

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **The Licensing of Itinerant Merchants and Peddlers**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **House Document No. 14**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1985**

**MEMBERS OF SUBCOMMITTEE**

Delegate Claude W. Anderson, Chairman  
Senator William E. Fears, Vice Chairman  
Delegate James W. Robinson  
Commissioner James M. Fleetwood  
Commissioner Victor J. Smith



**STAFF**

**Legal and Research**

**John A. Garka, Economist**

**W. Rand Cook, Attorney**

**Administrative and Clerical**

Office of Clerk, House of Delegates

**Report of the  
Joint Subcommittee Studying the Licensing  
of Itinerant Merchants and Peddlers  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January, 1985**

**To: Honorable Charles S. Robb, Governor of Virginia  
and  
The General Assembly of Virginia**

## **I. INTRODUCTION**

The joint subcommittee was formed as a result of House Joint Resolution No. 79 which was sponsored by Delegate Claude W. Anderson. The resolution was introduced because of the recent large increases in the number of itinerant merchants, peddlers, flea markets, and shows in which exhibitors sell their products. The joint subcommittee was directed to study the advisability of the Commonwealth's licensing itinerant merchants and peddlers and persons and businesses either operating or exhibiting goods for sale at flea markets and shows. The major focus of the joint subcommittee was to examine the extent of this type of activity in Virginia and to clarify the confusion that exists regarding whether localities may impose a local license tax on itinerant merchants and peddlers of up to \$500 per year if the locality already imposes a merchants' capital tax. Secondly, the joint subcommittee examined Virginia's laws as they relate to penalties which localities can impose on itinerant merchants and peddlers for failure to obtain a local license.

**II. SUMMARY OF FINDINGS AND RECOMMENDATIONS**

The joint subcommittee examined the sales tax and local license tax imposed on itinerant merchants and peddlers as well as the statutes which allow localities to impose penalties upon individuals who do not obtain the required local license. The joint subcommittee was informed that many individuals believe that itinerant merchants and peddlers were evading sales taxes as well as local license taxes.

The joint subcommittee heard testimony from the State Tax Commissioner that, due to the combined efforts of the Department of Taxation, local Commissioners of the Revenue, and state and local law enforcement officials, Virginia is vigorously enforcing its sales tax law. The State Tax Commissioner believes that there are no significant problems being experienced by the Commonwealth in the collection of the proper sales tax from these individuals.

In terms of local license taxes, if some localities are not collecting the tax, the subcommittee believes that the major reason is not the transitory nature of the itinerant merchant or peddler but rather the fact that counties did not realize they could impose a merchants' capital tax on established retailers and also up to a \$500 local license tax on itinerant merchants. The subcommittee has found that counties felt they were precluded from imposing both taxes. The subcommittee has determined, however, with support from a recent Attorney General's opinion, that counties may impose both a merchants' capital tax on established retailers and a license tax on itinerant merchants and peddlers. The vast majority of the counties which impose a merchants' capital tax do not impose the local license tax on itinerant merchants and peddlers. As a result, the itinerant merchant and peddler legally escapes taxation because the merchants' capital tax is based on the value of inventory as of a certain tax day. Itinerant merchants and peddlers are usually not subject to this tax since due to their transitory nature, itinerants are not present in the locality on the tax day. Therefore, localities must impose the local license tax on itinerant merchants and peddlers if they are to be subject to local taxation. The joint subcommittee has found that all localities have the statutory authority to impose this tax.

The second major focus of the subcommittee was to examine the penalties which localities may impose on individuals who do not obtain the required local license. After examining the many aspects of this problem, the differences which exist throughout the localities of the Commonwealth in terms of numbers of itinerant merchants and peddlers and the problems they experience with these individuals, the subcommittee believes that localities need flexibility to deal with the taxation of itinerant merchants. If localities experience only a few problems with itinerants then the locality may wish to impose milder penalties than these localities which experience more severe local license problems.

