Virginia Register Form, Style and Procedure Manual (the Manual) issued by the Virginia Code Commission. Additionally, other non-substantive changes in style or form were made to enhance readability. Such amendments are exempt from the regulatory process under *Va. Code* § 2.2-4006 A 3. Virtually all of these amendments are self-evident. However, where necessary, an explanation is provided below the regulation. Examples of non-substantive changes in style or form include the following:

- The regulation numbering scheme has been adopted.
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  - Appendix B has been moved to 23VAC10-500-520.
  - The first paragraph of Appendix D is now located in Subsection B of 23VAC10-500-20. The second paragraph of Appendix D is now located in 23VAC10-500-50. The definitions of “nonprofit organization” and “charitable nonprofit organization” formerly located in Appendix D are now located in 23VAC10-500-10. The remainder of Appendix D is now located in 23VAC10-500-50.

Additionally, the Guidelines have been amended to reference changes in Virginia statutory law. As the amendments simply highlight rather than interpret the legislative changes, no agency discretion was involved. Therefore, these amendments are exempt from the regulatory process under *Va. Code* § 2.2-4006 A 4. These amendments are noted in the text through underlining and strikeouts. Additionally, a brief explanation is set forth after each regulation.

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Certain materials that provide an overview or history of the BPOL laws have been omitted because they cannot fairly be considered to have the force of law. Additionally, these materials simply repeat text found throughout the Guidelines and their deletion may be considered a change in style or form exempt from the regulatory process under *Code of Virginia* § 2.2-4006 (A)(3). On these bases, the following items have been omitted from the BPOL Regulations:

- "Applicability and Operation of the BPOL Tax" chart.
- BPOL Appeal Process Diagram Chart (page 50 of the 2000 BPOL Guidelines).
- "Appendix C: Legislative and Administrative History of the Tax" (pages 73 through 76 of the 2000 BPOL Guidelines).

**NOTE:**

The following information uses strikeouts, underlines, and annotations to show and explain all changes from the 2000 BPOL Guidelines.

**23VAC10-500-10. Definitions.**

~~Unless otherwise required by the context, the~~ The following words and terms, when used in this regulation, shall have the following meanings—meaning unless the context clearly indicates otherwise:

~~“Affiliated group” means a group of two or more corporations or chains of corporations. (See Appendix A for discussion and examples of Affiliated Group.)~~

“Affiliated group” means:

- A. 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:
  1. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and
  2. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other corporations subject to inclusion. As used in this subdivision, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the phrase “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.
- B. Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:
  1. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and
  2. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.
- C. When one or more of the corporations subject to inclusion, including the common parent corporation, is a non-stock corporation, the term "stock" as used in this ~~subdivision~~ definition

shall refer to the non-stock corporation membership or membership voting rights, as is appropriate to the context.

D. Two or more entities if such entities satisfy the requirements in this definition as if they were corporations and the ownership interests therein were stock. (See 23VAC10-500-50.)

“Amount in dispute,” when used with respect to taxes due or assessed, means the amount specifically identified in the application for review, the appeal to the Tax Commissioner, or the appeal to the circuit court as disputed by the party filing such appeal (See 23VAC10-500-660, et seq.).

“Ancillary” means subordinate to, subservient to, auxiliary to, or in aid of, that which is principal and primary (See 23VAC10-500-110).

*“Appealable event” means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official’s:*

A. *examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment,*

B. *determination regarding the rate or classification applicable to the licensable business,*

C. *assessment of a local license tax when no return has been filed by the taxpayer, or*

D. *denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license (See 23VAC10-500-660, et seq.).*

“Appeal to the circuit court” means an application by a taxpayer to the appropriate circuit court for review of a local license tax assessment pursuant to § 58.1-3984 of the Code of Virginia or an application by a taxpayer or a local assessing officer to the appropriate circuit court for review of the Tax Commissioner’s determination, or any part thereof, pursuant to §§ 58.1-3703.1 A 7 and 58.1-3984 of the Code of Virginia (See 23VAC10-500-660, et seq.).

“Appeal to the Tax Commissioner” means a taxpayer’s application, filed with the Tax Commissioner pursuant to ~~Code of Virginia~~ § 58.1-3703.1 A 5 c of the Code of Virginia (See 23VAC10-500-660, et seq.).

“Application for Review” means a taxpayer’s written request filed with a local assessing officer for review of an ~~audit~~ assessment resulting from an appealable event made pursuant to ~~Code of Virginia~~ § 58.1-3703.1 A 5 a of the Code of Virginia (See 23VAC10-500-660, et seq.).

“Apportionment” means the division of the volume of business done between taxing jurisdictions within which the business’ income or purchases are generated (See 23VAC10-500-210).

“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. (~~For a more complete description, please see Chapter 6 where assessments are discussed~~ See 23VAC10-500-580.)

~~“Audit” means an examination of records, financial statements, books of accounts and other information to determine the correctness of a local license tax. (See Chapter 7 for a more detailed description of what does and does not constitute an audit.~~

"Audit" means an examination of records, financial statements, books of accounts, and other information to evaluate the correctness of a local license tax. An audit shall include, but is not limited to, an examination to determine the correctness of a classification of a licensable business, examinations resulting in adjustments made to gross receipts, tax, and other information contained in the taxpayer’s return, and examinations resulting in the imposition of a local license tax when no return has been filed. An audit assessment is not: a statutory assessment, a self-assessment, or an assessment resulting from the correction of mathematical errors. However, if an examination of records or other information takes place in conjunction with the above, the assessment may be appealable as an audit assessment (See 23VAC10-500-600).

“Base year” means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 of the Code of Virginia. The local ordinance may provide for a different period for measuring the gross receipts of a business in the following situations: 1) for beginning businesses; or 2) to allow an option to use the same fiscal year as for federal income tax purposes.

“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. If a person 1) advertises or otherwise holds himself out to the public as being engaged in a particular business; or 2) files tax returns, schedules and documents that are required only of persons engaged in a trade or business, he is presumed to be engaged in business. However, a person may present evidence to overcome this presumption.

“Charitable nonprofit organization” means an organization which is described in ~~IRC~~ § 501 c 3 of the Internal Revenue Code (26 USC § 501 c 3) and to which contributions are deductible by the contributor under ~~IRC Code~~ §170 of the Internal Revenue Code (26 USC § 170), except that educational institutions are limited to schools, colleges and other similar institutions of learning. To the extent that a charitable nonprofit organization is required to report income which is in fact “unrelated business taxable income” for federal income tax purposes under ~~IRC Code~~ § 511 et seq. of the Internal Revenue Code (26 USC § 511 et seq.), such organization may be presumed to have gross receipts from an activity which, depending on the applicable classification, is licensable for BPOL purposes. The fact that a charitable nonprofit organization does not report any unrelated business taxable income for federal income tax purposes would not prevent the locality from requiring a license for the business activity; however, local officials may only

determine whether a charitable nonprofit organization has unrelated taxable business income pursuant to ~~IRC Code~~ § 511 et seq. of the Internal Revenue Code (26 USC § 511 et seq.) (See 23VAC10-500-40).

“Collection activity” means the ~~assessor’s~~ use of any means, direct or indirect, to obtain payment of an assessment (See 23 VAC 10-500-660, et seq.).

“Date of the assessment” means the date when a written notice of assessment is delivered to the taxpayer by the assessing officer or an employee of the assessing officer, or mailed to the taxpayer at the taxpayer’s last known address. Self-assessments shall be deemed made as of the date a return is filed, or if no return is required, when the tax is paid.

“Definite place of business” means an office or a location at which occurs a regular and continuous course of dealing where one holds one’s self out or avails one’s self to the public for thirty consecutive days or more, exclusive of holidays and weekends. 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 (See 23VAC10-500-30).

“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 (See 23VAC10-500-50).

“Filed.” A document is “filed” as of the date it is postmarked for first class delivery via United States Postal Service or when it is received if any other method of delivery, including facsimile transmissions, is utilized.

“Final Local Determination” means a writing setting out the local assessing officer’s final determination on a taxpayer’s Application for Review, including facts and legal authority in support of the local assessing officer’s position on each issue raised by the taxpayer. (See 23 VAC 10-500-800 §7.10. for a sample Final Local Determination).

“Financial services” means the buying, selling, handling, managing, and investing money, credit, securities, or other investments for others, as well as providing advice to others on such matters.

“Frivolous” means a finding, based upon specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous (See 23VAC10-500-660, et seq.).

“Fuel sale” or “fuel sales” shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201 of the Code of Virginia (See 23VAC10-500-100).

“Gas retailer” means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201 of the Code of Virginia (See 23VAC10-500-100).

“Gross receipts” means the whole, entire, total receipts, of money or other consideration received by the taxpayer as a result of transactions with others besides himself and which are derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business, without deduction or exclusion except as provided by law. See ~~§2.5 and 2.7~~ 23 VAC 10-500-70 and 90 for examples of items excluded from the definition of gross receipts.

“Jeopardized by delay” includes a finding, based upon specific facts, that the application is frivolous or that a taxpayer designs to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property within the locality, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question (See 23VAC10-500-680 and 23VAC10-500-811).

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

“Local assessing officer” means the Commissioner of Revenue, or chief assessing officer ~~or the chief assessing officer’s~~ his designee.

“Local officer responsible for collection activity” means the treasurer or other local officer responsible for collection activity, or his designee.

“Nonprofit organization” means an organization, other than a “charitable nonprofit organization,” which is exempt from federal income tax under ~~IRC~~ § 501 of the Internal Revenue Code (26 USC § 501). Activities conducted for consideration which are similar to activities that are conducted for consideration by for-profit businesses may be presumed to be activities that are subject to licensure. For example, a lunch counter operated by an organization open to members only, the proceeds from which are used to maintain the organization, may be subject to local license tax. In any case, gifts, contributions, and membership dues of nonprofit organizations would not be taxable gross receipts from the conduct of a business, nor could a locality impose a license fee on activities giving rise to such funds (See 23VAC10-500-40).

“Notice of intent to appeal” means the taxpayer’s written statement filed with the local assessing officer that informs the local assessing officer of the taxpayer’s intent to file an Application for Review. It also means the taxpayer’s written statement filed with the local assessing officer and the Tax Commissioner informing of the taxpayer’s intent to file an appeal to the Tax Commissioner (See 23 VAC 10-500-660, et seq.).

“Professional services” means services performed by those practicing the professions as listed in ~~Chapter 5, §5.4~~ 23 VAC 10-500-450. The word “profession” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

“Purchases” means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. (See ~~Chapter 5~~ 23 VAC 10-500-340 for the application of purchases to the classification of wholesale merchants.)

“Real estate services” means providing a service for others with respect to the purchase, sale, lease, rental, or appraisal of real property.

“Retail sale” means a sale of 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, industrial, and governmental users which are classified as wholesale sales.

“Sales solicitation” is the act or acts directly related to selling particular items or goods to a particular person. See ~~§3.3~~ 23VAC 10-500-170 for a discussion of situs of gross receipts of retailers and wholesalers (for wholesalers taxable on purchases, see ~~§3.4~~ 23VAC10-500-180). Sales solicitation does not include non-solicitation activities prior or subsequent to sales solicitation activities.

“Services” mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise. Specific types of services are defined further in the BPOL law. See, for example, the definitions of “financial services” and “professional services” in § 58.1-3700.1 of the Code of Virginia.

“Situs of gross receipts” means the definite place of business that generated taxable gross receipts. If activities are conducted outside a definite place of business, gross receipts are taxable at the definite place of business where these activities are initiated, controlled or directed (See ~~Chapter 3~~ 23 VAC 10-500-150 for detailed explanation.).

“Tax Commissioner” means the chief executive officer of the Department of Taxation or his delegate, authorized pursuant to § 58.1-3703.1 A 5 c of the Code of Virginia to issue a final determination on an appeal.

“Taxpayer” means a person, corporation, partnership, unincorporated association, or other business or representative thereof subject to a local license tax.

“Tax Year” means the same as license year, or the calendar year in which a license is issued.

“Volume” means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

“Wholesale sale” means a sale of goods, wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods for sale, and also includes sales to institutional, commercial, industrial, and governmental users which because of the facts and circumstances surrounding the sales, such as the quantity, price, or other terms, indicate that they are consistent with sales at wholesale.

Source:

*2000 BPOL Guidelines, Chapter 1.*

*The abbreviated definition of the term “affiliated group” has been replaced with the full definition of the term formerly located in Appendix A of the 2000 BPOL Guidelines. Paragraph D of the definition has been added to reflect 2000 Acts of Assembly, Chapter 557, which allowed entities other than corporations to be members of an affiliated group. The added language is a direct quote from the legislation.*

*The definition of “amount in dispute” is a new definition which has been added to reflect 2005 Acts of Assembly, Chapter 927. The added language is a paraphrase of the statutory definition provided in the legislation.*

*The definition of the term “appealable event” is a new definition which has been added to reflect 2002 Acts of Assembly, Chapter 317, which expanded the appeals process to include matters other than audit assessments. The added language is a direct quote from the legislation.*

*The definition of “appeal to the circuit court” is a new definition which has been added to reflect the changes made by 2005 Acts of Assembly, Chapter 927.*

*The definition of the term “appeal to the tax commissioner” was formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of the term “application for review” was formerly located in § 7.4 of the 2000 BPOL Guidelines. The definition has been amended to replace the term “audit” with the term “appealable event” in order to conform to 2002 Acts of Assembly, Chapter 317. The remaining changes have been made to reflect the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*The abbreviated definition of the term “assessment” which was formerly located in § 7.4 of the 2000 BPOL Guidelines, has been deleted as it is duplicative of the longer definition found in 23 VAC 10-500-10.*

*The abbreviated definition of the term “audit” has been replaced with the full definition which was formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of the term “charitable nonprofit organization” was formerly located in Appendix C of the 2000 BPOL Guidelines.*

*The definition of the term “collection activity” was formerly located in § 7.4 of the 2000 BPOL Guidelines. The remaining changes have been made to reflect the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*The definition of the term “date of the assessment” was formerly located in § 7.4 of the 2000 BPOL Guidelines. The remaining changes have been made to conform the definition to that found in the Guidelines for Appealing Local Mobile Property Taxes.*



*The definition of the term “entity” has been added to reflect 2000 Acts of Assembly, Chapter 557. The definition is a quote from the legislation.*

*The definition of the term “filed” was formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of the term “final local determination” was formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of the term “frivolous” has been added in order to conform the statutory changes made by 2005 Acts of Assembly, Chapter 927. The definition is a quote from the legislation.*

*The definition of the terms “fuel sale” and “fuel sales” has been added to reflect 2006 Acts of Assembly, Chapter 763. The definition is a quote from the legislation.*

*The definition of the term “gas retailer” has been added to reflect 2006 Acts of Assembly, Chapter 763. The definition is a quote from the legislation.*

*The definition of the “jeopardized by delay” has been added in order to conform the statutory changes made by 2005 Acts of Assembly, Chapter 927. The definition is paraphrased from the legislation.*

*The definition of the term “local assessing officer” was formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of “local officer responsible for collection activity” has been added in order to conform the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*The definition of the term “nonprofit organization” was formerly located in Appendix C of the 2000 BPOL Guidelines.*

*The definition of the terms “notice of intent to appeal,” “Tax Commissioner,” and “taxpayer” were formerly located in § 7.4 of the 2000 BPOL Guidelines.*

*The definition of the term “volume” was formerly located in § 3.1 of the 2000 BPOL Guidelines*

23VAC10-500-20. Authority to impose license tax.

- A. ~~Code of Virginia §~~ Section 58.1-3703 of the Code of Virginia authorizes localities to enact an ordinance levying a local license (BPOL) tax or and/or a fee, or both for issuing a license. Every ordinance adopted or maintained by a locality which levies a license tax is required to be substantially similar to the provisions in § 58.1-3703.1 of the Code of Virginia. Further, §§ 58.1-3703 and 58.1-3706 of the Code of Virginia set statutory maximums for license rates and fees. Localities may choose not to require a license or impose fees, or localities may assess rates and fees which are less than the maximums stated in the statute.
- B. Localities may levy license taxes at rates above the statutory maximum only if subject to the “rollback” provisions of § 58.1-3706 B of the Code of Virginia. Any locality which had, on January 1, 1978, a license tax rate for any of the categories listed in § 58.1-3706 A of the Code of Virginia which is higher than the maximum prescribed ~~therein~~ in § 58.1-3706 A of the Code of Virginia, may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions: (1) A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in § 58.1-3706 A of the Code of Virginia; (2) If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum; and, (3) A locality shall lower rates on categories which are above the maximums prescribed in § 58.1-3706 A of the Code of Virginia for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.
- C. While localities must follow the exemptions, rates, classifications and thresholds as set forth in Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 of the Code of Virginia, their local ordinances may:
1. Set tax rates at levels lower than those authorized by state law, or select the classifications to tax or not tax;
  2. Establish subclassifications within the classifications set out in state law and provide for different rates or exemptions for such subclassifications, as long as no rate exceeds the maximum permitted by state law;

3. Establish graduated tax rates for any classification or subclassification so that the rate increases or decreases with volume, as long as no rate exceeds the statutory maximum for the classification under state law; and
  4. Establish a threshold amount of gross receipts below which no tax will be imposed, or a maximum tax for any classification.
- D. Localities may establish classifications and sub-classifications based upon reasonable distinctions in municipal policy, and through the establishment of classifications and sub-classifications, localities may choose to exempt certain categories of taxpayers.
- E. ~~Code of Virginia §~~ Section 58.1-3704 of the Code of Virginia provides that no locality shall be required to impose either a license tax on merchants or a tax on the capital of merchants.

Source:

*2000 BPOL Guidelines, § 2.1.*

*Other than its first sentence, the text of subsection B, was formerly located in Appendix D of the 2000 BPOL Guidelines and referenced by Footnote 2 of the 2000 BPOL Guidelines.*

*Paragraph E was formerly located in Footnote 1 of the 2000 BPOL Guidelines.*

**23VAC10-500-30. Activities subject to license taxation.**

Where a Virginia locality has adopted a BPOL ordinance which requires a license, every person engaged in a licensable activity at a definite place of business in such locality must apply for a license. Whether or not a particular activity is in fact subject to license taxation depends upon the local ordinance. What constitutes a definite place of business is discussed in ~~Chapter 1: Definitions, above~~ 23 VAC 10-500-10. See Uniform Ordinance provisions, ~~Code of Virginia~~ § 58.1-3703.1 of the Code of Virginia. Where a locality has adopted a BPOL ordinance requiring a license, a license is also required if a person has no definite place of business in a particular locality in Virginia but the person operates amusement machines in a locality or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to § 58.1-3715 of the Code of Virginia, or a public service corporation as defined in § 58.1-3731 of the Code of Virginia.

