

CITY OF MANASSAS

CODE OF ORDINANCES

ARTICLE II. LICENSING

DIVISION 1. GENERALLY

Sec. 30-31. Definitions.

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

Affiliated group means:

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

of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

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

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

Assessment means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

Base year means the calendar year preceding the license year, except for contractors subject to the provisions of Code of Virginia, § 58.1-3715, or unless this article provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or 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. The following acts shall create a rebuttable presumption that a person is engaged in a business:

- (1) Advertising or otherwise holding oneself out to the public as being engaged in a particular business; or
- (2) Filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Business service means any service rendered by a commission merchant or rendered for compensation to any business, trade, occupation or governmental agency, unless the service is specifically provided for under another subject of taxation in this article.

Carnival means an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not the shows, amusements, concessions, eating places and riding devices are owned and actually operated by separate persons.

Commission merchant means any person engaged in the business of selling merchandise on commission by sample, circular, or catalogue for a regularly established retailer, who has no stock or inventory under his control other than floor samples held for demonstration or sale and owned by the principal retailer.

Contracting and *constructing* generally include, but are not limited to, the following occupations, businesses, or trades:

Air conditioning.

Brick contracting and other masonry.

Building.

Cementing.

Dredging.

Electrical contractor.

Elevator installation.

Erecting signs which are assessed as realty.

Floor scraping or finishing.

Foundations.

House moving.

Paint and paper decorating.

Plastering and drywall.

Plumbing, heating, steamfitting, and gasfitting.

Refrigeration.

Road, street, bridge, sidewalk or curb and gutter construction.

Roofing and tinning.

Sewer drilling and well digging.

Sign painting when painted on any structure assessed as realty.

Structural metal work.

Tile, glass, flooring and floor covering installation.

Tunneling.

Wrecking, moving or excavating.

All other contractors and contracting businesses not specifically set out in this definition.

Contractor means any person:

- (1) Accepting or offering to accept orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;
- (2) Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys, or highways, or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;
- (3) Accepting or offering to accept an order for or contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining rights-of-way;
- (4) Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terracotta or other material;
- (5) Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing, or maintaining of electric wiring, devices or appliances permanently connected to such wiring, or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power; or
- (6) Engaging in the business of plumbing and steamfitting.

Persons employed directly on a salary or wage basis by a contractor and who do not, in addition, furnish the materials and supplies therefor are not contractors within the meaning of this definition.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

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

Financial services means the buying, selling, handling, managing, investing and providing of advice regarding money, credit, securities or other investments. Financial services include, but are not limited to, the following:

Buying installment receivables.

Chattel mortgage financing.

Consumer financing.

Credit card services.

Credit unions.

Factors.

Financing accounts receivable.

Industrial loan companies.

Installment financing.

Inventory financing.

Loan or mortgage brokers.

Loan or mortgage companies.

Safety deposit box companies.

Security and commodity brokers and services.

Stockbrokers.

Working capital financing.

Fortuneteller means any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or practice palmistry or phrenology.

Gross expenditures means all expenditures incurred in connection with the acquisition or lease of real property, including cash, credits, fees, commissions, brokerage charges and rentals, and all expenditures incurred in connection with the improvement or development of such property, including costs of all labor involved in such improvement or development, cost of materials and supplies, equipment rental or an equivalent charge therefor if equipment is owned by the builder or developer, and any other expenditure of whatever description incurred in connection with the improvement or development of such property. The term "gross expenditures" shall not include amounts expended for interest on or payment of principal of debt incurred in connection with such improvement or development work.

Gross receipts.

(1) The term "gross receipts" means the whole, entire, total receipts from any business, trade, profession, occupation, vocation, calling or activity, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind, nature or description from either sales made or services rendered without any deduction therefrom on account of cost of the property sold, the cost of material, labor or services or other costs, interest or discounts paid or any expense whatsoever, and such term shall include in case of merchants the amount of the sale price of supplies and goods furnished to or used by the licensee or his family or other person for which no charge is made.

(2) The term "gross receipts," when used in connection with or in respect to financial transactions involving the sale of notes, stocks, bonds or other securities or the loan, collection or advance of money or the discounting of notes, bills or other evidence of debt, shall mean the gross interest, gross discount, gross commission or other gross receipts earned by means of or resulting from such financial transactions, but the term "gross receipts" shall not include any amount received as payment of debt.

(3) The term "gross receipts" shall include the gross receipts from all sales or services rendered or activities conducted within the city, both to persons within the city and to persons outside the city, including governmental agencies; provided, however, that the term "gross receipts" shall not include dues collected by trade, business, professional, service or civic associations or other similar organizations.

(4) Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.