The subcommittee has found that localities already have considerable latitude in imposing penalties. The subcommittee believes that no additional legislation is necessary, even though some local tax officials have indicated uncertainty as to the local authority to levy criminal penalties. The subcommittee believes localities clearly have the statutory authority under § 15.1-505 and § 15.1-901 to impose, by ordinance, criminal penalties against individuals who violate local ordinances, including the failure to obtain required licenses or pay local taxes which are imposed by ordinance. Under current law, localities can impose a penalty of up to \$1,000 or up to one year in a penal or correctional institution, or both.

In the course of its study, the subcommittee has found that the major problem has not been statutory authority or the lack of flexibility but rather confusion at the local level. As a result, the subcommittee has prepared a detailed memorandum which outlines the issues and findings of the subcommittee and provides the citation of the specific statutory authority which localities need to deal with itinerant merchants and peddlers. This memorandum has been sent to all city managers, town managers, county administrators and commissioners of the revenue. The subcommittee hopes that this will help clarify the understanding of all concerned. The memorandum is contained in Appendix A.

Respectfully submitted,

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Delegate Claude W. Anderson, Chairman

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**Senator William E. Fears, Vice Chairman**

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**Delegate James W. Robinson**

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**Commissioner James M. Fleetwood**

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**Commissioner Victor J. Smith**

APPENDIX A



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

CLAUDE W. ANDERSON  
BOX 7  
BUCKINGHAM, VIRGINIA 23921  
FIFTY-NINTH DISTRICT

COMMITTEE ASSIGNMENTS:  
PRIVILEGES AND ELECTIONS (CHAIRMAN)  
FINANCE  
LABOR AND COMMERCE  
RULES

To: Local Tax Officials

From: The Joint Subcommittee Studying the Advisability of  
Licensing Itinerant Merchants Peddlers and Exhibitors  
at Fleamarkets

RE: Findings of the Study

The Joint Subcommittee Studying the Advisability of Licensing Itinerant Merchants, Peddlers and Exhibitors at Fleamarkets was established during the 1984 Session of the Virginia General Assembly as a result of the recent increases in the number of itinerant merchants, peddlers, fleamarkets and shows in which exhibitors sell their products. (See the enclosed copy of House Joint Resolution 79.) In the subcommittee's first two meetings a number of speakers have emphasized that localities are experiencing difficulty in the enforcement and collection of certain state and local taxes levied against itinerant merchants, peddlers and exhibitors. More specifically, the difficulty appears to exist in the collection of sales taxes and local license taxes. Rather than giving serious consideration to the establishment of a state licensing program, the subcommittee has focused its attention on the development of possible solutions to the problem which could be implemented at the local level. The purpose of this letter is to provide information to local tax officials, on a statewide basis, which the subcommittee feels may be useful in the collection of these taxes.

Of primary importance to the subcommittee is the situation where merchants display and sell products, often from the back of a truck, at roadside locations which they occupy for a very short period of time, usually for one day or at most a weekend. Due to the transitory and temporary nature of these businesses it is difficult for local tax inspectors to be aware of their presence in the locality, and therefore, equally difficult to collect the proper taxes due. It has been brought to the attention of the subcommittee that, in order to deal with this situation, some local tax officials have devised a plan with law enforcement officers, both state and local, whereby the officers report the presence of itinerant merchants to the proper officials in the locality, who can then determine if all proper taxes and licenses have been paid.

In past years, localities which imposed a merchants' capital tax usually did not impose a license tax (BPOL tax) on other types of occupations. Such localities, therefore, would not be concerned with the enforcement problems we have been discussing. However, you should be informed that the Attorney General has ruled that localities which impose a merchants' capital tax may also levy a license tax (See the enclosed Opinion). Such license tax, however, may not be levied against those individuals subject to the merchants' capital tax. Although the Opinion does not specifically address the subject of itinerant merchants, it would appear, and the subcommittee believes, that localities which impose a merchants' capital tax on established merchants could also levy a license tax under § 58.1-3717 specifically on itinerant merchants. Under this approach localities can continue to tax established merchants under the merchants' capital tax, and impose up to a \$500 annual license tax upon itinerant merchants who have traditionally been able to avoid taxation. Such an approach may be of interest to those of you operating in merchants' capital jurisdictions.