*Source:*

*2000 BPOL Guidelines, § 2.2.*

*The last sentence was formerly located in Footnote 3 to the 2000 BPOL Guidelines.*

**23VAC10-500-40. Exemptions from the BPOL tax.**

- A. ~~Code of Virginia~~ § Section 58.1-3703 C of the Code of Virginia prohibits local taxation of certain privileges which would otherwise be taxable. Those privileges are detailed in § 58.1-3703 C of the Code of Virginia. Localities may not impose a license tax or fee on certain persons and privileges which include, but are not limited to, the following:
1. certain public service corporations and motor carriers, common carriers, and other carriers of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration;
  2. the privilege of selling farm or domestic products or nursery products, or the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;
  3. the privilege of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or the privilege or right of operating or conducting any radio or television broadcasting station or service;
  4. manufacturers for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;
  5. persons severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713 of the Code of Virginia;
  6. a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town;
  7. the privilege of renting, as the owner of such property, real property (except in certain grand fathered localities) other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses;
  8. certain transactions of ~~a corporation~~ an entity which is a member of an affiliated group of ~~corporations~~ entities with other members of the same affiliated group (See ~~Appendix A~~ 23VAC10-500-10 and 23VAC10-500-50.);
  9. any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of Title 58.1 of the Code of Virginia or on any agent of such company;

10. any bank or trust company subject to taxation under Chapter 12 (§ 58.1-1200 et seq.) of Title 58.1 of the Code of Virginia;
  11. ~~certain nonprofit organizations. (See Appendix D for a discussion of nonprofit organizations) Additionally, Code of Virginia § 58.1-3703 C 18 provides certain exemptions to non-profit organizations.~~ nonprofit and charitable nonprofit organizations, which are defined separately in 23 VAC 10-500-10 as the kinds and sources of funds flowing to either nonprofit or charitable nonprofit organizations are different for purposes of the exemption from the BPOL tax; and
  12. any venture capital fund or other investment fund, except commissions and fees of such funds.
  13. on total assessments paid by condominium unit owners for common expenses.
  14. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 of the Code of Virginia and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq. of the Code of Virginia) or similar federal law.
- B. See also, e.g., ~~Code of Virginia §§ 58.1-3703 B, 58.1-3712 through 58.1-3713.4, 58.1-3717 through 58.1-3721, and 58.1-3724 through 58.1-3730~~ of the Code of Virginia, which discuss specific types of businesses which are exempt from the local license tax. See also §§ 58.1-3714, 58.1-3715, and 58.1-3716 of the Code of Virginia. Also § 58.1-3731 of the Code of Virginia discusses BPOL taxes on specific types of public service companies.

Source:

*2000 BPOL Guidelines, §2.3.*

*Subdivision 8 of subsection A has been amended to reflect 2000 Acts of Assembly, Chapter 557.*

*Subdivision 11 of subsection A has been amended to include text formerly located in Appendix D of the 2000 BPOL Guidelines.*

*Subdivision 13 of subsection A has been added to reflect 2002 Acts of Assembly, Chapter 303, which added the new exemption. The amendment is a quote from the legislation.*

*Subdivision 14 of subsection A has been added to reflect 2006 Acts of Assembly, Chapter 922, which added the new exemption. The amendment is a quote from the legislation.*

*Subsection B was formerly located in Footnote 4 of the 2000 BPOL Guidelines.*

**23VAC10-500-50. Exemption for affiliated groups.**

- A. An affiliated group is composed of two or more corporations or chains of corporations. An affiliated group may be composed of two or more other types of entities if such entities satisfy the requirements to be an affiliated group as if they were corporations and the ownership interests therein were stock. The terms “entity” and “affiliated group” are defined in 23 VAC 10-500-10. The filing of a consolidated income tax return is presumptive of an affiliated group, but not conclusive.
- B. No locality shall impose a license fee or levy a license tax on gross receipts or purchases derived from transactions which occur between members of the affiliated group. Affiliated corporations are not exempt from the license tax or fee from gross receipts or purchases conducted with nonaffiliated entities. Localities may also levy a wholesale license tax on an affiliated corporation for sales to nonaffiliated entities, even if the tax would be based on purchases from an affiliated corporation. Sales by the affiliated corporation to a nonaffiliated entity means sales by the affiliated corporation to the nonaffiliated entity where goods sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity.
- C. Affiliated groups are one of two types, either parent-subsiary or brother-sister.
1. Parent-Subsidiary Control Group - A parent-subsidiary affiliated group consists of one or more chains of corporations in which a parent corporation directly owns at least 80% of the stock of at least one of the corporations subject to inclusion in the affiliated group, and at least 80% of the stock of any corporations subject to inclusion in the affiliated group, other than the parent corporation, are owned directly by one or more of the corporations subject to inclusion in the affiliated group. The percentages of stock throughout this ~~appendix~~ this section refer to the voting power of all classes of stock and each class of nonvoting stock subject to inclusion. Stock does not include nonvoting stock which is limited and preferred as to dividends in § 58.1-3700.1 1(b) of the Code of Virginia. For example:
    - a. Corp. A owns 80% of Corp. B. Corp. B owns 80% of Corp. C.
 

Corp A → 80% → Corp. B

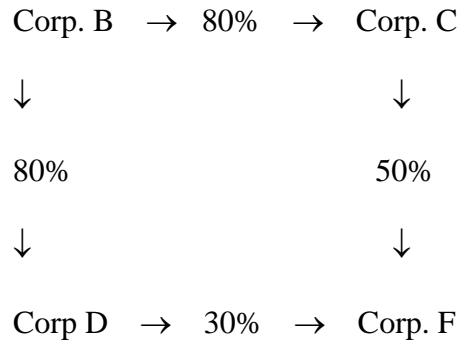
↓

80%

↓

Corp. C

Corp. A is the common parent of a parent-subsidiary affiliated group of A, B and C corporations.
    - b. Corp. B owns 80% of Corp. C and 80% of Corp. D. Corp. C owns 50% of Corp. F. Corp. D owns 30% of Corp. F.



Corp. B is the common parent of the B, C, D, and F affiliated group.

2. Brother-Sister Affiliated Group

a. A brother-sister affiliated group exists if the following elements occur.

1. Two or more corporations are owned by five or fewer persons (or estates or trusts); and
2. A total membership test is met. Total ownership occurs when the shareholder group owns at least 80% of the total value of all stock or the total voting power of all classes of stock entitled to vote; and
3. A common ownership test is met. Common ownership occurs when the shareholder group owns more than 50% of the total value of all stock or the total voting power of all classes of stock entitled to vote. The stock held by each person (estate or trust) is considered only to the extent that the stock ownership is identical for each corporation.

b. The best way to apply this test is to put the respective shareholders and corporations into charts. Shareholders are listed down the first column and corporations are listed in the first row. Each shareholder's percentage of stock ownership is placed in the respective cell. The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled into the identical ownership column and then the identical ownership column is totaled to determine the 50% test. Any owner who does not own at least some stock in each corporation is not considered in either the 50% test or the 80% test.

1. Example 4:

Individual shareholder A owns 30% of Corp. E, 40% of Corp. F, and 20% of Corp. G



Individual shareholder B owns 50% of Corp. E, 20% of Corp. F, and 30% of Corp. G

Individual shareholder C owns 10% of Corp. E, 20% of Corp. F, and 10% of Corp. G

Individual shareholder D owns 10% of Corp. E, 20% of Corp. F, and 30% of Corp. G

	Corporations			
Shareholders	E Corp.	F. Corp.	G Corp.	Extent of Shareholder's Identical Ownership
A	30%	40%	20%	20%
B	50%	20%	30%	20%
C	10%	20%	10%	10%
D	10%	20%	30%	10%
Totals	100%	100%	90%	60%

The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled to determine the 50% test. Since all three test are met, E, F & G are an affiliated group.

2. Example 2:

Same facts as ~~above~~ in the first example except that Shareholder A owns 40% of Corp. E, Shareholder B owns 10% of Corp. F, Shareholder C owns 30% of Corp. G and Shareholder D owns 0% of Corp. E and 0% of Corp. G.

	Corporations			
Shareholders	E Corp.	F. Corp.	G Corp.	Extent of Shareholder's Identical Ownership
A	40%	40%	20%	20%
B	50%	10%	30%	10%
C	10%	20%	30%	10%
D	0%	20%	0%	0%
Totals	100%	90%	80%	40%

Corporations E, F, and G are not an affiliated group because the 50% test is not met. Owner D is not considered in the calculation since D does not own stock in each corporation.

However, as shown in the following chart, Corporations E & F are an affiliated group in the previous example above:

Shareholders	Corporations			Extent of Shareholder's Identical Ownership
	E Corp.	F. Corp.	G Corp.	
A	40%	40%		40%
B	50%	10%		10%
C	10%	20%		10%
D	0%	20%		0%
Totals	100%	90%		60%

Source:

*2000 BPOL Guidelines, Appendix A. Some sentences moved to enhance readability.*

*Subsection A has been amended to reflect 2000 Acts of Assembly, Chapter 557.*

*The last sentence of subsection B was formerly located in Footnote 20 of the 2000 BPOL Guidelines.*

**The last two sentences of subdivision 1 of subsection C were formerly located in Footnote 21 of the 2000 BPOL Guidelines.**

**23VAC10-500-60. Gross receipts.**

**The definition of “gross receipts” is discussed above in ~~Chapter 1~~ 23 VAC 10-500-10. Definitions. Income that is not derived from the exercise of the privilege for which the taxpayer is licensed by the locality do not constitute gross receipts for purposes of BPOL taxation. Activities of a taxpayer which serve only the taxpayer’s interest, and no other, do not give rise to gross receipts. Other exclusions and deductions from gross receipts are discussed below in 23 VAC 10-500-70 through 90.**

**Source:**

**2000 BPOL Guidelines, § 2.4.**

**23VAC10-500-70. Exclusions from gross receipts.**

A. Generally, gross receipts for license tax purposes exclude any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business. The following is a partial list for illustrative purposes:

1. amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or amounts received for any federal or state excise taxes on motor fuels;
2. amounts representing the liquidation of debt or the sale of a capital asset;
3. amounts allowed by a business to its customers for returns and allowances;
4. receipt of loan proceeds by a licensee where it is the obligor;
5. return of principal either on a loan to a licensee-creditor or where a licensee sells a capital asset;
6. rebates or discounts taken or received on account of purchases by the licensee;
7. certain withdrawals from inventory; or
8. investment income not directly related to an entity's exercise of its licensed privilege, unless the entity's licensable activity is that of financial services.

B. Examples:

1. A lawyer is advanced funds by his client to pay court filing fees and the cost of a court reporter. He also receives payment from City A on account of a refund of excess taxes paid by his client. With his client's permission, lawyer deducts from the tax refund the cost of his services for handling the tax case, including telephone tolls, meals, copying and certain other charges the client has agreed to reimburse. The lawyer is taxable on the amount of his fee including any amount separately billed to the client. Amounts advanced to pay expenses on the client's behalf are not gross receipts, nor is the amount of the tax refund because it is received by the lawyer as the client's agent. "Trust fund" receipts, technically speaking, are not derived from the exercise of a licensable privilege; therefore, "trust fund" receipts do not constitute gross receipts.

2. A lawyer handles a real estate closing for a real estate developer and receives the sale proceeds, net after costs withheld by the purchaser's attorney. He mails the proceeds, net of his fee, to the real estate developer. The lawyer is taxable only on his fee, and not on the full sales proceeds of the transaction. The developer is taxable on the whole of the proceeds of the transaction, including the fee withheld by the attorney.
  3. Corp. C, in County D, Virginia purchases a portfolio of loans for its own account. So long as the corporation's activities in the locality are limited to purchasing and holding portfolios for its own account, there is no tax.
  4. Same facts as ~~above~~ in Example 3 except that Corp. C sells interests in its investment pools through public offerings. There is no tax. Proceeds attributable to capital transactions in the nature of raising capital in the equity markets are not subject to BPOL tax.
- C. Section 58.1-3732.2 of the Code of Virginia provides an exclusion for certain gross receipts of real estate brokers. ~~Code of Virginia § Section 58.1-3732.3 of the Code of Virginia provides an exclusion for certain gross receipts of providers of funeral services.~~ Code of Virginia § Section 58.1-3732.4 of the Code of Virginia provides an exclusion for certain gross receipts of certain staffing firms.

Source:

*2000 BPOL Guidelines, § 2.5.*

*The change to Subdivision A1 was necessitated by 2007 Acts of Assembly, Chapter 85.*

*The first sentence of subsection C has been added to make reference to the statutory change made by 2002 Acts of Assembly, Chapter 503. The remainder of the subsection was formerly located in Footnote 7 to the 2000 BPOL Guidelines.*

**23VAC10-500-80. Deductions from gross receipts.**

A. The following shall be deducted from gross receipts:

1. any amount paid for computer hardware or software sold to the U.S. or a state government provided certain holding and contractual requirements are met; and,
2. any receipts attributable to a 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. A Virginia taxpayer is liable for an income or other tax based upon income if the taxpayer files a return for an income or income-like tax in that state or foreign country. The Virginia taxpayer, however, need not actually pay any tax to take the deduction.

B. Examples:

1. Merchant sells goods to a North Carolina resident and ships the goods to him in that state. Gross receipts from the sale of the goods are attributable to a definite place of business in Virginia. North Carolina imposes an income tax and Merchant files a North Carolina income tax return. Merchant reports sales delivered to customers in North Carolina in the numerator of its sales factor for North Carolina income tax apportionment purposes. Gross receipts from sales delivered in North Carolina are deductible from Merchant's Virginia BPOL taxable gross receipts (or the cost of the purchases are deductible from the tax base if the merchant is taxable on purchases.)
2. Same facts as above in Example 1 except that sales are delivered to a customer in Ohio. In Ohio, Merchant pays either a tax based on income or based on net worth, whichever is greater. Merchant files the appropriate Ohio tax return. Gross receipts (or the cost of purchases if Merchant is taxable on purchases) from sales delivered in Ohio are deductible from Merchant's Virginia BPOL taxable gross receipts. Receipts attributed to business conducted in another state or foreign country in which the taxpayer is liable for an income or an income based tax are deductible from Virginia BPOL taxable gross receipts, if such receipts are also attributable to a definite place of business in Virginia.
3. Same facts as above in Example 2 except that sales are made to a customer in Nevada. Nevada imposes no income tax or other tax based upon income. Merchant does not file a return or perform any other actions to pay an income or income-based tax. For gross receipts relating to business conducted in another state or foreign country to be deductible from Merchant's Virginia BPOL taxable gross receipts, Merchant must be liable for an income or other tax based upon income. To be liable for an income or income-like tax, Merchant must file a tax return for an income or income like tax in the state or foreign

country. Merchant is not entitled to a deduction as it did not file a return for an income or income based tax in Nevada.

Source:

*2000 BPOL Guidelines, § 2.6.*

*Subdivision 2 of subsection A has been amended to make reference to the statutory change made by 2002 Acts of Assembly Chapter 346, which expanded the deduction.*

**23VAC10-500-90. Other exclusions and deductions from gross receipts.**

Examples of items deemed not to be receipts derived from the licensable business include, but are not limited to, the following:

- A. Certain adjustments which may be required by reason of the accounting method or system or otherwise to reflect events subsequent to the sale, such as the return of merchandise for credit or refund. If the local ordinance requires gross receipts to be reported using the same method of accounting as used for federal income tax purposes, and the accrual method is used, sales will often be accrued, reported and taxed before actual payment is received. Adjustments may then be required to prevent the taxation of items accrued but never received. For example:
1. A business may record a customer's exchange of merchandise as a refund and new sale. If so, the refund of the previously taxed sale would be deductible because there would have been only one sale -- the first sale would have been rescinded when the refund/exchange was made.
  2. A business that offers customers a discount for volume purchases, prompt payment, or other reason, may record the sale at full value and deduct the discount at the time of payment. If so, the discount from the previously taxed full sales price would be deductible from gross receipts since the amount was not and never will be received.
  3. A business that makes sales on credit may accrue the full sales price and set up a receivable account for the installment payment or revolving charge account agreement. If the business subsequently determines that all or a portion of the receivable is worthless, entitling the business to a bad debt deduction for federal income tax purposes, the portion of the previously taxed sale which is determined to be worthless would be deductible because it was not received. The subsequent collection of a debt deducted from gross receipts as worthless would be includible in gross receipts when received, and considered ancillary to the business activity that created the debt.
  4. A business that reports its receipts on the cash method of accounting would include all customer payments on installment contracts and revolving charge accounts when received since none of the receipts would be attributable to previously taxed sales.
- B. The borrower's receipt of the proceeds of a loan transaction are not gross receipts arising from the exercise of a licensable privilege in the ordinary course of business even if the business regularly obtains money, goods or services on credit.
- C. A business which lends money in the regular course of business may receive interest, points, origination fees, and other fees in connection with the loan transaction, all of which would be gross receipts derived from the licensable business. Customer payments to a lender which



represent the return of principal on a loan are not gross receipts arising from the exercise of a licensable privilege in the ordinary course of a money lending business. As described in paragraph A ~~above~~, the treatment of return of principal on the loans, installment contracts and the accounts receivable of other types of businesses may depend on the nature of the transaction in which the debt was created and the method of accounting used.

D. Patronage dividends, to the extent they represent a reduction in purchase price to a co-operative member.

Source:

*2000 BPOL Guidelines, § 2.7.*

**23VAC10-500-100. Rates and fees.**

- A. The Uniform Ordinance provisions establish two thresholds; one for license fees and another for license taxes. The following chart gives an overview of the thresholds' application to the exemption based on gross receipts and the limitation on the license fee based on a locality's population:

Population	Maximum License Fee Amount	Gross Receipts Threshold Amounts
0-24,999	\$30	No dollar threshold amount
25,000-50,000	\$50	\$50,000
50,001+	\$50	\$100,000

- B. The thresholds indicate that, except as specifically provided in § 58.1-3706 of the Code of Virginia and except for the fee authorized in § 58.1-3703 of the Code of Virginia, no local license tax imposed pursuant to the provisions of Chapter 37 (§ 58.1-3700, et seq.) of Title 58.1 of the Code of Virginia, except those specified in §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of Title 58.1 of the Code of Virginia or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than:

1. \$100,000 in any locality with a population greater than 50,000; or,
2. \$50,000 in any locality with a population of 25,000 but no more than 50,000.

The License license tax = equals \$0 if the threshold is not met. Some localities may be grand fathered with respect to applicable license tax rates once thresholds have been met. See Appendix D.