(5) The following items are excluded:

- a. Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Commonwealth retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, for any federal or Commonwealth excise taxes on motor fuels.
- b. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- c. Any amount representing returns and allowances granted by the business to its customer.
- d. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
- e. Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- f. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.
- g. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory whether or not a gain or loss is recognized for federal income tax purposes.
- h. Investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(6) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

- a. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to such entity by the original purchaser who shall have been

contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

b. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

(7) Gross receipts for license tax purposes shall be calculated on either a cash or accrual basis; provided, however, that the basis must coincide with the system of accounts used by the taxpayer and with the method employed by the taxpayer for federal and state income tax purposes. The preceding calendar year's gross receipts may be either the fiscal year used by the business or the calendar year; provided that the year employed must also coincide with the year used for federal or state income tax purposes.

Itinerant merchant means a person who shall engage in, do or transact any temporary or transient business in the Commonwealth, either in one locality or in traveling from place to place, in the sale of goods, wares and merchandise, and who for the purpose of carrying on such business shall hire, lease, use or occupy any building or structure, motor vehicle, tent, car, boat or public room or any part thereof, including rooms in hotels, lodgings, or houses of private entertainment, or in any street, alley or other public place in any city or town, or in any public road in any city, for a period of less than one year, for the exhibition of or sale of such goods, wares or merchandise.

Itinerant photographer means any person, partnership or corporation having no regularly established place of business in the Commonwealth who provides services consisting of the taking of pictures or the making of pictorial reproductions in the city. The term shall also include every employee, agent or canvasser for such photographer. Nothing in this definition shall apply to:

- (1) Amateur photographers who expose, develop and finish their own work and who do not receive compensation for such work or receive compensation for performing any of the processes of photography;
- (2) Coin-operated photography machines; or
- (3) Photographers providing service in the course of their employment by newspapers, magazines or television stations.

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

Peddler means any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter such goods, wares or merchandise, or actually sell

or barter such goods, wares or merchandise. All persons who do not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, open at all times in regular business hours and at the same place, who shall offer for sale or barter goods, wares and merchandise, or actually sell or barter goods, wares and merchandise, shall be deemed peddlers under this article. All persons who keep a regular place of business, open at all times in regular business hours and at the same place, who shall, elsewhere than at such regular place of business, personally or through their agents, offer for sale or sell or offer for barter or actually barter and, at the time of such offering for sale or barter, deliver goods, wares and merchandise shall also be deemed peddlers. The term "peddler" shall not include those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. A dairyman who uses upon the streets of the city one or more vehicles may sell and deliver from his vehicles milk, butter, cream and eggs in the city without procuring a peddler's license. This definition shall not apply to a peddler at wholesale. A producer shall not be required to obtain a peddler's license under this article; provided, however, that a person claiming such exemption shall obtain certification from an extension agent of the Virginia Polytechnic Institute and State University for the area in which the wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruit and other family supplies of a perishable nature or farm products in question are produced or grown by such person so claiming the exemption, certifying to the fact that such person is a producer.

Person means any individual, firm, partnership, copartnership, corporation, company, association or joint stock association, including any trustee, receiver, assignee or personal representative thereof, carrying on or continuing a business, profession, trade or occupation, but not including a court-appointed trustee, receiver or personal representative in the liquidation of assets for immediate distribution or a sergeant or sheriff or any deputy selling under authority of process or writ of a court of justice. Such term shall not include a volunteer fire department, a volunteer rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court or other educational, cultural, recreational, and athletic facilities and facilities for the welfare of the residents of the area.

Personal service means any service rendered for compensation either upon or for persons, animals or personal effects, unless the service is specifically provided for under another subject of taxation in this article.

Professional services means services performed by architects, attorneys at law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Commonwealth department of taxation may list in the BPOL guidelines promulgated pursuant to Code of Virginia, § 58.1-3701. The department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or

learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

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.

Real estate services means providing a service as lessor, buyer, seller, agent or broker, with respect to the purchase, sale, lease, rental or appraisal of real property, unless the service is specifically provided for under another subject of taxation in this article. Those rendering real estate services include, but are not limited to, the following:

Appraisers of real estate.

Escrow agents, real estate.

Fiduciaries, real estate.

Principal real estate brokers and managers.

Repair, personal, and business services include, but are not limited to, the following:

Advertising agencies.

Airports.

Ambulance services.

Amusement and recreation services (all types other than shooting galleries).

Animal hospitals, grooming services, kennels or stables not operated by licensed veterinarians.

Auctioneers.

Automobile driving schools.

Barbershops, beauty salons, cosmetology salons and hairdressing establishments, schools and services.

Bid or bidding reporting service.

Billiard or pool establishments or parlors.

Blacksmiths or wheelwrights.

Bondsmen.

Booking agents or concert managers.

Bottle exchanges.

Bowling alleys.