The subcommittee has also examined the proper collection of taxes at fleamarkets and craft shows. As all of you know these events have grown in both size and popularity. Today such events are being held on a regular basis, often involving hundreds of exhibitors. It has been learned that in many localities such exhibitors are not collecting the applicable state and local sales taxes. One successful technique used to collect these taxes is to enter into an understanding with the promoter of the fleamarket or craft show whereby the promoter oversees the collection of taxes. The Department of Taxation has prepared an easy-to-use registration form which also may be helpful to you in the collection of sales taxes. An operator of one of the larger flea markets in the state used the following procedure to collect the sales tax. He uses the seller's automobile license number as an identification number. Each seller is given a sales tax slip and before leaving the area each seller must return the collection form, along with the proper tax due, to the operator, who then remits the tax to the state. The collection of license taxes at flea markets may also be handled in the same manner. A sample ordinance which imposes a license tax on flea markets is enclosed.

It has been suggested to the subcommittee that the imposition of criminal penalties for failure to comply with local tax ordinances may also be an answer to these problems. A number of local tax officials, however, have indicated uncertainty as to the authority to levy such penalties. It is the opinion of members of this subcommittee that localities have the statutory authority (see enclosed §§ 15.1-505 and 15.1-901) to impose, by ordinance, criminal penalties against individuals who violate ordinances. (A sample criminal penalty ordinance is enclosed.) Localities could therefore impose such penalties against individuals who fail to obtain required licenses and/or pay local taxes which are imposed by ordinance. These stiffer penalties may serve to improve local tax compliance, however, they do not lessen the need to enforce taxes through an effective monitoring of businesses operating in the locality.

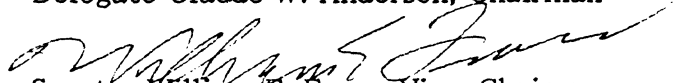


Hopefully the information presented in this letter may be of some use to you in your collection and enforcement efforts. Please feel free to contact the subcommittee staff (John Garka or Randy Cook at the Division of Legislative Services (786-3591)) if you have any questions or information you would like to share with the subcommittee.

Sincerely,



Delegate Claude W. Anderson, Chairman



Senator William E. Fears, Vice-Chairman

**Sec. 29-152. Penalty for failure to obtain license.**

(a) Every person prosecuting a trade, business, occupation or profession in the city without a license assessable under this article, or operating or causing to be operated a vehicle on the streets of the city without a license assessable under this article or without paying the entire amount of license taxes assessed plus penalty and interest when due, as provided in sections 29-146 to 29-151 of this Code, or having a taxable slot machine in any place in the city without a license, shall be guilty of a misdemeanor. Nothing contained in this section shall be construed to relieve the collector of city taxes from the duty imposed on him by law of collecting the amount due by any person on account of the license taxes prescribed by levying or distraining therefor or otherwise.

(b) A prosecution or conviction for the violation of this section shall not relieve a taxpayer from the liability for the payment of interest upon any assessment against him from the date of such assessment if the assessment be not paid within thirty days from the date of such assessment, as provided in section 29-157 of this Code. (Code 1968, § 37-123.)

## HOUSE JOINT RESOLUTION NO. 79

*Establishing a joint subcommittee to study the advisability of licensing exhibitors at flea markets, craft shows and other shows.*

Agreed to by the House of Delegates, March 9, 1984  
Agreed to by the Senate, March 9, 1984

WHEREAS, the number of flea markets and shows at which exhibitors sell at retail has increased dramatically in recent years; and

WHEREAS, the enforcement and collection of state and local taxes is made difficult because exhibitors at flea markets and shows often have no regular place of business in the communities where they exhibit; and

WHEREAS, because of the transient character of exhibitors at flea markets and shows, consumers can be left without practical recourse when sold stolen, defective or unsatisfactory goods; and

WHEREAS, many of the statutes providing for the licensing of itinerant peddlers, antique shows and transient businesses were repealed by the 1982 Session of the General Assembly, effective January 1, 1983; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the advisability of the State's licensing persons and businesses either operating or exhibiting goods for sale at flea markets and shows.