- C. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth ~~below~~ for the classifications listed:
1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of gross receipts;
  2. For retail sales, twenty cents per \$100 of gross receipts;
  3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in §58.1-3706, thirty-six cents per \$100 of gross receipts.
- D. Additionally, ~~Code of Virginia~~ § 58.1-3703 A of the Code of Virginia provides that no license tax may be assessed on any amount of gross receipts of a business upon which a license fee is charged.
- E. It is within the discretion of localities to impose flat license taxes, in addition to or in lieu of the license fee, however, a locality cannot fashion a flat tax which violates the threshold or the rate caps set in ~~Code of Virginia~~ § 58.1-3706 of the Code of Virginia.
- F. The ~~above~~ tax rates and rate thresholds for license taxes as indicated in § 58.1-3706 of the Code of Virginia do not apply to those items regarding taxation on the severance of coal, gas or oil as specified in §§ 58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, or any other provision in Chapter 37 (§ 58.1-3700, et seq.) of Title 58.1 of the Code of Virginia where a special taxing provision exists; for example, those taxes assessed upon the following taxpayers: (i) wholesalers, governed by § 58.1-3716 of the Code of Virginia; (ii) public service companies, which ~~shall be~~ are governed by § 58.1-3731 of the Code of Virginia; (iii) carnivals, circuses and speedways, which ~~shall be~~ are governed by § 58.1-3728 of the Code of Virginia; (iv) fortune-tellers, which ~~shall be~~ are governed by § 58.1-3726 of the Code of Virginia; (v) massage parlors; (vi) itinerant merchants or peddlers, which ~~shall be~~ are governed by § 58.1-3717 of the Code of Virginia; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which ~~shall be~~ are governed by § 58.1-3729 of the Code of Virginia; (viii) savings institutions and credit unions, which ~~shall be~~ are governed by § 58.1-3730 of the Code of Virginia; (ix) photographers, which ~~shall be~~ are governed by § 58.1-3727 of the Code of Virginia; and (x) direct sellers, which ~~shall be~~ are governed by § 58.1-3719.1 of the Code of Virginia.

- G. ~~The above rate limitations and thresholds set forth in § 58.1-3706 of the Code of Virginia regarding license taxes do not apply to the license fee, authorized in § 58.1-3703 of the Code of Virginia.~~ The license fee is subject to separate thresholds, as follows: localities with populations of less than 25,000 may assess businesses a license fee not to exceed \$30. Localities with populations of 25,000, ~~but less than 50,000 persons may assess businesses a license fee not to exceed \$50.00.~~ Localities with populations of more than 50,000 persons or more may assess businesses a license fee not to exceed ~~\$100.00~~ 50.00. ~~Localities with populations greater than 50,000 persons must reduce license fee to \$50.00 by January 1, 2000.~~ For purposes of the license fee threshold, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. A locality may impose a fee for issuing a BPOL license upon all businesses for each licensable privilege in which they engage. Businesses paying a BPOL tax on other than a gross receipts basis or paying a flat BPOL tax are also subject to the license fee.
- H. Additionally, ~~Code of Virginia § 58.1-3703.1 A 1~~ of the Code of Virginia provides that any locality with a population greater than 50,000 may waive the license requirements provided for in that section for businesses with gross receipts of less than \$100,000.00.
- I. Additionally, § 58.1-3706 E of the Code of Virginia provides that in any case in which the Department of Mines, Minerals and Energy (“DMME”) determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District - Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately preceding one-week period and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase (See 23VAC10-500-100). For license years beginning on or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records available upon request by the local tax official. The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to § 58.1-3703 of the Code of Virginia for the license year immediately preceding the license year of such increase. The DMME shall determine annually if such increase has occurred and remained in effect for such 28-day period. The DMME shall report its findings concerning gasoline price increases pursuant to this subsection no later than January 30 of each year to the Virginia Petroleum, Convenience and Grocery Association; the Virginia Municipal League; and the Virginia Association of Counties.

*Source:*

*2000 BPOL Guidelines, § 2.8.*

*The last two sentences of subsection B were formerly Footnote 6 of the 2000 BPOL Guidelines.*

*Footnote 7 of the 2000 BPOL Guidelines has been deleted as the decrease in the maximum fee took place January 1, 2000 and the current maximum is noted in subsection G.*

*Subsection E was formerly located in Footnote 9 of the 2000 BPOL Guidelines.*

*The changes to Subsection G regarding the maximum license fee reflect the statutory change made by 1996 Acts of Assembly, Chapters 715 and 720 requiring every locality with a population in excess of 50,000 to reduce its maximum fee to \$50 or less before January 1, 2000. As this change has been in effect for 7 years, the explanation of the change has been deleted as being longer necessary.*

*The change to Subsection G regarding the optional determination of population reflect the statutory change made by 2005 Acts of Assembly, Chapter 103. The change paraphrases the legislative change.*

*Subsection H was formerly located in Footnote 8 of the 2000 BPOL Guidelines.*

**Subsection I has been added to reflect the statutory change made by 2006 Acts of Assembly, Chapter 763. The provision is essentially a quote from the legislation.**

**23VAC10-500-110. Multiple businesses.**

- A. Multiple businesses conducted by a person at a single location are required to obtain a separate license for each business. If an entity has multiple businesses at one location with each separate business licensed, it would then count each separate licensed business for purposes of the threshold in order to trigger the BPOL tax under § 58.1-3706 of the Code of Virginia. For purposes of the license fee imposed under § 58.1-3703 of the Code of Virginia, it is within the locality's discretion whether or not to assess multiple fees for the issuance of multiple licenses where one entity exercises several licensable privileges at one location; however, every license issued carries with it a separate rate threshold. Examples:
1. XYZ Co. operates a business at one location in City A at which automobiles are repaired and auto parts are sold. City A requires XYZ to obtain a retail business license and also a repair services license, charging a \$100 fee for each license. XYZ Co. has two thresholds for purposes of establishing gross receipts for the applicability of the BPOL tax, one for the repair business and one for the retail business.
  2. Same facts as ~~above~~ in Example 1, except that XYZ Co. operates several business locations in City A at which automobiles are repaired and auto parts are sold. XYZ will be required to obtain two licenses for each location in City A and each licensable business will have a separate threshold for purposes of establishing gross receipts for the applicability of the BPOL tax.
  3. Same facts as in Example 1 ~~above~~, except that the locality chooses to charge the business only one fee for the issuance of two licenses. As ~~above~~ in Example 1, XYZ Co. would have two thresholds for purposes of establishing gross receipts for the applicability of the BPOL tax, one for the repair business and one for the retail business.
- B. Each such business must be clearly identifiable as a separate business and not merely activities ancillary to the primary business. An activity for which no separate charge is made is presumed to be ancillary to the activity for which a charge is made, but separately stating charges for different activities does not create a presumption that each such activity is a separate business. Gross receipts attributable to any ancillary activities are taxable as part of the primary licensable business. Gross receipts which are not ancillary to a licensable business must rise to the level of a separate business to be taxable. The following are examples of activities which may be ancillary or de minimis:
1. A merchant (retail or wholesale) offers an extended warranty with the merchandise it sells. The warranty covers parts and labor, and may include replacement of defective merchandise. Although a separate charge is made for the warranty, at the time of sale it is impossible to determine how much of the charge will be used (if any) for labor, parts, or replacement merchandise. The charge for an extended warranty is ancillary to the sale of the merchandise.

2. A retail merchant offers to deliver the merchandise it sells for a fee. The merchant has its own delivery trucks, but also contracts with third parties to make some of the deliveries. The fee charged to the customer varies with distance, but does not depend on whether the merchandise is delivered by the merchant or a third party. Because the delivery service is only offered with respect to merchandise sold by the merchant, the delivery charge is ancillary to the merchandising business.
  3. A repair service must occasionally replace small, inexpensive parts. It does not separately charge for the parts. The provision of parts is ancillary to the repair service.
  4. A firm offers repair service at numerous offices in several states. At its headquarters the firm employs lawyers and certified public accountants to assist in managing its operations. The firm also employs a real estate professional, engineer and architect to find and develop locations for new offices. None of these employees offer their services to anyone other than the firm, and the firm does not separately charge anyone for the activities of its professional employees. The activities of these employees are ancillary to the firm's repair business and do not generate gross receipts.
  5. A retail merchant offers installment contracts in conjunction with the sale of its merchandise. Each contract provides for the payment of interest and collection costs, including attorneys fees of 20% of any delinquent amount collected by legal action.
    - a. Interest received pursuant to the installment sales contract is ancillary to the retail sale of the merchandise.
    - b. If the merchant employs a salaried staff attorney to collect delinquencies under the installment sales contract, any amounts collected would be ancillary to the retail sale of merchandise. (But see, ~~2.7.~~ 23 VAC 10-500-90 for the impact of the cash or accrual method of accounting.)
- C. Localities may permit, but may not require, a taxpayer to elect any of the following:
1. Multiple businesses conducted at a single location may be taxed under a single license if all are taxable at the same rate; or
  2. Multiple businesses conducted at a single location may be taxed at the highest rate if the businesses are subject to tax at different rates; or
  3. A single business may be issued separate licenses for its primary business and one or more ancillary activities which would be taxed at a different rate if the ancillary activities constitute a separate business.
- D. The following are examples of multiple businesses that may be required to obtain multiple licenses:

1. When a merchant conducts both a wholesale and a retail business, the merchant is subject to the retail license tax on the retail portion of the business and subject to the wholesale license tax on the wholesale portion of the business. However, the locality may permit but not require the merchant to pay the license tax as a retailer on both the retail and wholesale portions of the business.
2. Any person engaged in repair service who sells parts as part of the repair service is engaged in a licensable service business. If the person sells parts in addition to the repair service, he is engaged in retail or wholesale sales as to the sales of the repair parts.
3. Any boardinghouse or lodging house which also furnishes or sells food or merchandise for compensation may be engaged in retail sales as to the sale of the food or merchandise.
4. An optometrist who also fills prescriptions for or fits corrective lenses and eyeglass frames in a regular course of dealing is engaged in two licensable businesses. The optometrist is rendering a professional service when examining eyes and is conducting business as a retail merchant when filling prescriptions and fitting corrective lenses and eyeglass frames.
5. Any practitioner of a profession who sells goods, wares or merchandise in connection with the practice of the profession may be engaged in making retail sales depending on the nature of the products sold and the service performed.
6. A medical doctor who engages in the sale of drugs or other merchandise as well as the practice of medicine is a merchant as to those sales. However, a medical doctor is not a merchant as to the drugs used in giving an immunization to a patient.
7. A chiropodist who sells shoes in connection with his practice is a retail merchant as to such sales.
8. An attorney practices law in Town A, Virginia, and has receipts from clients for trying cases, providing advice, lobbying, periodically teaching law at Town A Law School, the sale of stock received as a fee for incorporating a business, interest from the bank on his business accounts, and from gambling during a client- sponsored trip. Receipts from clients for trial work, legal advice, lobbying, the value of stock received as a fee in the year received are all taxable as gross receipts. Teaching law, the sale of stock as a fee, interest earned from the business accounts at the bank and gambling winnings are not taxable because the lawyer is not regularly engaged in these activities as a business and these activities are not ancillary to the practice of law. However, if some of the non-taxable activities were conducted on a regular basis as defined in the statute, they might constitute the conduct of business and be subject to separate licensure.



Source:

*2000 BPOL Guidelines, § 2.9.*

**23VAC10-500-120. Multiple locations.**

The classification of a business generally depends on the nature of the goods or services offered to the customers of the business for consideration. In the case of a business which conducts different activities at multiple locations, proper classification of the business may require consideration of its activities at locations in addition to the licensed location, i.e., the overall nature of the business. For example:

- A. A complex product is manufactured in stages at different locations. It is undisputed that the overall process is manufacturing. However, final assembly and processing occur at a separate location and, viewed in isolation, the activities at this location may not cause sufficient transformation to be considered manufacturing. The location will be considered a "place of manufacture" for purposes of classifying the gross receipts or purchases as arising from sales at wholesale at the place of manufacture.
- B. A contractor maintains a staff of architects and engineers and bids on "design-build" contracts. The bids are for a lump sum and do not segregate design costs from building costs. The entire gross receipts are subject to license tax as a contractor in the locality in which the building is constructed. The design activities are ancillary to the contracting activities and the contractor will not be required to obtain a professional license for the architects and engineers.

*Source:*

*2000 BPOL Guidelines, § 2.10.*

**23VAC10-500-130. Employees and Independent Contractors.**

- A. Employees are generally not engaged in a licensable business separate from that of their employer. Therefore, a license obtained by the employer generally covers the activities of any employees.
- B. An independent contractor is engaged in a business separate from that of the person who contracts for the independent contractor's services. Therefore, if one licensable business subcontracts some of its business to an independent contractor, the primary business may not deduct from its taxable gross receipts any payments to an independent contractor even though the independent contractor or subcontractor is also taxable on its gross receipts.
- C. The determination as to whether a person is an employee or an independent contractor is based on common law principles and is affected by factors such as control, who furnishes materials, and other factors.
- D. Localities are entitled to rely upon the classification of a person as an employee or independent contractor for federal payroll tax purposes unless the taxpayer demonstrates that the classification for federal payroll tax purposes is erroneous or inapplicable.

*Source:*

*Subsection A of 2000 BPOL Guidelines, § 2.11.*

*Subsections B through D of 2000 BPOL Guidelines, § 2.12.*

23 VAC 10-500-140. NAICS Codes.

The federal government publishes a manual of North American Industry Classification System (NAICS) codes. A locality may use the NAICS codes in the course of classifying a business for BPOL tax purposes; however, the NAICS code of a business does not control, or even create a presumption, as to the correct classification for BPOL purposes for the following reasons:

- A. The NAICS codes group manufacturers and processors together, while processors are generally excluded when using the term manufacturer for BPOL tax purposes.
- B. Only one NAICS code is assigned to an enterprise or establishment, while a separate BPOL license may be required for each identifiable business.
- C. A classification, exemption, or deduction under state law or local ordinance may require consideration of factors not relevant to NAICS code selection.

*Source:*

*2000 BPOL Guidelines, § 2.13.*

**23VAC10-500-150. Situs of gross receipts.**

- A. Except as otherwise provided by law, situs refers to the locality in which a person subject to local license taxation for any business, profession, trade, occupation or calling has a definite place of business. If the person has a definite place of business in any other locality, then the other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax upon his business.
- B. If a local license tax imposed by any locality is measured by volume, the volume on which the tax may be computed will be the volume attributable to all definite places of business of the business, profession, trade, occupation or calling in such locality. See 23 VAC 10-500-10 for the definition of the term “volume.” All volume attributable to any definite places of business of the business, profession, trade, occupation or calling in any other locality will be deductible from the base in computing any local license tax measured by volume imposed on the taxpayer by the locality in which the first-mentioned definite place is located. ~~The above~~ This may not be construed as prohibiting any locality from requiring a separate license for each definite place of business located in such locality. ~~Code of Virginia §~~ Section 58.1-3708 of the Code of Virginia.
- C. When a BPOL tax is measured by gross receipts, the gross receipts included in the taxable measure are only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within Virginia. Where activities are conducted outside of a definite place of business, such as during a visit to a customer location, gross receipts are 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 are attributed to one or more definite places of business or offices as ~~follows:~~ detailed in 23 VAC 10-500-160 through 200.

*Source:*

*2000 BPOL Guidelines, § 3.1.*

*Subsection B was formerly located in Footnote 10 of the 2000 BPOL Guidelines. The definition of the term “volume” formerly located in Footnote 10 is now located in 23 VAC 10-500-10.*

**23VAC10-500-160. Situs of gross receipts for a contractor.**

- A. Generally, under § 58.1-3703.1 A 3 a (1) of the Code of Virginia, the gross receipts of a contractor are attributed to the definite place of business where its services are performed. If a contractor performs services in a locality in which it does not maintain a definite place of business, then gross receipts from such services are attributed to the definite place of business where its services are initiated, controlled or directed, unless the contractor is subject to § 58.1-3715 of the Code of Virginia. Prior to July 1, 1999, the provisions of ~~Code of Virginia~~ § 58.1-3715 of the Code of Virginia did not apply to contractors with no definite place of business in Virginia.
- B. A contractor is subject to § 58.1-3715 of the Code of Virginia when it derives gross receipts in excess of \$25,000 in one year from a Virginia locality in which it does not maintain a definite place of business. This locality may require the contractor to pay a license fee or tax. If the contractor maintains a definite place of business in a Virginia locality, the contractor may deduct the amount of business done in the locality in which it does not maintain a definite place of business from the gross revenue reported to the locality where its definite place of business is located. If gross receipts derived from the locality in which the contractor does not maintain a definite place of business do not exceed \$25,000, then those receipts are attributable to the locality in which the contractor's definite place of business is located.
- C. For example:
1. A painter is located and properly licensed in B County in Virginia. The painter is contracted to paint a large warehouse located in Town A in Virginia. The painter will receive gross receipts in excess of \$25,000 for this job. The painter is subject to a license tax in Town A pursuant to § 58.1-3715 of the Code of Virginia. The gross receipts taxable in Town A are deductible from the gross receipts ~~which~~ that the painter reports to County B.
  2. A plumber residing in City A performs plumbing work in City A, County B and Town C. The gross receipts attributable to County B and Town C are each less than \$25,000 a year. The plumber keeps all tools and parts in his truck but maintains his records and business phone line in his house. The situs of gross receipts would be City A because the location of his phone line and records means that he controls his business from this locality.
  3. DEF, Inc., a company engaged in the business of contracting, has its principal office in City A (population 115,000), and provides contracting services in City A as well as County B (population 235,000) and Town C (population 15,000). DEF's gross receipts in City A in a year equal \$125,000 and its gross receipts in County B equal \$15,000 in

that same year. DEF's gross receipts from Town C equal \$35,000 in that same year, also. All of these localities ~~herein~~ require a license of, and also assess a BPOL tax on, contractors. DEF pays a license fee of \$100 per year in City A and also pays a license fee of \$30 per year in Town C. Here, DEF would report gross receipts of \$175,000 to City A. However, since Town C could assess a BPOL tax on the \$35,000 in gross receipts DEF generated in its locale, and if in fact it did levy such a tax upon DEF, then DEF would receive a deduction from the gross receipts it reports to City A for its BPOL tax in the amount of the business done in Town C. However, DEF would not receive a deduction in the calculation of its City A BPOL tax for any license fee paid to Town C. For the reasons stated ~~above~~ in subsection A, since DEF's gross receipts from County B do not exceed \$25,000, those receipts are attributable to City A, where DEF's principal office is located. Accordingly, DEF's gross receipts would be attributed as follows: \$140,000 to City A and \$35,000 to Town C.