Brokers and commission merchants other than real estate or financial brokers.

Business research and consulting services.

Cable television.

Chartered clubs.

Child care attendants or schools.

Collection agents or agencies.

Commercial photography, art and graphics.

Commercial sports.

Dance studios and schools.

Data processing, computer and systems development services.

Developing or enlarging photographs.

Detective agency and protective services.

Drafting services.

Engraving.

Erecting, installing, removing or storing awnings.

Extermination services.

Freight traffic bureaus.

Fumigating or disinfecting.

Funeral services and crematories.

Golf courses, driving ranges and miniature golf courses.

Hauling of sand, gravel or dirt.

Hotels, motels, motor lodges, auto courts, lodginghouses, tourist courts, boardinghouses and roominghouses, and trailer parks and campsites.

House cleaning services.

Information bureaus.

Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports, and the like.

Interior decorating.

Janitorial services.

Laundry cleaning and garment services including laundries, dry cleaners, linen supply, diaper service, coin-operated laundries and carpet and upholstery cleaning.

Mailing, messenger and correspondent services.

Marinas and boat landings.

Movie theaters and drive-in theaters.

Nickel plating, chromizing and electroplating.

Nurses and physician registries.

Nursing and personal care facilities including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes.

Packing, crating, shipping, hauling or moving goods or chattels for others.

Parcel delivery services.

Parking lots, public garages and valet parking.

Pawnbrokers.

Personnel services, labor agents and employment bureaus.

Photographers and photographic services.

Piano tuning.

Picture framing and gilding.

Porter services.

Press clipping services.

Private hospitals.

Promotional agents or agencies.

Public relations services.

Realty multiple listing services.

Recreation centers.

Renting or leasing any items of tangible personal property.

Reproduction services.

Secretarial services.

Septic tank cleaning.

Shoe repair, shoeshine and hat repair shops.

Shooting galleries.

Sign painting.

Storage, all types.

Subdividers and developers.

Swimming pool maintenance and management.

Tabulation services.

Taxidermists.

Telephone answering services.

Theaters.

Theatrical performers, bands and orchestras.

Towing services.

Transportation services including buses and taxis.

Travel bureaus.

Tree surgeons, trimmers and removal services.

Turkish, Roman or other like baths or parlors.

Wake-up services.

Washing, cleaning or polishing automobiles.

Other repair, personal and business services not specifically set out in this definition.

Repair service means the repairing, renovating, cleaning or servicing of some article or item of personal property for compensation, unless the service is specifically provided for under another subject of taxation in this article.

Retail merchant means any person who makes retail sales, and generally includes, but is not limited to, the following:

Auto accessories, tires, or batteries.

Aircraft or aircraft parts.

Antiques.

Auto sales, motor vehicle dealers.

Bakeries.

Bicycles.

Boats, motors.

Books, stationery.

Building materials.

Candy or nut store.

Cigar or tobacco stands and newsstands.

Clothing.

Confectionery.

Custom tailors.

Dairy products.

Delicatessens which do not have seating available.

Department stores.

Draperies, curtains, or upholstery.

Drugs.

Dry goods stores.

Eggs and poultry.

Farm equipment.

Fish or seafood market.

Floor covering.

Florists.

Fruit stores and vegetable markets.

Fuel and ice.

Furniture.

Furriers.

Garden supplies.

General stores.

Gifts, novelties or souvenirs.

Groceries.

Hardware.

Heating, plumbing, and electrical equipment.

Hogs, grain, feed, or seed.

Hosiery.

Household products, any and all.

Jewelry.

Livestock dealers.

Luggage.

Lumber goods.

Mail order.

Meat markets.

Millinery.

Motorcycles.

Musical instruments.

Office, store, appliance supply.

Optical.

Paint, glass, or wallpaper.

Pet shops.

Photographic, supply, equipment.

Radios or household appliances.

Secondhand stores.

Scientific medical supplies.

Shoes.

Short-term rental businesses as defined in Code of Virginia, § 58.1-3510.

Sporting goods.

Used cars.

Variety stores.

Other retail stores and retail merchants.

Retail sale means the sale of goods, wares or merchandise for any purpose other than resale, but not including sales at wholesale to institutional, commercial, and industrial users.

Wholesale merchant means any person who sells to others for resale or sells at wholesale to institutional, commercial or industrial users.

(Code 1978, §§ 15-94, 15-123.1, 15-123.2, 15-124.1, 15-124.2, 15-125.1, 15-126.1, 15-127.1, 15-127.2, 15-132)

Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, Code of Virginia, §§ 54.1-1200 et seq.; 58.1-3700.1, 58.1-3714, 58.1-3717, 58.1-3726; 58.1-3727, 58.1-3728; requiring bondsmen to obtain a municipal revenue license, Code of Virginia, § 58.1-3724.