The joint subcommittee shall consist of nine members who shall be appointed in the following manner: four members of the House Finance Committee appointed by the chairman of that Committee; one commissioner of the revenue or other local tax official appointed by the Speaker; three members of the Senate Finance Committee and one commissioner of the revenue or other local tax official, all appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to submit recommendations, if any, to the 1985 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be \$12,500.



COMMONWEALTH of VIRGINIA  
Office of the Attorney General

Gerald L. Baliles  
Attorney General

William G. Broaddus  
Chief Deputy Attorney General

Donald C. J. Gehring  
Deputy Attorney General  
Criminal Law Enforcement Division

Maston T. Jacks  
Deputy Attorney General  
Human & Natural Resources Division

Elizabeth B. Lacy  
Deputy Attorney General  
Judicial Affairs Division

Walter A. McFarlane  
Deputy Attorney General  
Finance & Transportation Division

Karl E. Bren  
Director of Administration

October 20, 1983 10/21

The Honorable Benjamin L. Pinckard  
Commissioner of the Revenue for Franklin County  
Rocky Mount, Virginia 24151

My dear Mr. Pinckard:

You have asked whether Franklin County may continue to impose a tax on the capital of retail and wholesale merchants and impose a business license tax on all other businesses except merchants. For reasons hereinafter discussed, in my opinion, such a system of taxation is permissible.

The statutory authority for local governing bodies to impose license taxes is § 58-266.1(A) of the Code of Virginia, which provides in pertinent part:

"The...governing body of any county, may levy and provide for the assessment and collection of...county license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein...."

Subsection (5) of the above section states:

"Whenever any county...imposes a license tax on merchants, the same shall be in lieu of a tax on the capital of merchants, as defined by § 58-833."  
(Emphasis added.)

Localities are thus authorized to impose license taxes on all businesses, trades, professions and occupations if they so elect. As an alternative, they may impose the tax on capital of merchants as provided in § 58-833, but they cannot impose both. If the localities elect to impose a license tax on merchants, that tax is in lieu of the tax on capital.

Nothing in the language of § 58-266.1 prohibits the county from taxing merchants by a different method from that used on other businesses. Cf. 1981-1982 Report of the

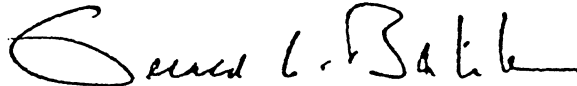
The Honorable Benjamin L. Pinckard  
October 20, 1983  
Page 2

Attorney General at 365 [§ 58-266.1 does not require a local ordinance to include the specific business classifications listed in subsection (B)]. In fact, the statute impliedly authorizes taxing merchants differently from other businesses, professions, etc. Local governments have wide discretion in making taxing classifications which in their judgment produce a reasonable system of taxation. See Rogers v. Miller, 401 F. Supp. 826 (E.D. Va. 1975).

Accordingly, it is my opinion that a license tax imposed on businesses, professions, trades and occupations under the authority of § 58-266.1 may exclude merchants if the county elects to impose a tax on the capital of merchants under §§ 58-832 and 58-833.

With kindest regards, I am

Sincerely,



Gerald L. Baliles  
Attorney General

5:30/150-127

**§ 15.1-505. Penalties for violation of ordinances.** — The governing body of any county may prescribe fines and other punishment for violations of ordinances, which shall be enforced by proceedings before a judge of the district court for the county in the manner and with the same right of appeal as if such violations were misdemeanors. Such fines, however, shall in no case exceed one thousand dollars and if imprisonment in the county jail be prescribed in any case such imprisonment shall not exceed twelve months; provided, however, that such penalties shall not exceed those penalties prescribed by general law for like offenses. (Code 1950, § 15-8; 1954, c. 529; 1956, cc. 218, 664; 1956, Ex. Sess., c. 40; 1958, c. 279; 1960, c. 606; 1962, c. 623; 1974, c. 598; 1976, c. 582; 1978, c. 150.)