Source:

*2000 BPOL Guidelines, § 3.2.*

*The last sentence of subsection A was formerly Footnote 11 of the 2000 BPOL Guidelines.*



**23VAC10-500-170. Situs of gross receipts for a retailer (or wholesaler subject to license taxation based on gross receipts).**

The gross receipts of a retailer are attributed to the definite place of business where sales solicitation activities occur. If sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. Unless a wholesaler is subject to a license tax measured by purchases (See ~~3-4~~ 23 VAC 10-500-180), its gross receipts are also attributed to the definite place of business where sales solicitation activities occur, or, if sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. For example:

- A. A national retailer who sells clothing through a catalog has a sales office in A County A where its sales staff receives telephone purchase orders and relays the orders to its warehouse which is located in Pennsylvania. Retailer's sales office is a definite place of business since sales solicitations are directed there. Gross receipts are sourced to A County A.
- B. A national retailer's corporate headquarters are located in B City B, Virginia. The retailer has stores throughout Virginia and the entire southeast. Each store maintains its own sales staff; however all accounting and operations management are performed at the corporate headquarters. Sales solicitation occurs at each store; therefore, the gross receipts from each store are sited to the localities in Virginia where each store is located.
- C. A wholesaler, whose BPOL tax is based upon gross receipts, has a warehouse in County A. Solicitations for the sale of goods stored at the warehouse are made from City B. The situs of these gross receipts is City B.
- D. A retailer sells goods over the Internet to customers who place their orders from home computers. The store, server, web page and customers are all in different localities in Virginia. The gross receipts of a retailer are attributed to the definite place of business where the sales solicitation activities occur. If sales solicitation activities are not performed in any one locality, then gross receipts are attributed to the definite place of business from which the sales solicitations are initiated, directed or controlled. The Internet page is not a definite place of business. Orders are filled at the retailer's store, and thus, under these facts, the sales solicitations are controlled at the store.
- E. Corp. A maintains a "back-shop" processing office in County B, Virginia where document specialists process requests for purchase proposals submitted to the office from sales representatives located throughout Virginia, including some in County B. An out-of-state office of Corp. A determines whether to submit a bid on the proposal, handles all aspects of

the contract negotiation process, and has all authority to bind Corp. A by accepting proposals. The “back-shop” processing office in County B, Virginia has no authority to bind Corp. A and cannot accept any proposals. Gross receipts of a retailer, or a wholesaler which is taxed based upon gross receipts, are attributed to the definite place of business where sales solicitation occurs. If sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. Sales solicitation relates to selling a particular product to a particular person. Generally, it does not include activities prior or subsequent to such activities. Whether sales solicitation takes place at one place or more is often a facts and circumstances test. In situations where multiple locations are involved, one such factor is which location had the authority to bind the seller in the transaction. In this example, the sales solicitation activity is under the full and sole control of Corp. A’s out-of-state location; therefore, under these facts, gross receipts would not be attributed to County B, Virginia.

Source:

*2000 BPOL Guidelines, § 3.3.*

**23VAC10-500-180. Situs of purchases for wholesaler subject to tax based on purchases.**

- A. The gross receipts of a wholesaler or distribution house subject to the tax based on purchases are attributed to the definite place of business from where the goods are physically delivered to customers or at the shipping point to customers. Examples:
1. A wholesaler has its sales office in B Town B and maintains a warehouse in C County C from which it ships goods by truck to customers in Virginia. Wholesaler is subject to license tax measured by purchases. Wholesaler's warehouse is a definite place of business subject to taxation in C County C.
  2. A wholesaler has facilities in North Carolina and has a distribution center in A Town A, Virginia, which assesses a BPOL tax on wholesalers based upon purchases. Merchandise shipped from the wholesaler in Town A is subject to the license tax measured by purchases and the situs of the wholesaler's purchases, of goods shipped from Town A is Town A because it is the shipping point from the distribution center.
  3. A wholesaler, whose BPOL tax is measured based upon purchases, has a warehouse in County A from where it delivers goods to customers. The situs of its purchases is County A.
  4. Company A manufactures equipment for industrial, governmental and commercial use at its plant outside Virginia. It has an office in City B, Virginia where sales solicitations take place. Company A's sales office is taxable as a wholesale merchant based on purchases. The purchases of a wholesaler subject to the tax on purchases are attributed to the definite place of business where the goods are physically delivered to customers or at the shipping point to customers. Company A has no taxable purchases in City B since the goods are not delivered or shipped from the sales office in that locality.
  5. Company A sells petroleum products at retail in its own retail stores. It also sells petroleum products at wholesale to retail dealers at City A in Virginia. Company A exchanges a shipload of petroleum products for a shipload of oil with Company A. The exchange occurs outside of Virginia. The exchange is not taxable. The sale is not a retail sale nor attributable to the exercise of the privilege of selling at retail at Company A's retail stores. There is no purchase at any place of business in Virginia that is subject to a wholesale merchant's tax in Virginia because delivery occurred outside Virginia.
- B. "Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or

offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

- C. Some localities are grandfathered to assess a BPOL tax upon wholesalers based upon gross receipts. Any wholesaler who is subject to a BPOL tax in two or more localities with different bases or measures may apply to the Tax Commissioner for the proper measure of purchases and gross receipts subject to tax in each locality.

Source:

*2000 BPOL Guidelines, § 3.4. The paragraphs have been reordered to improve readability.*

*The first sentence of subsection C was formerly located in Footnote 12 of the 2000 BPOL Guidelines.*

**23VAC10-500-190. Situs of a business renting tangible personal property.**

The gross receipts of a business renting tangible personal property are attributed to the definite place of business where the property is rented, or if there is no definite rental place, then to the locality where the rental of the property is managed. For example:

A car rental agency located in County B, stores its cars in a lot in Town C. The car rental contract is signed in the main office in County B and then an employee drives the customer out to the lot to pick up the car. The situs of gross receipts is County B since that is the locality where the rental took place. A business located in City A rents home electronics. Orders are placed by phone to the main warehouse in City A where the goods are then transported by truck to customers' homes in various localities. The rental contract is filled out by a customer at her home and given to the driver at which time the goods are released. Situs of gross receipts is City A. Although the place of rental is in a number of localities, the rental is managed in City A.

*Source:*

**2000 BPOL Guidelines, § 3.5.**

**23VAC10-500-200. Situs of a business performing services.**

The gross receipts from the performance of services are attributed to the definite place of business where the services are performed, or if not performed at any definite place, then they are attributed to the definite place of business where the services are directed or controlled.

Examples:

- A. A law firm has an office in City A where all management decisions are made. Attorneys travel to all surrounding city and county court houses to perform legal services. The proper situs would be City A since management decisions are made from this location.
- B. A real estate management company is headquartered in ~~B~~ County B. Properties managed by the company are located in other Virginia localities as well as other states. Each rental property has an on-site office where rental, repair and management decisions may be made. Since each definite place of business is at the on-site rental office, gross receipts would be sourced to the localities where the rental offices are located. Further, if a locality in which any on-site office is located does not assess a BPOL tax, the gross receipts from such office would not be attributed back to County B where the company's headquarters are located.
- C. Same facts as ~~above~~ in Example B, except that there are no on-site management offices. All rental, repair and management decisions are directed and controlled at the company headquarters. Gross receipts will be sourced to ~~B~~ County B since it is the definite place of business where the rental activity is directed and controlled.
- D. An individual works as a marketing consultant. This individual travels constantly throughout various cities and counties in the Commonwealth. She has no office, but keeps a cellular phone and her business records in her car. Her home is located in ~~E~~ County C. Consulting income will be sourced to ~~E~~ County C. Although she runs her business out of her car, a person's residence is deemed to be a definite place of business if there is no definite place of business maintained elsewhere. See § 58.1-3700.1 2 (b) of the Code of Virginia.

- E. Company XYZ has one truck which operates out of City A in southwest Virginia. Company XYZ picks up and delivers wares, loads and other goods for customers to and from locations in and outside of Virginia. Company XYZ has a telephone, desk, files and operating log books at its office in City A and controls, directs and conducts business out of this location. It has no other locations outside of this office in City A. Company XYZ has one truck which operates out of City A, with maintenance on the truck being performed at this location. Company XYZ is a service provider. Gross receipts from business services are attributed to the definite place of business where services are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. ~~Code of Virginia~~, Section 58.1-3703.1 A 3(a)(4) of the Code of Virginia. Here, services are performed across a broad geographic range. Since services are not performed at any definite place of business, gross receipts are attributed to Company XYZ's office in City A where the services are directed or controlled.
- F. Acme Pest Co., a pest control and extermination business, has its principal offices in City C, Virginia. Most of Acme's customers are located in City C; however, Acme has some customers in localities which surround City C. Acme provides its service by making on-site visits and performing inspections and pest control spraying and eradication at its customers' residences or places of business. Acme has on-going contracts with some of its customers under which it makes bi-annual visits to their residences or places of business. Other service visits are made on an intermittent, as-ordered basis. Acme leaves no equipment at its regular customers' locations, with the exception of the placement of an occasional mouse trap. Gross receipts from business services are attributed to the definite place of business where services are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. ~~Code of Virginia~~ § 58.1-3703.1 A 3(a)(4) of the Code of Virginia. A definite place of business means an office or location at which occurs a regular and continuous course of dealing. ~~Code of Virginia~~ § 58.1-3700.1 of the Code of Virginia. Service is performed by Acme at each location on a regular but non-continuous basis. Acme does not maintain a permanent presence at its customers' locations. Thus, Acme does not have a definite place of business at those locations, and its gross receipts from each place where service is rendered are attributed to City C where Acme has its principal office.

- G. ABC CPA's LLP, a CPA firm, has its principal offices in City C, Virginia. Although most of ABC's customers are located in City C, it has some customers in localities ~~which~~ that surround City C. ABC provides some of its service by making on-site visits and performing inspections, audits, consulting, tax and business advice at its customers places of business. ABC also has engagements with some of its customers under which it makes bi-annual visits to their places of business. Other services are also performed at ABC's principal offices on an on-going as well as an intermittent, as ordered, basis. ABC has no equipment at its regular customers' locations. Gross receipts from business services are attributed to the definite place of business where services are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. ~~Code of Virginia § 58.1-3703.1 A 3(a)(4) of the Code of Virginia.~~ A definite place of business means an office or location at which occurs a regular and continuous course of dealing. Code of Virginia § 58.1-3700.1 of the Code of Virginia. Where a professional service provider performs services at other locations away from an established or principal office where its phone and mailing address ~~is~~ are located and does not maintain a continuous presence for more than 30 consecutive days at these other locations, the location of its definite place of business remains its established or principal office. In this example, service is performed by ABC at each customer location on a regular but non-continuous basis. Thus, ABC does not have a definite place of business at those customer locations, and its gross receipts from each place where service is rendered are attributed to City C where ABC has its principal office.
- H. Corp. A is a financial services corporation headquartered in Town B, Virginia. Corp. A maintains a loan servicing office in State C and a portfolio maintenance office in State D. Receipts attributable to loan servicing activities and portfolio maintenance are not taxable in Town B.

*Source:*

*2000 BPOL Guidelines, § 3.6.*



**23VAC10-500-210. Apportionment; In General.**

A. If the taxpayer has more than one definite place of business and it is not possible or practical to determine at which definite place of business gross receipts should be taxed, gross receipts must be divided between the definite places of businesses by payroll. Some activity must occur or be controlled from a definite place of business for gross receipts to be taxed by the locality of the definite place of business. If an entity's definite place of business is in a locality ~~which~~ that does not tax gross receipts, a different locality may not tax these gross receipts simply because the first locality does not have a license tax.

B. Examples:

1. A large electronics retailer has its main sales office in City A and maintains a satellite office with its own management in the distant County B. Sales staff from City A make the initial sales contact in County B and process all sales related paperwork. Sales staff in County B make all personal and follow up sales contacts in County B. The definite place of business is in both City A and County B since each sales office is equally responsible for sales solicitations. If it were not possible or practical to determine which definite place of business gross receipts should be attributed to, gross receipts must be apportioned between the definite places of business on the basis of the payroll of the sales staff at each respective place of business.
2. A group medical practice has offices in County A and City B. County A does not tax gross receipts. Patient visits and record keeping functions occur in County A, but physicians see patients in the City B offices on a regular basis. City B may tax the gross receipts generated from services performed at offices located within its boundaries. However, City B may not tax the practice's gross receipts generated from County A simply because the county does not have a license tax.

Source:

*2000 BPOL Guidelines, § 4.1.*

**23VAC10-500-220. Apportionment; Agreement to apportion among localities.**

- A. Local assessors may enter into agreements with each other regarding the manner in which gross receipts shall be apportioned among definite places of business. The sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all definite places of business affected by the agreement. Upon notification from a taxpayer that a method attributing gross receipts is inconsistent with the method of one or more other localities in which the taxpayer is licensed, 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 which the taxpayer is licensed, the assessor shall make a good faith effort to reach an apportionment agreement with the other localities involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to § 58.1-3701 of the Code of Virginia. Notice of the request must be given to the other party.
- B. Notwithstanding the provisions of §58.1-3993 of the Code of Virginia, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of § 58.1-3986 of the Code of Virginia, the court may 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.

*Source:*

*2000 BPOL Guidelines, § 4.2.*

**23VAC10-500-230. Contractors; Maximum rate.**

The maximum rate for local license taxes imposed upon a person engaged in contracting and persons constructing for their own account for sale is sixteen cents per one hundred dollars of gross receipts. In lieu of the tax, a license fee may be charged by the locality. The amount of the fee depends upon the locality's population. See ~~2-8-23~~ VAC 10-500-100

Source:

*First paragraph of 2000 BPOL Guidelines, § 5.1.1.*

**23VAC10-500-240. Contractors; Classification.**

- A. A person shall be classified as a contractor if he accepts contracts to perform, or regularly performs, or engages others to perform, any of the work described in ~~paragraph~~ subsection B of § 58.1-3714 of the Code of Virginia on buildings, structures or real estate owned by him when the buildings, structures or real estate are sold upon completion of such work; or, if he regularly performs, or engages others to perform, any of the work described in ~~paragraph~~ subsection B of § 58.1-3714 of the Code of Virginia on buildings, structures or real estate owned by others.
- B. Contractors include persons who subdivide and improve real estate, and speculative builders who build houses or other buildings with the intention to offer the subdivided lots or completed buildings for sale. A person who would otherwise be classified as a contractor shall not lose such classification because real estate is temporarily leased until it can be sold, or leased with an option to purchase instead of sold, unless the leasing activity constitutes a separate licensable business. Any gross receipts from such leases shall be considered ancillary to the business of contracting.
- C. The mere subdivision of land into lots, without more, is not contracting. However, a person who installs water or sewer systems, roads, or engages in any other activity described in subsection B of § 58.1-3714 of the Code of Virginia on his own land with the intent to offer the land for sale is a contractor regardless of whether the land is subdivided.
- D. A person shall not be deemed to be engaged in the business of contracting solely because he acts as his own prime contractor to build or improve a building which he intends to occupy as his residence, office or other place of business, or actually so occupied within a reasonable time prior to the sale of the premises.

Source:

*Subsections A through D of 2000 BPOL Guidelines, § 5.1.1.*

**23VAC10-500-250. Contractors; List of occupations.**

Contracting generally includes, but is not limited to, persons engaged in the following occupations, businesses or trades:

1. Air-conditioning
2. Brick contracting and other masonry
3. Building
4. Cementing
5. Dredging
6. Electrical contracting
7. Elevator installation
8. Erecting signs which are assessed as realty
9. Floor scraping or finishing
10. Foundations
11. House moving
12. Paint and paper decorating
13. Plastering
14. Plumbing, heating, steam fitting
15. Refrigeration
16. Road, street, bridge, tunnel, sidewalk or curb and gutter construction
17. Roofing and tinning
18. Sewer drilling and well digging
19. Sign painting
20. Structural metal work
21. Tile, glass, flooring and floor covering installation
22. Wrecking, moving or excavating

Source:

*2000 BPOL Guidelines, § 5.1.2.*

**23VAC10-500-260. Installation by merchant.**

- A. An installation by a merchant is not considered contracting where he delivers and installs an appliance or other merchandise he sells when the installation uses existing openings and connections. If, however, the installation requires making openings in a wall, running ductwork, wires or plumbing, or any other work described in ~~paragraph~~ subsection D of § 58.1-3714, then the installation work may be deemed contracting. This factor may turn upon the difficulty involved in making way for the goods to be installed. Other factors which may be considered in making the determination of whether or not a merchant's installation of goods constitutes contracting are as follows: (I) whether the installation is merely ancillary to the retail sales of a merchant, as opposed to constituting a substantial portion of what is sold in the transaction; (ii) does the merchant hold himself out as able to perform contractor's activities; and (iii) does the merchant install his own merchandise only, or does he also install the goods of others. Ultimately, however, the determination of whether or not a merchant's installation of goods constitutes contracting for purposes of the BPOL tax will depend upon the facts and circumstances in each case.
- B. A merchant engaged in the business of selling and erecting, or erecting, tombstones is not a contractor solely because he places or erects the tombstone on a gravesite, but is engaged in either retail or wholesale sales.
- C. While a person engaged in the business of wrecking or demolishing a building is a contractor, the subsequent sale of the materials after they have been separated, cleaned, graded, etc., may be classified as either retail or wholesale sales. However, bulk sales of such material from the demolition site may be classified as ancillary to the demolition contract.
- D. A person who merely sells a prefabricated building or structure is not a contractor, but if the person or a subcontractor for that person erects the building or structure, then the seller is a contractor.
- E. If a merchant sells floor coverings (whether the covering be carpet, linoleum, tile or other covering) and installs the floor covering as part of or incidental to the sale, the transaction is not contracting but a retail or wholesale sale. The fact that the purchaser is a general contractor or other institutional, commercial or industrial entity, coupled with the quantity sold and other terms, may affect the classification of the sale as a wholesale rather than retail sale. A person other than a merchant who enters into a contract to install floor coverings would be classified as a contractor, whether the contract is for installation only or sale and installation.

F. The mere hauling of sand, gravel and dirt excavated by another is not contracting but is a business service.

G. Soliciting business for a contractor is not contracting but is a business service.

Source:

*2000 BPOL Guidelines, § 5.1.3.*

**23VAC10-500-270. Retail sales; Maximum rate.**

The maximum rate for local license taxes imposed on a person engaged in retail sales is twenty cents per one hundred dollars of gross receipts. In lieu of a tax, a license fee may be charged by the locality. The amount of the fee depends upon the locality's population. See ~~2-8~~ 23 VAC 10-500-100.