Sec. 30-32. Penalty for violation of article.

Any person who is convicted of a violation of any of the provisions of this article shall, except where some other penalty is specifically provided, be guilty of a Class 3 misdemeanor.

(Code 1978, § 15-122)

Sec. 30-33. Article does not impose tax contrary to law of Commonwealth.

No provision of this article shall be construed in such manner as to require the imposition of a license tax in contravention of the Code of Virginia.

(Code 1978, § 15-104)

State law references: Exercise of powers not expressly prohibited by the constitution and the general laws of the Commonwealth, Code of Virginia, § 15.2-1102; license tax law as the sole authority for the city for the levying of the license taxes described therein, Code of Virginia, § 58.1-3702.

Sec. 30-34. Licenses to be subject to applicable laws, regulations and guidelines.

All licenses issued under this article shall be subject to the laws, regulations and guidelines of the Commonwealth, to the provisions of this Code and other ordinances of the city, and to the regulations of the council in force at the time of issuing or during the period covered by such license.

(Code 1978, § 15-105)

State law references: Access to Code of Virginia and Virginia Administrative Code, Code of Virginia, § 30-34.10:2; state department of taxation to promulgate guidelines, Code of Virginia, § 58.1-3701.

Sec. 30-35. License to be personal privilege.

Every license issued under the provisions of this article shall be deemed to confer a personal privilege to transact, carry on or conduct the business, profession, trade or occupation which may be the subject of the license, and shall not be exercised except by the persons licensed.

(Code 1978, § 15-112)

State law references: License required, engaging in business without obtaining license, Code of Virginia, § 58.1-3700.

Sec. 30-36. Activities subject to tax.

Each and all of the taxes imposed in this article are in all cases imposed upon the privilege of doing business or exercising a trade, profession, occupation, vocation, calling or activity conducted in the city.

(Code 1978, § 15-95)

Sec. 30-37. License required; evidence of payment of certain taxes.

(a) Each person conducting a business or engaged in professional employment or doing anything upon which a license tax is imposed by this article shall secure a license therefor before starting such business or profession and shall pay the requisite license tax.

(b) Whenever a license is required by this article and whenever the city council shall impose a license fee or levy a license tax on any business, employment or profession, it shall be unlawful to engage in such business, employment or profession without first obtaining the required license. No business license under this article shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the city have been paid which have been properly assessed against the applicant by the city. Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by this article.

(Code 1978, §§ 15-98, 15-122)

State law references: Similar provisions, Code of Virginia, § 58.1-3700.

Secs. 30-38--30-60. Reserved.

DIVISION 2. STATE UNIFORM ORDINANCE PROVISIONS*

***Cross references:** Ordinances and resolutions, § 2-101 et seq.

Sec. 30-61. Adopted; legal basis.

Provisions of Commonwealth law are adopted in sections 30-62 through 30-66 pursuant to Code of Virginia, § 58.1-3703.1.

(Code 1978, § 15-95.1(a))

State law references: License tax ordinance to include provisions substantially similar to "uniform ordinance provisions," Code of Virginia, § 58.1-3703.1.

Sec. 30-62. License requirement.

(a) Every person shall apply for a license for each business or profession when engaging in a business in the city if:

- (1) The person has a definite place of business in the city;
- (2) There is no definite place of business anywhere and the person resides in the city;
or
- (3) There is no definite place of business in the city but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to Code of Virginia, § 58.1-3715, or public service corporation.

(b) A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

- (1) Each business or profession is subject to licensure at the location and has satisfied any requirements imposed by Commonwealth law or other provisions of the ordinances of the city;
- (2) All of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and
- (3) The taxpayer agrees to supply such information as the commissioner of the revenue may require concerning the nature of the several businesses and their gross receipts.

(Code 1978, § 15-95.1(a)(1))

State law references: Similar provisions, Code of Virginia, § 58.1-3703.1(A)(1).

Sec. 30-63. Due dates and penalties.

(a) *Application for license.* Each person subject to a license tax under this article shall apply for a license prior to beginning business if he was not subject to licensure in the city on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. The application shall be on forms prescribed by the assessing official.

(b) *Payment of tax.* The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business,

the tax shall be paid on or before March 1. If the business begins after March 1, the tax shall be paid within 30 days after beginning business.

(c) *Extension of time.* The assessing official may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten percent of the portion paid after the due date.

(d) *Late penalty.*

(1) A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud or reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days, the treasurer or other collecting official may impose a ten percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

(2) For purposes of this subsection, the term "acted responsibly" means that:

a. The taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and

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

(3) For purposes of this subsection, the term "events beyond the taxpayer's control" includes, but is not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(e) *Interest.*

(1) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded, together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Code of Virginia, § 58.1-3916.