**§ 15.1-901. Penalties for violation of ordinances.** — When a municipal corporation is authorized and deems it necessary or expedient to adopt ordinances on any subject, it may impose penalties for the violation of such ordinances. No penalty imposed shall exceed a fine of one thousand dollars or imprisonment in a penal or correctional institution for twelve months or both; provided, however, that such penalty shall not exceed the penalty prescribed by general law for a like offense. (Code 1950 (Suppl.), § 15-77.64; 1958, c. 328; 1962, c. 623; 1976, c. 582.)

AN ORDINANCE TO AMEND THE CODE OF THE  
COUNTY OF CHESTERFIELD, 1978, AS AMENDED,  
BY ADDING SECTION 12-39.1 RELATING TO  
BUSINESS LICENSE TAXATION OF  
FLEA MARKET AND CRAFT SHOWS

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

(1) That the Code of the County of Chesterfield, 1978, as amended, is amended by adding the following section.

Sec. 12-39.1. Flea market and craft shows.

(a) Every person engaged in the business of organizing, promoting or managing a flea market or craft show shall obtain a license for the privilege of doing such business in the County and shall pay a license tax equal to thirty dollars or thirty-six hundredths of one percent of the total gross receipts from all sales of goods or merchandise sold by individuals participating in such flea market or craft show, whichever is greater.

(b) "Flea Market or craft show" shall include any show consisting of a group of persons or merchants selling goods, wares or merchandise such as hobby crafts, antiques, art works or second-hand articles, or any combination of these.

(c) No individual participating in a flea market or craft show as a merchant shall be liable for any license taxation on his gross receipts generated at such show under this chapter if the promoter, manager or organizer of the show obtains a license and pays the license tax as provided in this section, and if the merchant reports to such promoter, manager or organizer the merchant's total gross receipts from such show.

(d) Nothing contained in this section shall be construed to relieve any promoter, manager or organizer of a flea market or craft show of the obligation to pay any other license taxes that may be imposed by this chapter.

ADOPTED 5/9/84

AN ORDINANCE TO AMEND AND REENACT SECTIONS 12-116  
OF THE CODE OF THE COUNTY OF CHESTERFIELD,  
1978, AS AMENDED, RELATING TO BUSINESS LICENSE  
TAXES FOR COMMISSION MERCHANTS  
AND ITINERANT MERCHANTS

BE IT ORDAINED by the Board of Supervisors of Chesterfield County:

(1) That Section 12-116 and of the Code of the County of Chesterfield, 1978, as amended, is amended and reenacted as follows:

Sec. 12-116. Commission Merchants.

Every person who receives or distributes food products, cotton, flour, hay, grain, provisions, dry goods, merchandise, or other commodities shipped to him for distribution on account of the shipper, who participates in the profits ensuing from or accruing out of the sale of such commodities or who invoices such sales or collects money therefor, every person buying or selling for another any kind of merchandise or commodities, on commission, except associations or organizations of farmers for mutual help in the marketing of their produce and not for profit and every person who sells any personal property which may be left with or consigned to him for sale on commission shall pay a license tax equal to twenty dollars for all gross commission below five thousand, five hundred and fifty-six dollars and thirty-six hundredths of one percentum of the gross commissions of the business above five thousand five hundred and fifty-six dollars. The provisions of this section shall not apply to any person who on commission sells merchandise by sample, circular or catalogue, where the merchandise subsequently delivered is not samples, who has no office, display room, store or other definite place of business in the state, who has no stock of merchandise in his custody of possession or under his control at any time during the year and who employs no person.

(2) This ordinance shall be effective January 1, 1985.

ADOPTED 1/11/84