Source:

*2000 BPOL Guidelines, § 5.2.1.*



**23 VAC 10-500-280. Retail sales; Retail and wholesale distinguished.**

The sales price alone is not determinative of whether the sale is at retail or wholesale. The fact that a person sells goods, wares or merchandise at wholesale prices, at cost, or at less than cost does not prevent the person from being classified as a retail merchant if the sales fall within the definition of a retail sale. See ~~5.3~~ 23 VAC 10-500-350.

Source:

*2000 BPOL Guidelines, § 5.2.2.*

**23VAC10-500-290. Retail sales; Banks.**

- A. Banks are generally exempt from local license tax, but § 58.1-1202 of the Code of Virginia specifically authorizes localities to subject banks to local license tax on the sale of blank checks, repossessed automobiles, and any other tangible personal property sold by banks in connection with promotions or otherwise. In connection with the sale of blank checks:
1. A bank is not engaged in retail sales if the customer places an order for the checks directly with the printer and authorizes the bank to collect for the printer by charging his account, and the bank is not obligated to pay for the checks except insofar as it honors the customer's authorization.
  2. A bank is engaged in retail sales if the customer places his order with the bank, and the bank contracts with the printer and is liable to the printer, whether or not the bank actually collects from the customer.
- B. ~~Code of Virginia~~ § Section 58.1-1202 of the Code of Virginia does not authorize the imposition of a BPOL tax on banks. It merely indicates that banks are not exempt as to the sale of tangible personal property. A BPOL tax can be imposed on such sales by a bank when authorized by § 58.1-3703 of the Code of Virginia. In other words, such sales must be a separate business. If they are ancillary to the banking business, and classified as financial services, they would be exempt from the BPOL tax.

Source:

2000 BPOL Guidelines, § 5.2.3.

*Subsection B was formerly located in Footnote 13 of the 2000 BPOL Guidelines.*

**23VAC10-500-300. Retail Sales; Solicitation.**

A person is not subject to a local license tax if his business in this state is limited solely to the solicitation of orders by catalogs mailed from outside this state to mail-order buyers in this state and who fills orders from outside this state. However, if the catalogs are distributed by a Virginia resident by mail or in person or if the person engaged in the mail-order business has a definite place of business in this state at which mail orders are received or filled, the mail order business may be treated the same as any other retail or wholesale business for purposes of local license taxes.

*Source:*

*2000 BPOL Guidelines, § 5.2.4.*

**23VAC10-500-310. Retail sales through a commission merchant.**

Any person who sells goods at retail through a commission merchant, as defined in § 58.1-3733 of the Code of Virginia, may be held liable for a local license tax as to such sales even though the commission merchant may also be taxable with respect to a commission on such sales.

Source:

*2000 BPOL Guidelines, § 5.2.5.*

**23VAC10-500-320. Non-mercantile businesses.**

A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed. The term “job printer” does not lend itself to rigid definition.

Source:

*2000 BPOL Guidelines, § 5.2.6.*

**23VAC10-500-330. Motor vehicle dealers.**

Any locality imposing a license tax on motor vehicle dealers may, by ordinance, require any dealer who separately states the amount of local license tax applicable to a sale and collects it from the customer to treat such taxes collected as held in trust for the locality and require that all such sums collected be paid over to the locality quarterly during the license year. Gross receipts on which the tax has been separately stated, collected and paid over shall be excluded from other taxable gross receipts when the annual license is obtained. During the three year period following over-assessments on the part of the motor vehicle dealers, the locality will refund the amounts due to the purchasers who produce verification that the over-payments were made.

*Source:*

*2000 BPOL Guidelines, § 5.2.7.*

**23 VAC 10-500-340. Wholesale sales; Maximum rate.**

In general, the maximum rate for local license taxes imposed on a person engaged in wholesale selling is five cents per one hundred dollars of purchases of goods for sale. In lieu of a tax, a license fee also be charged by the locality. The amount of the fee depends upon the locality's population. See ~~§ 2-8~~ 23 VAC 10-500-100. Some localities are grand fathered to assess a BPOL tax on wholesalers based upon gross receipts.

Source:

*2000 BPOL Guidelines, § 5.3.1.*

**23VAC10-500-350. The licensable privilege of wholesale selling.**

- A. Whether or not a sale of tangible personal property is properly classified as wholesale selling depends on the facts and circumstances of the particular transaction under consideration. Wholesale trade is generally recognized as the selling at such prices and in such quantities to others who will then resell such goods either to ultimate consumers or further down the normal distribution chain. Wholesale trade may also include sales to industrial, commercial, or governmental users where goods sold will be used by the buyer in its productive processes.
- B. Although no single factor such as price, purpose, or place of sale may always distinguish between wholesale and other types of sales, the following inquiries may be helpful:
1. Is the sale to an individual consumer for the consumer's own personal use? This type of transaction is never considered a wholesale sale for BPOL purposes regardless of whether the taxpayer sells the item at a purported "wholesale price" or sells the item from a business facility that appears to be a wholesale establishment.
  2. Is the sale to another merchant for resale? Transactions in which the taxpayer is selling new "in the box" items to a merchant for retail or distribution to other retailers or wholesalers are wholesale sales for BPOL purposes. Sales of used goods for resale may be wholesale depending upon the facts and circumstances of the transaction.
- C. Taxpayers engaged in the business of selling goods to a government, institutional, business, or industrial entity for consumption, use or incorporation in an assembly, manufacturing or processing operation are typically subject to the BPOL tax on wholesalers. "Wholesale price" can be an important factor in classifying this type of sales activity, especially when the transaction in question involves goods which are simultaneously offered to individual consumers at a higher price. Examples of these wholesale activities include:
1. bulk quantity sales of goods for maintenance of facilities or equipment;
  2. sales of materials or components for incorporation into a product; or
  3. the supplying of machinery, fixtures or furnishings.
- D. Factors that help distinguish between wholesale and retail selling:



1. Retail:
  - a. Personal use by individual consumers, or
  - b. Retail price offered to consumers
  
2. Wholesale:
  - a. Sale for resale,
  - b. Volume,
  - c. Sale to government, institutional, or industrial entity for input into productive process,  
or
  - d. Sales by the original manufacturer.

Source:

*2000 BPOL Guidelines, § 5.3.2.*

**23VAC10-500-360. Wholesale activities ancillary to manufacturing.**

A. In bringing their goods to market most manufacturers engage in a wholesale function. So long as this function is ancillary to the manufacturing function, i.e. it does not rise to the level of becoming a separate business activity, the manufacturer is not licensable as a wholesaler or subject to the wholesaler BPOL tax. The following wholesale functions are ancillary to a manufacturer's privilege of manufacturing and selling goods at wholesale at the place of manufacture and not subject to BPOL tax:

1. All facilities of manufacturer at same location. In this case, the wholesale function and the related sales personnel are located at the place of manufacture. The wholesale function is ancillary to the principal business of manufacturing and thus not licensable or taxable as a wholesale operation for BPOL purposes.
2. Manufactured goods distributed from place of manufacture - sales function performed in several separate jurisdictions. Even though in this case sales activity is taking place in other jurisdictions, the activity does not rise to the level of a separate wholesale business because the goods to be sold remain at the place of manufacture. All sales activity is directed towards delivery of the goods from the place of manufacture to the customer and thus within the statutory exemption for manufacturing.
3. All facilities of manufacturer at same location except completed goods warehoused in separate jurisdiction. The result in this example is the same as in the previous two. Assuming the warehouse is a storage facility which conducts no other business functions, its existence in another jurisdiction does not provide this other jurisdiction with grounds to levy a license tax on the facility. Mere storage of completed goods is ancillary to manufacturing regardless of where the storage takes place.

B. Examples of Wholesale Activities:

1. Company C manufactures parts for automobiles outside Virginia. Some of its production is sold directly to governmental, institutional, business, and industrial entities, and some of its production is sold through a store in City D, Virginia. Customers of that store include individuals purchasing at established retail prices, businesses purchasing at the same prices, and other businesses purchasing on a fleet basis at a discount. Sales by Company C directly to government, institutional, business, and industrial entities from the factory are wholesale sales provided that the purpose of the customer in buying such goods is to resell them in one form or another or to use them for business needs as supplies or equipment. Sales made at Company C's store in City D are wholesale to the extent made to businesses on a fleet basis at discount. Its sales made to other businesses not on a fleet and discounted basis are retail sales.

2. Corp. A, from its facility in City C, manufactures widgets which are installed in commercial, industrial, and governmental customer locations. Components are not for sale separately, nor can customers purchase unmade widgets. There is no tax. The company is a manufacturer selling at wholesale at the place of manufacture.

Source:

*2000 BPOL Guidelines, § 5.3.3.*

**23 VAC 10-500-370. Financial, real estate and professional services; Maximum rate.**

The maximum rate for local license taxes imposed on a person engaged in a financial, real estate or professional service is fifty-eight cents per one hundred dollars of gross receipts. In lieu of a tax, a locality may charge a license fee. The amount of the fee depends upon the locality's population. See ~~2-8~~ 23 VAC 10-500-100.

Source:

*2000 BPOL Guidelines, § 5.4.1.*

**23VAC10-500-380. Financial Services; Definitions.**

Any person rendering a service for compensation in the form of a credit agency, an investment company, a broker or dealer in securities and commodities, or a security or commodity exchange is providing a financial service, unless such service is specifically provided for under another section of ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10 et seq.). For purposes of this classification, the term:

- A. "Broker" means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.
- B. "Commodity" means staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.
- C. "Dealer" means any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.
- D. "Security" shall have the same meaning as in the Securities Act (. 13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Source:

*2000 BPOL Guidelines, § 5.4.2.1.*

**23 VAC 10-500-390. Financial services; list of occupations.**

A. Those engaged in rendering financial services include, but are not limited to, the following:

1. Buying installment receivables
2. Chattel mortgage financing
3. Consumer financing
4. Credit card services
5. Factors
6. Financing accounts receivable
7. Industrial loan companies
8. Installment financing
9. Inventory financing
10. Loan or mortgage brokers
11. Loan or mortgage companies
12. Safety deposit box companies
13. Security and commodity brokers and services
14. Stockbroker
15. Working Capital Financing

B. Some localities may be grand fathered for purposes of the BPOL tax to apply a rate higher than that specified by state statute to stockbrokers.

Source:

*2000 BPOL Guidelines, § 5.4.2.2.*

*Subsection B was formerly located in Footnote 14 to the 2000 BPOL Guidelines.*

**23VAC10-500-400. Financial services; buying for another.**

Any person other than a national bank or bank or trust company organized under the laws of this state, or a duly licensed or practicing attorney-at-law, that engages in the business of buying or selling for others on commission or for other compensation, shares in any corporation, bonds, notes or other evidences of debt is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve the broker from local license taxation.

Source:

*2000 BPOL Guidelines, § 5.4.2.3.*

**23VAC10-500-410. Financial Services; banks.**

Although they render financial services:

- A. banks and trust companies subject to the Virginia bank franchise tax are exempt from local license tax by § 58.1-1202 of the Code of Virginia except as to sales of tangible personal property;
- B. savings institutions (including those whose name includes "savings bank") and state chartered credit unions are limited to a local license tax of \$50 by § 58.1-3730 of the Code of Virginia; and
- C. federal credit unions are exempt under the Federal Credit Union Act, 12 USC § 1768.

Source:

*2000 BPOL Guidelines, § 5.4.2.4.*



**23 VAC 10-500-420. Real estate services.**

Any person rendering a service for compensation as lessor, buyer, seller, agent or broker is providing a real estate service, unless the service is specifically provided for under another section of ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10 et seq.).

Source:

*2000 BPOL Guidelines, § 5.4.3.1.*

**23VAC10-500-430. Real estate services; list of occupations.**

Those rendering real estate services include, but are not limited to, the following:

- A. Appraisers of real estate
- B. Escrow agents, real estate
- C. Fiduciaries, real estate
- D. Lessors of real property
- E. Real estate agents, brokers and managers
- F. Real estate selling agents
- G. Rental agents for real estate

Source:

*2000 BPOL Guidelines, § 5.4.3.2.*

**23 VAC 10-500-440. Professional services; generally.**

The BPOL tax applies to the rendering of professional services for a fee and does not apply to professional classifications, per se. For example, lawyers or accountants employed by a corporation and compensated in wages as employees are not subject to the BPOL tax as professionals.

Source:

*2000 BPOL Guidelines, § 5.4.4.*

**23 VAC 10-500-450. Professional services; List of occupations.**

A. The BPOL statute requires the Department of Taxation to list those occupations which may be classified as “professionals” by the localities. The BPOL statute limits the term “professional” to those occupations or vocations in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching others, and serving their interests or welfare in the practice of an art or a science founded upon it. The statute also states that the word “profession” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit. The following is an all encompassing list. Unless otherwise specifically excluded, all professional titles listed include the specialties and sub-specialties included within that title in the U.S. Department of Labor’s Dictionary of Occupational titles. For instance, “dentist” includes orthodontist, periodontist, oral pathologist, endodontist, oral surgeon, and prosthodontist. Further, the term “engineer” includes, petroleum engineer, mechanical engineer, chemical engineer, civil engineer, industrial engineer, electrical engineer, nuclear engineer, and agricultural engineer. A “professional” means a person rendering services as:

1. Architects
2. Attorneys-at-law
3. Certified public accountants
4. Dentists
5. Engineers
6. Land surveyors
7. Surgeons
8. Veterinarians
9. 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), including pharmacists and occupational and physical therapists; chiropractors; dieticians; and such occupations as listed ~~herein~~ in this section, and no others.

B. In addition to ~~the above list~~, the following occupational titles would fall within the ~~above~~ definition of “professional,” as well:

1. Anatomists
2. Archeologist
3. Biologists
4. Botanists
5. Chemists

6. Economists
7. Geologists
8. Historians
9. Mathematicians
10. Metallurgists
11. Meteorologists
12. Morticians
13. Physicists
14. Zoologists

Source:

*2000 BPOL Guidelines, § 5.4.4.1.*

*The three sentences before the last sentence in Subsection A were formerly located in Footnote 16 of the 2000 BPOL Guidelines.*

**23VAC10-500-460. Professional Services; consulting.**

The terms "consultants" and "consulting" imply that the person possesses education, experience, and expertise in the subject matter of the service offered. However, whether a consultant renders a professional service also depends on the nature of the service offered. While consulting involves the rendering of an expert opinion, as opposed to the mere conveyance of data or the giving of general advice, the activity of consulting will not fall into the definition of "professional services" unless some professional service is rendered with the consulting advice and the rendering of such professional service is listed on the list contained in ~~§5.4.4.2. above~~ 23 VAC 10-500-450. For example:

- A. An inexperienced lawyer offering legal services to the public is classified as a professional because qualifying as a lawyer requires a prolonged course of specialized instruction and study, and legal services are generally considered professional services.
- B. A "professional exterminator" is classified as personal and other services because he is offering an exterminating service even though he may be very experienced, expert and knowledgeable in the subject. On the other hand, a biologist or sanitarian who does not provide extermination services but advises as to procedures (among which may be extermination services), equipment, and other measures to avoid contamination by viruses, bacteria, chemicals, insects, rodents, and the like may be considered a professional.
- C. Services which are not considered professional services may be offered in connection with professional services and be considered ancillary. For example, tax preparation services generally are not professional services, while rendering advice concerning the tax consequences of completed or contemplated transactions would be a professional service. Professionals who specialize in tax matters may prepare returns as well as render advice, and the tax preparation service would be ancillary to the professional service.
- D. The term "management consulting" does not convey enough information about the service offered to determine the proper classification. Services which assist the business in the conduct of its day-to-day operations would generally not be considered professional. For example, payroll services, marketing surveys, and cash management, are all services that would not properly be classified as professional services.

Source:

2000 BPOL Guidelines, § 5.4.4.2.

**23VAC10-500-470. Professional services; services for compensation.**

- A. Certification as a professional by itself is not sufficient to establish liability for local license taxation because many individuals may maintain their professional certification even though they are not practicing their profession. The business may not be classified as professional unless it is offering professional services to the public for compensation.
- B. Gross receipts for purposes of local license taxation as a professional include only those gross receipts obtained from the practice of that profession as a business (including any ancillary receipts), whether the practice be on a full or part-time basis, and without regard to the legal form of the business entity.

Source:

*2000 BPOL Guidelines, § 5.4.4.3.*

**23VAC10-500-480. Repair, personal, business and other services; other businesses.**

Other services not clearly identified as financial, real estate or professional are classified as "repair, personal, business and other services" under ~~5.5~~ 23VAC10-500-490 to 510.

Source:

*2000 BPOL Guidelines, § 5.5.*



**23VAC10-500-490. Repair, personal, business and other services; maximum rate.**

The maximum rate for local license taxes imposed upon a person engaged in providing for compensation any repair, personal, business or other services not specifically otherwise classified in ~~these Guidelines~~ the BPOL Regulations (23VAC10-500-10 et seq.) or exempted from local license tax is thirty-six cents per one hundred dollars of gross receipts. In lieu of a tax, a locality may impose a license fee upon the service. The amount of the fee charged is limited by the locality's population. See § ~~2-8~~ 23VAC10-500-100.

Source:

*2000 BPOL Guidelines, § 5.5.1. The last sentence of 2000 BPOL Guidelines § 5.5.1 is now located in 23VAC10-500-500.*

**23VAC10-500-500. Repair, personal, business and other services; list of occupations.**

Definitions of repair service, personal service, and business service have been omitted since this classification applies to all services not classified as financial, real estate or professional. Those rendering a repair, personal or business service or other service as provided for in ~~5-5~~ 23 VAC 10-500-480 include, but are not limited to, the following:

1. Advertising agencies
2. Airports
3. Ambulance services
4. Amusements and recreation services
5. Animal hospitals, grooming services, kennels or stables (except for the services of a veterinarian)
6. Auctioneers and common criers
7. Automobile driving schools
8. Barber shops, beauty parlors, and hairdressing establishments, schools & services
9. Bid or building reporting services
10. Billiard or pool establishments or parlors
11. Boat landings
12. Bondsman
13. Booking agents or concert managers
14. Bowling alleys
15. Brokers and commission merchants other than real estate or financial brokers
16. Business and governmental research and consulting services
17. Chartered clubs
18. Child care attendants or schools
19. Collection agents or agencies
20. Commercial photography, art and graphics
21. Copying over the counter (including copies made by the customer on the business' equipment)
22. Court reporting and public stenographers
23. Dance studios and schools
24. Data processing, computer and systems development services
25. Developing or enlarging photographs
26. Detective agency and protective services
27. Drafting services
28. Employment agencies
29. Engraving outside of the manufacturing process
30. Erecting, installing, removing or storing awnings
31. Extermination services (unless the services involve performing functions defined as

- contracting under ~~Code of Virginia~~ § 58.1-3714 D of the Code of Virginia)
32. Farrier or blacksmith
  33. Forester
  34. Freight traffic bureaus
  35. Fumigating or disinfecting
  36. Funeral services and crematories
  37. Golf courses, driving ranges and miniature golf courses
  38. Hauling of sand, gravel or dirt (excavated by others)
  39. Home for adults (licensed by Department of Social Services)
  40. Hospitals (other than the performance of medical services falling within the definition of professional services)
  41. Hotels, motels, tourist courts, boarding and rooming houses and transient trailer
  42. parks and campsites
  43. House cleaning services
  44. Information bureaus
  45. Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like
  46. Interior decorating
  47. Janitorial services
  48. Laundry cleaning and garment services including laundries, dry cleaners, linen supply, diaper service, coin operated laundries and carpet and upholstery cleaning
  49. Mailing, messenger and correspondent services
  50. Movie theaters and drive-in theaters
  51. Nickel plating, chromizing and electroplating
  52. Nurses and physician registries
  53. Nursing and personal care facilities including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes
  54. Packing, crating, shipping, hauling or moving goods or chattels for others
  55. Parcel delivery services
  56. Parking lots, public garages and valet parking
  57. Pawnbrokers
  58. Personnel services, labor agents and employment bureaus
  59. Piano tuning
  60. Picture framing and gilding
  61. Porter services
  62. Press clipping services
  63. Professional sports (i.e., commercial rather than amateur)
  64. Promotional agents or agencies
  65. Public relations services
  66. Realty multiple listing services
  67. Renting or leasing any items of tangible personal property
  68. Research and development laboratories
  69. Secretarial services
  70. Septic tank cleaning

71. Shoe repair, shoe shine and hat repair shops
72. Sign painting (unless the painting services involve performing functions defined as contracting under subsection D of 58.1-3714 of the Code of Virginia)
73. Storage -- all types
74. Swimming pool maintenance and management
75. Tabulation services
76. Tax preparers (other than professionals described in ~~5.4.4.2~~ 23 VAC 10-500-450)
77. Taxicab companies
78. Taxidermist
79. Telephone answering services
80. Temporary employee services
81. Testing laboratories
82. Theaters
83. Theatrical performers, bands and orchestras
84. Towing services
85. Transportation services including buses and taxis
86. Travel agencies
87. Tree surgeons, trimmers and removal services
88. Trucking companies, intrastate
89. Wake-up services
90. Washing, cleaning or polishing automobiles

Source:

*2000 BPOL Guidelines, § 5.5.2. The first sentence was formerly the last sentence of 2000 BPOL Guidelines § 5.5.1.*

**23VAC10-500-510. Commission merchants.**

A commission merchant as defined in § 58.1-3733 of the Code of Virginia is deemed to be providing a service to the manufacturer or merchant for whom he sells. The commission merchant's commission income may be subject to a license tax of up to thirty-six cents per hundred dollars of gross receipts under this classification.

Source:

*2000 BPOL Guidelines, § 5.6.*

**23VAC10-500-520. Manufacturing.**

A. Manufacturers are not listed as a classification for which § 58.1-3706 of the Code of Virginia specifies the maximum tax rate. The taxation of wholesalers, however, is affected by whether the business is also classified as a manufacturer, and whether activities at a definite place of business from which sales are made are considered to be part of the manufacturing process. Questions also arise as to whether a business is a manufacturer or properly classified as another type of business.

B. The Code of Virginia does not define the term "manufacturer" for purposes of the local business license tax. The courts, however, have developed a liberally applied test involving three essential elements in determining when a person is a manufacturer:

1. The original material;
2. A process whereby the original material is changed; and
3. A resulting product which, by reason of being subjected to processing, is different from the original material.

~~Included in this Appendix are excerpts from~~ (See the Virginia Supreme Court's discussion in the County of Chesterfield v. BBC Brown Boveri, 238 Va. 64 (1989) ~~case~~ of the term "manufacturer" ~~as contained in~~ for purposes of the BPOL law.)

C. "Manufacturer" means one engaged in activity which transforms materials into an article or product of substantially different character. A business engaged in manufacturing does not lose its status as a manufacturer merely because it conducts some non-manufacturing activities. When one is engaged in both manufacturing and non-manufacturing activities, it can still be classified as a manufacturer if its manufacturing activity constitutes a substantial portion of its overall activities. The test to determine whether a multi-purpose business qualifies as a manufacturer for tax purposes is one of substantiality. The test of substantiality has no rigid definition; however, the business as a whole must be considered. In order for the manufacturing component of a multipurpose business to be deemed substantial, it must not be de minimis, merely trivial, or only incidental to its principal business.

1. Gross receipts that are ancillary to a manufacturer's sales at wholesale at the place of

manufacture are also exempt even though the receipts may be attributable to activities at another location, e.g., interest on an installment sale or charge account may be received at a location other than the place of manufacture and sale at wholesale.

2. ~~Thus, mere~~ Mere manipulation or rearrangement of the original materials is not sufficient; there must be a substantial, well-signified transformation in form, usability, quality and adaptability rendering the original material more valuable for use than it was before. Merely processing, blending, grading etc. material is not manufacturing.
3. Not every person engaged in some manufacturing is classified as a manufacturer. The manufacturing component of the business must be a substantial (i.e., not incidental or inconsequential) portion of the business. The factors that may be considered in determining whether the manufacturing component of a multi-purpose business makes a substantial contribution to the entire business include, but are not limited to, any one or more of the following:
  - a. the manufacturing component's financial receipts or proportion of total corporate income;
  - b. the percentage that manufacturing equipment, inventory, etc. comprises of the total capital investment;
  - c. the number of employees working in the manufacturing component as compared with the total number of employees; or
  - d. the ratio of manufacturing activities to the entire business. For example, if a developer of very complex custom software produces only a few copies of disks, the assembly of purchased components may or may not constitute manufacturing. However, if such production constitutes a majority of the business' activities, the business may be considered a manufacturer.
4. Routine assembly generally is not manufacturing. For example, if components are sold separately and assembly is offered as an option to the purchaser, the assembly is a service (which may or may not be ancillary to the sale of the component, or de minimis.) When evaluating the facts and circumstances to determine if a business is engaged in manufacturing, factors which suggest that assembly is not a separate service but part of a manufacturing process include, but are not limited to, any one or more of the following:
  - a. The assembly process is complex and uses numerous parts.

- b. After assembly, the components cannot be recognized without previous knowledge.
  - c. The components are not readily usable for any purpose other than incorporation into the finished product.
5. Engineering, design, research and development, and computer software development typically are not manufacturing. However, the actual production of tangible products based on engineering, design, research and development can be manufacturing. For example:
  - a. While the development of computer software is not manufacturing, the production of boxes containing the software on disks and related instruction manuals may be manufacturing.
  - b. While the design of computer hardware components is not manufacturing, the production of such components may be manufacturing.
  - c. While the design and engineering of specialized tools, dies, and machinery is not manufacturing, the production of even a single tool, die or machine may be manufacturing.
6. Manufacturing Examples:
  - a. ~~Example:~~ An entity accepts delivery of used and burnt up turbine-powered generators which can no longer properly function. The entity removes parts from the generators and replaces them with new parts which it makes to precise specifications from raw copper. The entity also rewinds the generators with new copper wiring. After repair, the generators operate much like a new machine. For the reasons stated ~~above in this section, the above~~ this activity constitutes manufacturing.
  - b. ~~Example: Entity~~ An entity purchases livestock outside of the state of Virginia, brings that stock into Virginia, and slaughters and trims the stock here, and also smokes and salts the meat for sale in Virginia. Under these facts, this activity constitutes manufacturing.
  - c. ~~Example:~~ An entity receives from various vendors electro-magnetic tape, some in raw form and some in programmed format, and integrates the data thereon with other magnetic tape received from other vendors which will result in a customized home



- video game cartridge or diskette. Based upon these facts and for the reasons stated ~~above~~ in this section, ~~the above~~ this activity does not constitute manufacturing.
- d. ~~Example:~~ Same as ~~above~~ Example C, except the entity designs small plastic, box-like cartridges and, after integrating the various original data types into combined data on a previously blank magnetic tape medium, it electronically engrafts the new, combined data onto magnetic plate-like tape diskettes inside of the cartridges and ships the resulting cartridges for wholesale from its production facility in Virginia. For the reasons stated ~~above~~ in this section, ~~the above~~ this activity as outlined in these set of facts constitutes manufacturing.
- e. ~~Example:~~ An entity engages in typesetting, duplicating, editing or graphic design processes. These activities by themselves are neither printing nor manufacturing. However, when an entity engages in more than one or a combination of these processes to produce a product that is substantially transformed from the original material, it may qualify as a manufacturer. If the entity sells the new product at wholesale from the place of manufacture, the business may benefit from the exemption contained within § 58.1-3703 C 4 of the Code of Virginia.

Source:

*2000 BPOL Guidelines, Appendix B.*

*Footnote 22 to the 2000 BPOL Guidelines, which stated “For purposes of consolidation, some comments included in the 1997 BPOL Guidelines have been omitted. However, the 1997 BPOL Guidelines are the primary source of this version.” has been deleted as not being appropriate for a regulation.*

*The last sentence of subsection B, formerly located in Footnote 23 to the 2000 BPOL Guidelines, has been rewritten to assist in readability.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-530. Due dates.**

- A. If not previously licensed, a person must apply for a license prior to beginning business. If licensed the previous year, a person must apply for a license prior to ~~March 1<sup>st</sup>~~ the application due date adopted by the locality. Applications are on forms prescribed by the local tax officials.
- B. For reasonable cause, the local official may allow an extension for the filing of the application and such extension may be conditioned on the timely payment of an estimate of the tax due. Taxes paid based upon an estimate will be subject to correction, with interest and penalties, if the estimate is unreasonable.
- C. For taxes based on gross receipts, the locality has the option of requiring payment of the tax on or before ~~March 1<sup>st</sup>~~ the locality's fixed due date for filing license applications or a later date, or thirty or more days after the person begins business.
- D. Every locality must adopt a March 1<sup>st</sup> due date for applications or a later application date that is on or before May 1<sup>st</sup> of the license year no later than the 2004 2007 license year.

Source:

*2000 BPOL Guidelines, § 6.1.*

*The text formerly located in Footnote 17 of the 2000 BPOL Guidelines is now located in Subsection D.*

*The other changes to this section reflect 2006 Acts of Assembly, Chapters 119 and 181. The changes paraphrase the changes made by the legislation.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-540. Interest and penalties.**

The provisions of ~~Code of Virginia~~ § 58.1-3703.1 of the Code of Virginia relating to interest and penalties apply to assessments made on and after January 1, 1997, even if for an earlier license year. Interest is charged on all late payments regardless of reason. A locality may impose a ten percent penalty on an entity which fails to file a license application or return on time or on an entity which makes late payments. The ten percent penalty and interest for late payment apply to license fees as well as the license tax.

Source:

2000 BPOL Guidelines, § 6.2.

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-550. Interest.**

- A. For assessments made on or after January 1, 1997, if a payment of tax is late, interest will be charged on the late payment from the due date until the date paid without regard to fault or other reason.
- B. For tax years prior to January 1, 1997, localities may charge interest upon delinquent taxes pursuant to § 58.1-3916 of the Code of Virginia.
- C. If an assessment of additional or omitted tax is found to be erroneous, the interest and penalty charged and collected on the amount of such assessment must be refunded with interest on the refund from the date of payment or the due date, whichever is later. Interest on any refund must be paid at the same rate charged under § 58.1-3916 of the Code of Virginia.
- D. Taxes paid by first-year taxpayers based upon estimates will be subject to correction with interest and penalties if estimates prove to be unreasonable. Unless otherwise provided by a locality, estimates of the tax due will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due.
- E. If a refund is made within than thirty days from the date of the payment that created the refund, or the due date of the tax, whichever is later, interest will not be paid.
- F. If a late payment is made within than thirty days from the due date of the tax, whichever is later, interest on the payment will not be due.

Source:

**2000 BPOL Guidelines, § 6.2.1.**

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-560. Penalties.**

- A. Upon a failure to file or a failure to pay a tax due, a penalty of ten (10%) percent may be imposed. If both the application and payment are late, only one penalty may be imposed, unless the local official determines the taxpayer has a history of non-compliance, then both penalties may be assessed. Where an assessment of additional tax is made, but the application ~~and/or~~ or the return, or both were made in good faith by the taxpayer and there is no fraud, recklessness or intentional disregard of the law on the part of the taxpayer, there will be no penalty on the additional tax.
- B. A ten percent late penalty may be imposed on any assessed tax which is not paid within thirty (30) days. If the failure to file or pay is not the fault of the taxpayer, the penalty will not be imposed, or if imposed, shall be abated. Lack of fault must be demonstrated by the taxpayer showing that he acted responsibly and that the failure was due to events beyond his control. "Acted responsibly" means that the taxpayer exercised the reasonable care that a prudent person would exercise under the circumstances, and that the taxpayer took significant steps to avoid or mitigate the failure. Examples of such steps include requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered. "Events beyond the taxpayer's control" include, but are not limited to, unavailability of records due to fire or other casualty; unavoidable absence (e.g., due to death or serious illness) of the person with 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.

Source:

2000 BPOL Guidelines, § 6.2.2.

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

## 23VAC10-500-570. Waiver or abatement of late filing or late payment penalties.

If a taxpayer is penalized for failing either to file for a license or to pay the tax on the appropriate due date, the assessing official must waive or abate the penalty if the taxpayer was not at fault and the failure was due to events beyond the taxpayer's control. Interest, as opposed to a penalty, cannot be waived. To demonstrate lack of fault for waiver of penalty, a taxpayer must have exercised the same amount of care as a reasonably prudent person and must have actively tried to avoid the failure. For example:

- A. Taxpayer opened small dry-cleaning business in County A. County A has a population of 25,000. Taxpayer failed to apply for a license because taxpayer thought, in good faith, that his gross receipts would not exceed \$50,000. Taxpayer's gross receipts were \$100,000. Taxpayer would be liable for the license tax plus a penalty because taxpayer failed to file an application for a license.
- B. A retailer fails to file an application on time when its computer system suffers significant damage due to floods. The retailer never informs tax assessor of its problem. Although the failure to file was initially not the fault of the retailer, retailer will be liable for the penalty since it failed to act reasonably in notifying the locality within a short period of time and did not attempt to correct the failure and to obtain an extension.
- C. Same facts as ~~#2 above~~ Example C, except that the retailer did not contact the tax assessor for ten months after its computer system is repaired and its store reopened. Although its failure to file was through no fault of its own, the retailer will be responsible for the penalty since it failed to rectify the failure within an amount of time which was reasonable under the circumstances indicated once the impediment was removed.
- D. Local official erroneously sends old tax forms with outdated information to taxpayer. Taxpayer, who in good faith uses the old tax forms, underpays his tax. Since the underpayment was due to an event beyond the taxpayer's control and it was not reckless, fraudulent or the result of an intentional disregard of the law, there will be no penalty on the understatement.

Source:

2000 BPOL Guidelines, § 6.2.3.

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

## 23 VAC 10-500-580. Assessments; limitations and extensions.

- A. ~~Code of Virginia~~ § Section 58.1-3903 of the Code of Virginia provides that, in general, an assessing official may only assess omitted local taxes for the current tax year and the three preceding tax years. Notwithstanding §58.1-3903 of the Code of Virginia, the assessing official may 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. The provision permitting an assessment of license tax for up to six preceding years in certain circumstances may not be construed to permit the assessment of tax for a license year beginning before January 1, 1997. ~~Code of Virginia §§ Sections 58.1-3703.1 A 4 b and 58.1-3703.1 B 2 of the Code of Virginia.~~
- B. However, where before the expiration of time established for the assessment of any license tax, 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 assessing officer and the taxpayer can agree to extend the period assessing the original tax, assessing additional tax or omitted tax, or for revising an assessment as part of making a refund. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The provisions of § 58.1-3703.1 A 4 a of the Code of Virginia relating to agreements extending the period for assessing tax are effective for agreements entered into on and after July 1, 1996.
- C. 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. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer. ~~An assessment does not include the imposition of a late filing or a late payment penalty except to the extent that the imposition of penalties is associated with or imposed as the result of an audit.~~

Source:

2000 BPOL Guidelines, § 6.3.

*The citation located at the end of subsection A was formerly located in Footnote 18 of the 2000 BPOL Guidelines.*

*The second sentence of subsection B was formerly located in Footnote 19 of the 2000 BPOL Guidelines.*

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

***The last sentence in subsection C, which states that the assessment of penalties and interest are only considered assessments if they result from an audit, has been stricken because the distinction between audit and other assessments is no longer relevant due 2002 Acts of Assembly, Chapter 317, which expanded the administrative appeals process to include appeals not resulting from an audit.***



## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-590. Limitations on collection.**

~~Code of Virginia~~ § Section 58.1-3940 of the Code of Virginia provides that, in general, collection of local taxes may only be enforced for five years following December 31 of the year for which such taxes were assessed. In addition, ~~Code of Virginia~~ § 58.1-3703.1 A 4 c of the Code of Virginia provides that the period for collecting any local license tax will not expire prior to the period specified in § 58.1-3940 of the Code of Virginia, two years after the date of assessment if the period for assessment has been extended pursuant to §58.1-3703.1 A 4 c of the Code of Virginia, two years after the final determination of an appeal for which collection has been stayed pursuant to § 58.1-3703.1 A 5 b or d of the Code of Virginia, or two years after the final decision in a court application pursuant to § 58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later.

*Source:*

*2000 BPOL Guidelines, § 6.4.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-600. Record-keeping and audits.**

- A. Every person who is assessable with a local license tax must keep sufficient records to enable the assessor to verify the correctness of taxes 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 must 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 a jurisdiction. The assessor must provide the taxpayer with the option to conduct the audit at the taxpayer's place of business if the records are maintained there. If maintained outside the assessor's jurisdiction, copies of the appropriate books and records must be sent to the assessor's office upon demand.
- B. A taxpayer must keep its records for the current license year and the preceding three (3) license years where it regularly files BPOL tax returns; however, a locality may review a taxpayer's records for the current license year and the six (6) preceding license years when there has been a failure on the part of the taxpayer to file BPOL tax returns or obtain a BPOL license, or where there has been fraud on the taxpayer's part relating to BPOL taxes. For each license year under audit or for which the taxpayer must keep records, base year records provide the measure for license tax on gross receipts. See ~~Code of Virginia~~ §§ 58.1-3703.1 A 4 b and 58.1-3703.1 B 2 of the Code of Virginia. For example:
1. Company A regularly pays BPOL taxes and is audited in 1997 for license years 1994, 1995 and 1996 by the locality in which it operates. In order for a full review covering all relevant tax years to take place, Company A must have its records for the current year and for license years 1994 through 1996.
  2. Same facts as ~~above~~ in the first example, except Company A has not applied for a BPOL license nor filed BPOL tax returns since 1989. ~~Code of Virginia~~ § Section 58.1-3703.1 A 4 b of the Code of Virginia allows a locality to assess the BPOL tax for the current license year and the previous six license years where there is fraud or the taxpayer fails to apply for a BPOL license. However, in cases of fraud or a failure to apply for a BPOL license, 58.1-3703.1 B 2 of the Code of Virginia limits the application of § 58.1-3703.1 A 4 b of the Code of Virginia to BPOL assessments for license years beginning on and after January 1, 1997. The ability to assess a BPOL tax for the current license year and the previous six license years under § 58.1-3703.1 A 4 b of the Code of Virginia is in addition to the statutory authority to assess a BPOL tax for three preceding years under § 58.1-3903 of the Code of Virginia. Therefore, under § 58.1-3903 of the Code of Virginia, Company A can be assessed a license tax for 1997, 1996, 1995, and 1994.

Source:

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

*2000 BPOL Guidelines, § 6.5.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-610. Consistent reporting and coordinated enforcement.**

The local official administering the license tax may consult with federal, state and local government officials to verify that any relevant certifications, determinations or classifications made by such other government official or the taxpayer for other tax or regulatory purposes are consistent with the classification claimed by the taxpayer for local license tax purposes or to coordinate enforcement of various tax and regulatory provisions. No presumption will be established by the action or inaction of another government official unless the applicable law, regulation, or policy administered by the other government official is substantially similar to the definition, law, ordinance or other provision applicable for BPOL purposes. Certifications, determinations, or classifications made by a government official or the taxpayer for other tax or regulatory purposes are evidence of the correctness of a classification of a taxpayer, but are not conclusive evidence. For example:

- A. The local tax official may consult with federal and state tax officials concerning whether a person who claims not to be engaged in business for local license tax purposes properly filed a Schedule C with his federal and state income tax returns.
- B. The local tax official may verify whether federal forms W-2, 1099 or similar forms have been filed with respect to persons or income for which classification as an employee or independent contractor is an issue.
- C. The local tax official may verify whether a person has obtained or is required to obtain a state or local regulatory license such as a contractor's license, professional license, zoning approval, building permit, etc. The existence or absence of such other regulatory action generally will not establish a presumption with respect to BPOL tax issues because different definitions, purposes, and policies are involved.

Source:

*2000 BPOL Guidelines, § 6.6.*

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-620. Locality tax year.**

A locality which changes its license year from a fiscal year to a calendar year and adopts March 1 as the due date for license applications is not required to prorate any license tax to reflect a license year of less than twelve months, whether the tax is a flat amount or measured by gross receipts, provided that no change is made in the taxable year for measuring gross receipts. For example, Locality A has a license year which is based on a fiscal year and its license tax is based on gross receipts from the previous calendar year, with license taxes being payable on May 1-15 of each year following the calendar year in which gross receipts are recognized. However, when Locality A changes its license year from a fiscal year to a calendar year, license taxes are payable on March 1 of each year following the calendar year in which gross receipts are recognized. In this instance, Locality A is not required to prorate any license taxes.

Locality's Change of License Year

Years	1994	1995	1996	1997	1998	1999	2000
Old License Year (based on fiscal year)	May 1- Apr.30	May 1- Apr.30	May 1- Apr.30	N/A	N/A	N/A	N/A
New License Year (based on calendar year)	N/A	N/A	N/A	Jan.1- Dec.31	Jan.1- Dec.31	Jan.1- Dec.31	Jan.1- Dec.31
Base year	Jan. 1, 1993 to Dec. 31, 1993	Jan. 1, 1994 to Dec. 31, 1994	Jan. 1, 1995 to Dec. 31, 1995	Jan. 1, 1996 to Dec. 31, 1996	Jan. 1, 1997 to Dec. 31, 1997	Jan. 1, 1998 to Dec. 31, 1998	Jan. 1, 1999 to Dec. 31, 1999
License tax Due date	May 1, 1994	May 1, 1995	May 1, 1996	Mar. 1, 1997	Mar. 1, 1998	Mar. 1, 1999	Mar. 1, 2000

Every locality imposing the BPOL tax or fee is required to have adopted a calendar year tax year by January 1, 1997.

*Source:*

*2000 BPOL Guidelines, § 6.7.*

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

*1996 Acts of Assembly, Chapters 715 and 720 required every locality imposing the BPOL tax or fee to adopt a calendar year tax year by January 1, 1997. As this change has been in effect for 10 years, the explanation of the transition from a fiscal year to a calendar year tax year has been deleted as being longer necessary.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-630. Taxpayer's request for a written ruling.**

A taxpayer or authorized representative of a taxpayer may request a written ruling from the local assessing officer regarding the application of a local license tax to a specific set of facts. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request will invalidate any such ruling issued. A written ruling issued by the local assessing officer may be revoked or amended prospectively if: (i) there is a change in the law, a court decision, or the ~~Guidelines~~ BPOL Regulations (23VAC10-500-10 et seq.) issued by the Department of Taxation upon which the ruling was based, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

Source:

*2000 BPOL Guidelines, § 6.8.*

***The changes are necessitated by 2005 Acts of Assembly, Chapter 927.***

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-632. Tax Commissioner's advisory and interpretative powers.**

- A. The Tax Commissioner has the authority to issue advisory written opinions which interpret the BPOL statutes and ~~accompanying~~ the BPOL Regulations (23 VAC 10-500-10 et seq.). The Tax Commissioner is not required to interpret any local ordinances.
- B. Examples of the issues which the Commissioner may render advisory opinions upon include:
1. Interpretation of changes made to the BPOL statutes.
  2. Questions, the answers of which depend upon both state law and the laws of a locality.
  3. Situations where two jurisdictions are attempting to tax the same gross receipts.
  4. Classifications of businesses under the BPOL enabling legislation.
  5. Whether a business qualifies as a manufacturer under existing court decisions.
  6. Whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL enabling legislation.
  7. Situs rules contained within the BPOL enabling legislation.
  8. Whether changes made to a local statute conform with required changes under recent Virginia law.
- C. Suggested examples of advisory opinions which the Commissioner may decline to make include:
1. Interpretations of wording contained within individual local BPOL ordinances.
  2. Interpretations of the validity of an individual locality's appeals process.

Source:

*2000 BPOL Guidelines, § 7.11.*



23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-633. Form for requesting an advisory opinion from the Tax Commissioner.

The form for use in the filing of a request for a written advisory opinion from the Tax Commissioner is set forth in ~~Appendix G~~ below.

REQUEST FOR BPOL ADVISORY OPINION

Name of requesting party:

~~Local tax official or business~~ Organization:

Address:

~~Locality or localities involved:~~

~~Date request made:~~

Telephone:

FAX:

E-mail:

Locality or localities involved:

Date request made:

~~On the lines~~ In the space below, please fully describe the facts on which you seek an opinion and sign Section C ~~on Page 2~~. Please attach ~~additional sheets and~~ copies of pertinent documentation to this form as necessary.

<Insert Facts>

Before the Department of Taxation can respond to this request, this form must be signed. If the requesting party is a locality, this form must be signed by the Commissioner of the Revenue, Director of Finance, or other person authorized to sign on behalf of such persons. If the requesting party is a Business, this form must be signed by an authorized representative of the Business.

I understand that the department may contact (my local tax official or, if an opinion is being requested by a locality, the Business) for purposes of answering my question(s).

Signature:

Title:

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

Source:

*The last sentence of 2000 BPOL Guidelines, § 7.11 and Appendix G. The format of the form has been changed to make it easier for taxpayers and local government officials to insert it into an electronic document.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23 VAC 10-500-640. Administrative appeals; Introduction.**

The 1996 amendments to the ~~BPOL statutes~~ Chapter 37 (§ 58.1-3700, et seq.) of Title 58.1 of the Code of Virginia created a review process designed to encourage resolution of local license tax issues through an appeals process which includes review by the local assessing officer and appeal to the Tax Commissioner. Through this process, a taxpayer who disagrees with an audit assessment may apply to the local assessing officer for review. If the taxpayer is dissatisfied with the results of the local review, the taxpayer may appeal the local decision to the Tax Commissioner who will make a determination of the issues raised by the taxpayer. Additionally, the 1996 amendments provided taxpayers an opportunity for greater certainty in the administration of the BPOL tax through the use of written rulings. In this process, taxpayers may request a written ruling from their local assessing officer regarding the application of a local license tax to their unique circumstances. In most cases, the taxpayer may rely on the positions set forth in those rulings. The 2002 amendments to § 58.1-3703.1 of the Code of Virginia made by House Bill 317 (2002 Acts of Assembly, Chapter 364) altered the requirements for a local license tax issue to be eligible for the administrative review process. Effective for all appeals filed on or after July 1, 2002, the administrative review process is available for any assessment resulting from an “appealable event.” The term “appealable event” is defined in 23 VAC 10-500-10. In addition, The 2005 amendments to § 58.1-3703.1 of the Code of Virginia made by House Bill 2679 (2005 Acts of Assembly, Chapter 927) altered the BPOL administrative appeals process applicable to appeals filed with commissioners of the revenue or other assessing officers, appeals filed with the Tax Commissioner, and applications for judicial review filed in circuit courts on or after July 1, 2005.

Source:

*2000 BPOL Guidelines, § 7.1.*

The text added to the end of the section notes the statutory changes made by 2002 Acts of Assembly, Chapter 364 and 2005 Acts of Assembly, Chapter 927.

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-650. Overview of the administrative review process.

~~Discussion and charts illustrating the appeals process as presented in the Guidelines appear below.~~ **NOTE:** The following charts present an overview of the administrative review process and are intended to give general guidance to the local assessing officer and taxpayers. Local assessing officers and taxpayers should read the ~~accompanying Guidelines~~ BPOL Regulations (23 VAC 10-500-10 et seq.) to obtain complete information.

A. Administrative review of ~~bpol~~ BPOL ~~audit~~ assessments – Taxpayer

<u>Critical Date</u>	Function	Effect	Interest	Collection Activity
<del>Within 90 days of the date of an audit assessment.</del> <u>Within one year of 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</u>	Application for Review filed with the local assessing officer	Local assessing officer makes a final written determination	Accrues	Stops when a complete Application for Review or a Notice of Intent to Appeal is filed <sup>(1)</sup>
Within 90 days of the date of the <del>local assessing officer's</del> final written determination	Appeal to the Tax Commissioner <sup>(2)</sup>	Tax Commissioner will make a determination of the appeal	Accrues	Stops when an Appeal to the Tax Commissioner or a Notice of Intent to Appeal is filed <sup>(3)</sup>

(1) Taxpayers intending to appeal an ~~audit~~ assessment should immediately provide a written Notice of Intent to Appeal to the local assessing officer to stop collection activity. The local assessing officer must promptly notify the local officer responsible for collection activity that collection activities should be suspended. See 23VAC10-500-801 for a suggested form "Notice of Intent to Appeal to Local Assessing Officer." In order to prevent the commencement or resumption of collection activities, the taxpayer must file a

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

complete application for review within 30 days of filing the notice of intent to appeal.

- (2) If the appeal is incomplete, taxpayer is given 30 days to complete it.
- (3) Taxpayers intending to appeal a local assessing officer’s determination should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner to stop collection activity. The local assessing officer must promptly notify the treasurer or other local official officer responsible for collection activity that collection activities should be suspended. See 23 VAC 10-500-802 for a suggested form "Notice of Intent to Appeal to Tax Commissioner." In order to prevent the commencement or resumption of collection activities, the taxpayer must file a complete application for review within 30 days of filing the notice of intent to appeal.

As the chart above indicates, the taxpayer must first file an Application for Review with the local assessing officer before an appeal of an audit assessment can be made to the Tax Commissioner. ~~The the taxpayer has 90 days from the date of the audit assessment to file the Application for Review.~~ The taxpayer must file the Application for Review within one year of 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. Upon the timely filing of an Application for Review, the local assessing officer will make a final written determination on the taxpayer’s application. The taxpayer then has 90 days from the date of the local assessing officer’s final written determination to appeal that determination to the Tax Commissioner.

B. Administrative review of ~~bpol audit~~ BPOL assessments; Local assessing officer

Critical Date	Function	Effect	Interest	Collection Activity
Within a reasonable time of receipt of taxpayer’s Application for Review	Make a final written determination	Taxpayer has 90 days from date of final written determination to file an Appeal to the Tax Commissioner	Accrues	May begin or resume after final written determination is made
Within 30 days of notice that appeal has been made to the Tax Commissioner	Make a request to address new issues or make a written reply to taxpayer’s appeal <sup>(1)</sup>	Allows local assessing officer to respond to new issues or to the appeal, in general	Accrues	Stops until Tax Commissioner issues a final written determination <sup>(2)</sup>

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

- (1) If a request to address new issues is made, the appeal will return to the local assessing officer and the local appeals process re-starts. The local assessing officer must make a new final determination which can be appealed to the Tax Commissioner.
- (2) Collection activity may begin or resume if the taxpayer does not file a complete application for review within 30 days of filing the notice of intent to appeal.

As the chart above indicates, the local assessing officer must issue a final written determination within a reasonable time of the taxpayer's timely filing of an Application for Review. A taxpayer whose application for correction has been pending for more than one year without the issuance of a final determination may, upon not less than thirty days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner. The Tax Commissioner shall not consider an appeal filed in this manner if he finds that the absence of final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.

After issuing a final written determination, the local assessing officer ~~may commence or resume collection activity on a license tax assessment~~ should notify the local officer responsible for collection activity that collection activity may be commenced or resumed. Such collection efforts must be suspended, however, upon the taxpayer's filing of a Notice of Intent to Appeal the final determination or upon the filing of an Appeal to the Tax Commissioner. The Tax Commissioner will provide written notice to the local assessing officer when the taxpayer has filed a timely Appeal to the Tax Commissioner. The local assessing officer will then have 30 days to file a reply with additional information or to file a written request to address issues first raised on Appeal to the Tax Commissioner. If the local assessing officer files a written request to address new issues, the appeal must return to the local assessing officer and the local appeals process starts anew. Once an appeal is returned to the local assessing officer, the local assessing officer must issue a new final written determination which can be appealed to the Tax Commissioner.

Source:

*2000 BPOL Guidelines, § 7.2.*

*The substantive amendments are necessitated by 2002 Acts of Assembly, Chapter 364 and 2005 Acts of Assembly, Chapter 927.*

23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-661. Notice of Right to Appeal**

Every assessment made by a commissioner of the revenue or other assessing official 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.

*Source:*

*New section necessitated by 2005 Acts of Assembly, Chapter 927.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-660. Applicability of ~~guidelines~~ the BPOL Regulations (23VAC10-500-10, et seq.).

~~The following sections cover the administrative review of audit assessments by the local assessing officer and the Tax Commissioner. These Guidelines~~ The BPOL Regulations (23VAC10-500-10, et seq.) apply to local license taxes only. ~~The administrative review process is effective for assessments of local license tax made on and after January 1, 1997, even if for an earlier license year.~~ The existence, utilization, or attempt to utilize the administrative review process provided in ~~these Guidelines~~ the BPOL Regulations (23VAC10-500-10, et seq.) does not affect the taxpayer's right to pursue any other administrative and judicial remedies authorized by law. The filing of an action in circuit court does not prohibit an administrative review under § 58.1-3700 et seq. of the Code of Virginia

Source:

*2000 BPOL Guidelines, § 7.3.*



## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-670. Filing requirements.**

- A. For any limitation of time in making an Appeal to the Tax Commissioner, Application for Review, reply, or any other information or material mentioned in ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10 et seq.), should the last day of such limitation period fall on a Saturday, Sunday, or holiday observed by the Commonwealth of Virginia, the Appeal, Application, reply, or other information or material may be filed on the next business day. For any limitation of time appearing in ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10, et seq.), the limitation shall begin to run on the day next following the event which triggers the time limitation.
- B. "Filed." A document is "filed" as of the date it is postmarked for first class delivery via United States mail or when it is received if any other method of delivery, including facsimile transmissions, is utilized.

Source:

*2000 BPOL Guidelines, § 7.5.*

*Subsection B was formerly located in 2000 BPOL Guidelines, § 7.4.*

*The abbreviated definition of the term "assessment" which was formerly located in § 7.4 of the 2000 BPOL Guidelines has been deleted as it is duplicative of the longer definition found in 23 VAC 10-500-10.*

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-680. Suspension and commencement or resumption of collection activity.**

- A. Collection activity with respect to the amount in dispute is suspended upon:
1. The local assessing officer's receipt of a notice of intent to appeal the assessment to the local assessing officer or a timely and complete Application for Review.
  2. The local assessing officer's receipt of a Notice of Intent to Appeal.
  3. The local assessing officer's receipt of notice of the filing of an Appeal to the Tax Commissioner.
- B. The local assessing officer must notify the ~~treasurer or other collection official~~ local officer responsible for collection activity when collection activity must be suspended.
- C. Collection activity may commence or resume upon:
1. The local assessing officer's determination that an assessment subject to an Application for Review or an Appeal to the Tax Commissioner is jeopardized by delay. ~~"Jeopardized by delay" includes a finding that the application is frivolous or that a taxpayer desires to~~
    - ~~a. depart quickly from the locality,~~
    - ~~b. remove his property therefrom,~~
    - ~~c. conceal himself or his property therein, or~~
    - ~~d. do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.~~
  2. The local assessing officer's determination that the Application for Review or Appeal to the Tax Commissioner is frivolous.
  3. Failure by the taxpayer to file a timely and complete application for review after the taxpayer has initially filed a notice of intent to appeal to the local assessing officer.
  4. The local assessing officer's determination that the taxpayer has not responded to a request by the local assessing officer or the Tax Commissioner for relevant information after a reasonable time.
  5. The local assessing officer's issuance of a Final Local Determination.

## 23VAC10-500 Business, Professional and Occupational License Tax (Proposed)

6. The local assessing officer's receipt of written notice from the Tax Commissioner that the taxpayer has failed to file a timely Appeal to the Tax Commissioner after the taxpayer has initially filed a Notice of Intent to Appeal.
  7. Failure by the taxpayer to file an appeal with the Tax Commissioner and file a copy of the appeal with the local assessing officer within 30 days of filing a notice of intent to appeal to the Tax Commissioner.
  8. The local assessing officer's receipt of a final written determination issued by the Tax Commissioner in cases where the local license tax has not been totally abated.
  9. The local assessing officer's receipt of a copy of a taxpayer's request to withdraw an Appeal to the Tax Commissioner.
- D. The local assessing officer must notify the local officer responsible for collection activity when collection activity may commence or resume.

Source:

*2000 BPOL Guidelines, § 7.6.*

*The additional language in Subsection A has been added to conform this section to the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*The change in Subsection B has been made to conform this section to the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*The text of subdivision C(1), other than the first sentence, was formerly located in 2000 BPOL Guidelines, § 7.4. The stricken language has been moved to the definitional section, 23VAC10-500-10.*

*The change in Subdivision C(2) has been made to conform this section to the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*Subdivision C(3) conforms this section to the Guidelines for Appealing Local Mobile Property Taxes.*

*Subdivisions C(4), C(7) and Subsection D have been added to conform this section to the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-681. Notice of Intent to Appeal to Local Assessing Officer Exhibit.**

<Date>

<Name of Local Assessing Officer>

(Organization)

(Address)

(City, State ZIP)

**Re: Code of Virginia § 58:1-3703.1, Appeal of Local BPOL Tax**

<Taxpayer's name>

<Date of assessment>

Dear <Salutation>:

This is to notify you that <the taxpayer> intends to apply to you for correction of the above-referenced assessment.

Sincerely,

<Taxpayer or its representative>

Source:

*New section.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-682. Notice of Intent to Appeal to Tax Commissioner Form**

<Date>

Tax Commissioner  
Appeals and Rulings  
Virginia Department of Taxation  
Post Office Box 27203  
Richmond, Virginia 23261-7203

**Re: 58:1-3703.1, Appeal of Local BPOL Tax**

<Taxpayer's name>

<Locality>

<Date of Final Local Determination>

Dear <Salutation>:

This is to notify you that <the taxpayer> intends to apply to you for correction of the above-referenced final determination. By a copy of this letter, I am notifying the local assessing officer of this intent.

Sincerely,

<Taxpayer or its representative>

c: <Name of Local Assessing Officer>

Source:

*New section.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-690. Interest during appeal.**

Assessments subject to an Application for Review or Appeal to the Tax Commissioner will continue to accumulate interest until paid or abated. Taxpayers are encouraged to pay the undisputed portion of any assessment to avoid accrual of interest on that undisputed portion while an Application for Review or Appeal to the Tax Commissioner is pending. Any such payment will not be deemed a waiver of the taxpayer's remedies described in ~~these Guidelines~~ the BPOL Regulations (23VAC10-500-10 et seq.).

*Source:*

*2000 BPOL Guidelines, § 7.7.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-700. Application for review to local assessing officer.**

- A. A taxpayer ~~assessed with a local license tax as the result of an audit~~ may file an Application for Review with the local assessing officer ~~of a locality within ninety days of the date of the assessment~~ one year of 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.
- B. The Application for Review must be filed in good faith. The Application for Review must not be frivolous or otherwise filed for purposes of avoiding or delaying collection of the local license tax.
- C. Upon receipt of the complete Application for Review, the local assessing officer shall acknowledge in a writing to the taxpayer, receipt of the Application for Review.
- D. The application should contain the following:
1. Name and address of taxpayer and taxpayer identification number.
  2. If applicant is different from the taxpayer, name and address of the applicant and a power of attorney or letter of representation.
  3. Copy of Notice of Assessment.
  4. The tax period covered by the assessment.
  5. The amount in dispute.
  6. A statement explaining why the taxpayer believes the assessment is erroneous. The statement should also include facts, issues and authority which the taxpayer believes supports his position.
  7. Statement of relief the taxpayer requests.

Source:

*Subsection A was formerly located in 2000 BPOL Guidelines, § 7.8.1 and Subsections B and C were formerly located in 2000 BPOL Guidelines 7.8.2. Subsection D was formerly located in § 7.4 of the 2000 BPOL Guidelines and has been amended to replace the term “audit” with the term “appealable event” in order to conform to 2002 Acts of Assembly, Chapter 317. The*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

*remaining changes have been made to reflect the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

*Substantive amendments to Subsection A were necessitated by 2002 Acts of Assembly, Chapter 364 and 2005 Acts of Assembly, Chapter 927.*



## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-710. Final local determination.**

- A. Provided the application is filed in good faith and not merely for purposes of delay, the local assessing officer shall conduct a full review of the facts, assertions, and authorities submitted by the taxpayer.
- B. During this process the local assessing officer may hold conferences with the taxpayer, conduct further inquiries, or perform additional audits as required to reach a fair conclusion on the issues presented by the taxpayer.
- C. Within a reasonable time of receipt of the Application for Review, the local assessing officer shall issue a signed and dated Final Local Determination setting forth the facts and arguments in support of his position.
- D. Each final written determination shall contain the following notice:

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at ~~P.O. Box 1880, Richmond, Virginia 23218-1880.~~ the following address:

Appeals and Rulings  
Virginia Department of Taxation  
Post Office Box 27203  
Richmond, Virginia 23261-7203

- Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or an Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin. Collection activity may begin or resume if you do not file a complete application for review within 30 days of filing the notice of intent to appeal. A form for preparing a notice of intent to appeal are located in 23 VAC 10-500-802.

The BPOL ~~Guidelines~~ Regulations (23 VAC 10-500-10 et seq.) and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the ~~office of the local assessing officer or~~ at the General Assembly's website.

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

Source:

*2000 BPOL Guidelines, § 7.8.3.*

*The changes to Subsection C are necessitated by 2005 Acts of Assembly, Chapter 927.*

*The changes to the section are necessary to conform it to the Guidelines for Appealing Local Mobile Property.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-711. Final Local Determination Appeal Exhibit.**

FINAL LOCAL DETERMINATION

(DATE)

(Name)

(Organization)

(Address)

(City, State ZIP)

Re: Code of Virginia § 58.1-3703.1 A ~~5-a~~ Determination:  
Business, Professional and Occupational License (BPOL) Tax  
(Taxpayer's name)

Dear (Salutation):

Enclosed please find a final assessment for the base year(s) <list base years>. After considering your Application for Review made on <date>, a final determination on your application has been reached. We have based our determination upon the following grounds and relevant facts:

Facts

You (or your client) have challenged:  
(Specify the facts and issues presented in the Application for Review)

Determination

Based upon the facts we discovered during the audit and applicable local statutes, state statutes, and case law, we have determined:

(Final determination)

(Notification of taxpayer's rights)

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- A. If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at: ~~P.O. Box 1880, Richmond, Virginia 23218-1880.~~

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

Appeals and Rulings  
Virginia Department of Taxation  
Post Office Box 27203  
Richmond, Virginia 23261-7203

- B. Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin. Collection activity may begin or resume if you do not file a complete application for review within 30 days of filing the notice of intent to appeal.
- C. The BPOL Guidelines Regulations (23 VAC 10-500-10 et seq.) and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer and at the Virginia Department of Taxation General Assembly's website.

Sincerely,

(name of local assessing officer)  
(date)

Source:

*2000 BPOL Guidelines, § 7.9.9.*

*The changes to paragraph B conform the form to the statutory changes made by 2005 Acts of Assembly, Chapter 927.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-712. Procedure in event of nondecision.

**The local assessing officer must issue a final written determination within a reasonable time of the taxpayer's timely filing of an Application for Review. A taxpayer whose application for correction has been pending for more than one year without the issuance of a final determination may, upon not less than thirty days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner. The Tax Commissioner shall not consider an appeal filed in this manner if he finds that the absence of final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.**

*Source:*

*New section necessitated by 2002 Acts of Assembly, Chapter 364.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-715. Appeal to the Tax Commissioner; Time limitations.**

- A. The taxpayer has ninety days from the date of the local assessing officer's Final Local Determination to file an Appeal to the Tax Commissioner. The address is:

~~Tax Commissioner  
Post Office Box 1880  
Richmond, Virginia 23218-1880~~

Appeals and Rulings  
Virginia Department of Taxation  
Post Office Box 27203  
Richmond, Virginia 23261-7203

- B. The Tax Commissioner may permit an extension of this period for good cause shown.
- C. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the local assessing officer are notified that a longer period will be required.

Source:

*2000 BPOL Guidelines, § 7.9.1.*

*Subsection C is necessitated by 2005 Acts of Assembly, Chapter 927.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-720. Appeal to the Tax Commissioner; Procedures.

- A. Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the local assessing officer, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the determination by the local assessing officer. 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 local assessing officer.
- B. The appeal should contain the following:
1. Complete Application for Review (~~detailed below~~) as submitted to the local assessing officer.
  2. Local assessing officer's Final Local Determination.
  3. A statement explaining why the taxpayer believes the local assessing officer is in error. The statement should include analysis of how the local assessing officer misinterpreted or misapplied facts or legal authority and also include facts, issues and legal authority which the taxpayer believes the local assessing officer failed to take into consideration.

Source:

*New section necessitated by 2005 Acts of Assembly, Chapter 927. Subsection A paraphrases the statute.*

*Subsection B was formerly located in § 7.4 of the 2000 BPOL Guidelines. The term "authority" has been changed to "legal authority" to conform the definition to that found in the Guidelines for Appealing Local Mobile Property Taxes.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-730. Appeal to the Tax Commissioner; Notice of intent to appeal filed but appeal to the Tax Commissioner not timely filed.**

If a Notice of Intent has been filed with the Tax Commissioner, the Tax Commissioner shall give written notice to the local assessing officer and to the taxpayer of the taxpayer's failure to file an Appeal to the Tax Commissioner within the time provided for in ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10 et seq.).

Source:

2000 BPOL Guidelines, § 7.9.2.



## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-740. Administrative appeal to the Tax Commissioner; Incomplete appeals. ~~to the Tax Commissioner.~~

- A. If the Tax Commissioner receives an appeal that is incomplete, the taxpayer will be given notice stating the information is incomplete. The local assessing officer will be provided a copy of this notice. The taxpayer will be allowed thirty days from the date of such notice to provide the information or ninety days from the date of the local assessing officer's Final Local Determination, whichever is longer.
- B. Additional time to produce the missing items will be granted in compelling circumstances but only if the taxpayer makes such an extension request in writing within the time allowed under ~~7.9.3.(A) herein~~ subsection A. A copy of the request for additional time shall be mailed to the local assessing officer.
- C. If the taxpayer fails to provide missing item(s) within the time allotted, the Tax Commissioner may proceed to decide the appeal based on available information making such inferences from the failure or refusal to provide requested information as may be appropriate under the circumstances. If sufficient information is unavailable to permit an adequate analysis, the appeal will be dismissed.

Source:

2000 BPOL Guidelines, § 7.9.3.

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-750. Administrative appeal to the Tax Commissioner; Receipt of a complete appeal.

The Tax Commissioner shall send a notice of receipt of an appeal to the local assessing officer and to the taxpayer.

Source:

*2000 BPOL Guidelines, § 7.9.4.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-760. Administrative appeal to the Tax Commissioner; Local assessing officer's reply; New issues in taxpayer's appeal.

- A. The local assessing officer has thirty days from the date of the notice of receipt of an appeal to:
1. File a written reply to the Tax Commissioner with additional information.
  2. File a written request to address new issues raised by the taxpayer. If a written request to address new issues is filed, the appeal shall return to the local assessing officer to address new issues. Whenever an appeal is returned to the local assessing officer because the local assessing officer has made a written request to address new issues, the local appeals process has started again. At this point, the local assessing officer must make a new determination which can then be appealed to the Tax Commissioner as described ~~above~~ in 23VAC10-500-720.
  3. The Tax Commissioner may request that the local assessing officer make a new Final Local Determination on any issues raised for the first time on appeal. The local assessing officer, however, is not required to make a new Final Local Determination but rather can provide relevant information to the Tax Commissioner who will then make a final written determination. If the local assessing officer issues a new Final Local Determination, that determination can then be appealed to the Tax Commissioner as described ~~above~~ in 23VAC10-500-720.

Source:

*2000 BPOL Guidelines, § 7.9.5.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-770. Administrative appeal to the Tax Commissioner ; Tax Commissioner's final determination of the taxpayer's appeal.**

- A. In determining an appeal, the Tax Commissioner shall presume the local assessing officer's Final Local Determination is correct.
- B. The Tax Commissioner shall permit the local assessing officer to participate in the proceedings.
- C. The Tax Commissioner shall issue a written final determination on the taxpayer's appeal within ninety days ~~of the last day a reply or a written request to address new issues can be made~~ of receipt of the taxpayer's application. The taxpayer and local assessing officer will be notified if a longer period is required.

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

- D. The Tax Commissioner may make requests for relevant information during the appeal process. This request can include meetings and inspections of facilities. Should the taxpayer fail to respond, within a reasonable time, to a request for reasonably available information, the Tax Commissioner may make a written final determination stating that the local assessing officer's Final Local Determination is correct.
- E. All written and oral information relevant to the determination of the taxpayer's appeal shall be provided by the Tax Commissioner to the taxpayer and local assessing officer within a reasonable time of receipt. All such communications and information shall be made a permanent part of the taxpayer's case file.
- F. Written communications sent by the taxpayer or local assessing officer to the Tax Commissioner must also be mailed or delivered to the other party by the submitting party. Such communications shall include a signed and dated certificate that copies were provided, as required by ~~these Guidelines~~ the BPOL Regulations (23 VAC 10-500-10 et seq.), showing the date of mailing or delivery and the name and address of the addressee.
- G. The taxpayer or local assessing officer may request a meeting to discuss the issues presented by the appeal.
- H. The Tax Commissioner's final determination shall provide citations to sources of information which provide significant guidance, input, or serve as a basis for the final determination. The final determination may include an order correcting an assessment pursuant to § 58.1-1822 of the Code of Virginia.

Source:

*2000 BPOL Guidelines, § 7.9.6.*

*Subdivision B is necessitated by 2005 Acts of Assembly, Chapter 927.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-780. Administrative appeal to the Tax Commissioner; Withdrawal of appeal.

The taxpayer may withdraw his appeal to the Tax Commissioner by making such a request in writing any time prior to the issuance of the Tax Commissioner's final determination. A copy of the request to withdraw the appeal shall be mailed to the local assessing officer. Withdrawal of the appeal shall not preclude the Tax Commissioner from issuing for informational purposes an advisory opinion of issues presented by that appeal.

Source:

2000 BPOL Guidelines, § 7.9.7.

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-785. Administrative appeal to the Tax Commissioner ;  
Implementation of determination of Tax Commissioner.**

*Promptly upon receipt of the Tax Commissioner's final determination, the local assessing officer shall calculate the amount of tax owed by, or refund due to, the taxpayer consistent with the Tax Commissioner's determination and provide that information to the taxpayer and to the local officer responsible for collection activity, as follows:*

- A. If the determination sets forth a specific amount of tax due, the local assessing officer shall certify this amount to the local officer responsible for collection activity, who shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination.
- B. If the determination sets forth a specific amount of refund due, the local assessing officer shall certify this amount to the local officer responsible for collection activity, who shall issue a payment to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination.
- C. If the determination does not set forth a specific amount of tax due, or otherwise requires the local assessing officer to undertake a new or revised assessment that will result in the determination of a tax due that has not previously been paid in full, the local assessing officer shall promptly commence the steps necessary to issue a new or revised assessment. The new or revised assessment shall be provided to the taxpayer within 60 days of the date of the Tax Commissioner's determination, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the Tax Commissioner's determination, whichever is later. The local assessing officer shall certify the new assessment to the local officer responsible for collection activity, who shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.
- D. If the determination does not set forth a specific amount of refund due, or otherwise requires the local assessing officer issue a new or revised assessment that will result in the determination of a refund of taxes previously paid, the local assessing officer shall promptly commence the steps necessary to issue a new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the Tax Commissioner's determination, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the Tax Commissioner's determination, whichever is later. The local assessing officer shall certify the new assessment to the local officer responsible for collection activity, who shall issue a refund to the taxpayer for the amount of tax due together



23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

with interest accrued, within 30 days of the date of the new assessment.

Source:

*New section necessitated by 2005 Acts of Assembly, Chapter 927. The section paraphrases the statutory provisions.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-790. Administrative appeal to the Tax Commissioner;  
Confidentiality of determinations and advisory opinions.**

Tax Commissioner determinations and advisory opinions made available to the public shall eliminate any reference to the identities of the taxpayer and the local assessing officer.

*Source:*

*2000 BPOL Guidelines, § 7.9.8.*

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

23VAC10-500-800. Appeal to the circuit court; Generally.

- A. Following an order made by the Tax Commissioner, the taxpayer or the local assessing officer may file an appeal to the circuit court pursuant to 58.1-3984 of the Code of Virginia. The burden shall be on the appealing party to show that the ruling of the Tax Commissioner is erroneous.
- B. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to the appeal merely because the Tax Commissioner has issued a final determination.

Source:

*2000 BPOL Guidelines, § 7.10.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-820. Appeal to the circuit court; suspension of collection activity.**

- A. On receipt of a notice of intent to file an appeal to the circuit court of an order or final determination of the Tax Commissioner and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the local officer responsible for collection activity must further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous; (ii) collection would be jeopardized by delay; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.
- B. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.
- C. No suspension of collection activity shall be required if the appeal to the circuit court fails to identify with particularity the amount in dispute.
- D. Collection activity will continue to be suspended unless an appeal to the circuit court is filed and a copy served on the local assessing officer within 30 days of filing a notice of intent to file an appeal to the circuit court.
- E. Suspension of collection activity shall not be applicable to any appeal that is initiated by the direct filing of an appeal to the circuit court pursuant to *Code of Virginia* § 58.1-3984 without prior exhaustion of the right to appeal the assessment administratively to the local assessing officer and the Tax Commissioner pursuant to *Code of Virginia* § 58.1-3703.1.

23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

Source:

*New section necessitated by 2005 Acts of Assembly, Chapter 927. The section paraphrases the statutory provisions.*

## 23 VAC 10-500 Business, Professional and Occupational License Tax (Proposed)

**23VAC10-500-811. Appeal to the circuit court; Suspension of payment of disputed amount of refund.**

- A. Payment of any refund determined to be due pursuant to the Tax Commissioner's determination shall be suspended if the locality serves upon the taxpayer a notice of intent to file an appeal to the circuit court of the determination and pays the amount of the refund not in dispute, including tax and accrued interest, within 60 days of the date of the determination. 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 appeal to the circuit court is frivolous.
- B. No suspension of refund activity shall be permitted if the locality's appeal to the circuit court fails to identify with particularity the amount in dispute.
- C. The requirement that the obligation to make a refund be suspended shall cease unless an appeal to the circuit court is filed and served on the taxpayer within 30 days of the service of the notice of intent to file such application.

Source:

*New section necessitated by 2005 Acts of Assembly, Chapter 927. The section paraphrases the statutory provisions.*