

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**THE BUSINESS, PROFESSIONAL,  
AND OCCUPATION LICENSE TAX**

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



**HOUSE DOCUMENT NO. 59**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**

## **MEMBERSHIP OF THE SUBCOMMITTEE**

**Delegate David G. Brickley, Chairman**

**Senator E.M. Holland, Vice Chairman**

**Delegate Linda T. Puller**

**Delegate Harry R. Purkey**

**Delegate James M. Scott**

**Delegate Mitchell Van Yahres**

**Senator Robert L. Calhoun**

**Senator Charles J. Colgan**

**Senator Kevin G. Miller**

**Connie Bawcum**

**Helena L. Dodson**

**John R. Broadway, Jr.**

**Mark Jinks**

**George C. Newstrom**

**Carl W. Stenberg III**

---

## **STAFF**

### **Legal and Research**

#### **DIVISION OF LEGISLATIVE SERVICES**

**Joan E. Putney, Senior Attorney**

**Pamela Catania, Staff Attorney**

**Jane C. Lewis, Senior Operations Staff Assistant**

### **Administrative**

#### **HOUSE OF DELEGATES, OFFICE OF THE CLERK**

**Barbara H. Hanback, Committee Operations**

# TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>III.</b>	<b>BACKGROUND.....</b>	<b>5</b>
	<b>A. History .....</b>	<b>5</b>
	<b>B. Administering the Tax.....</b>	<b>7</b>
	<b>C. 1995 Legislation.....</b>	<b>8</b>
	<b>D. Activities of the Joint Subcommittee .....</b>	<b>9</b>
	<b>1. 1993 Activities.....</b>	<b>9</b>
	<b>a. Business Concerns.....</b>	<b>9</b>
	<b>b. Local Government Concerns.....</b>	<b>9</b>
	<b>c. Possible Solutions.....</b>	<b>10</b>
	<b>2. 1994 Activities.....</b>	<b>11</b>
	<b>a. October 27, 1994, Meeting.....</b>	<b>11</b>
	<b>b. December 7, 1994, Meeting .....</b>	<b>12</b>
	<b>c. January 9, 1995, Meeting .....</b>	<b>13</b>
<b>IV.</b>	<b>ISSUES.....</b>	<b>13</b>
<b>V.</b>	<b>FINDINGS AND CONCLUSIONS .....</b>	<b>14</b>
<b>VI.</b>	<b>APPENDICES .....</b>	<b>16</b>
	<b>A. House Joint Resolution No. 526 (1993)</b>	
	<b>B. House Joint Resolution No. 110 (1994)</b>	
	<b>C. House Bill 2351 (1995), <i>Annotated Legislation</i></b>	
	<b>D. House Joint Resolution No. 613 (1995)</b>	

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING THE BUSINESS, PROFESSIONAL,  
AND OCCUPATIONAL LICENSE TAX**

**To  
The Governor  
and the  
General Assembly of Virginia**

**Richmond, Virginia  
March 1995**

**I. EXECUTIVE SUMMARY**

House Joint Resolution . 526 (Appendix A), passed by the 1993 General Assembly, established a joint subcommittee to study the business, professional, and occupational license ("BPOL") tax imposed by local jurisdictions and to consider alternative means of taxation. House Joint Resolution 110 (Appendix B), passed by the 1994 General Assembly, continued the study for another year for the purpose of improving the administration of the tax.

In its deliberations during the first year, the subcommittee considered options for restructuring or replacing some or all of such taxes with alternative revenue-neutral business taxes which are fairer, easier to understand and apply, and more efficient to administer. During the second year, the joint subcommittee focused on making the administration of the tax more uniform. To achieve this goal, the subcommittee relied on an advisory committee, consisting of business and local jurisdiction representatives, and the Department of Taxation for assistance in preparing a model BPOL ordinance for use by all localities.

The BPOL tax has been a controversial tax for many years. Some in the business community think the categories of occupations are inappropriate and the tax rates unfair. A majority of those objecting to the tax agree the tax should not be levied on the gross receipts of a business. However, local jurisdictions depend substantially on the BPOL tax revenues and, therefore, will not give them up without some alternative which will provide comparable funds in order to provide required services. An equitable distribution of the financial responsibilities for those local services is of paramount concern to the localities.

In 1993, the subcommittee considered amending the current BPOL tax statute as well as repealing the statute and replacing it with one allowing a different method of taxation. In order to decide, the subcommittee met twice to hear testimony from those representing the business community as well as local jurisdictions. In addition, an advisory committee consisting of business people and local jurisdiction officials was appointed by the chairman of the joint subcommittee. The advisory committee, which also met twice, was to develop alternatives for the joint subcommittee's consideration. Realizing that eliminating the tax was impossible without an alternative revenue producer, the subcommittee focused on the administration of the BPOL tax.

In 1994, the joint subcommittee met twice, with its third and final meeting in early January, 1995. The advisory committee met five times with representatives from the Department of Taxation to develop the model ordinance, which was introduced during the 1995 General Assembly Session as House Bill 2351 (see Appendix C for annotated legislation). A resolution was also introduced which continued the study for an additional year in order to examine once again the possibility of eliminating the BPOL tax entirely (Appendix D).

## II. INTRODUCTION

The business, professional and occupational license ("BPOL") tax has been a controversial tax for many years. The fact that the tax is levied on the gross receipts, not profits, of certain businesses forms the most basic and the most widespread criticism against the tax. HJR 526, the resolution adopted by the 1993 General Assembly and establishing the joint subcommittee for this study, specifically recognizes this problem: "WHEREAS, a tax measured by gross receipts bears no necessary relationship to the profitability of the business which may pay the tax nor does such a tax give any consideration to the competitive situation a particular industry may face nor of the economic situation in general."

On the other hand, because local governments have come to rely on the revenues produced by the BPOL tax, its elimination without a replacement is unfeasible. Both the business community and local government agree, however, that a fair, equitable, and predictable tax structure which provides both a stable revenue stream and a fair taxing system is needed.

In 1993, the joint subcommittee consisted of 15 members as follows: Delegates David G. Brickley, Linda T. Puller, Harry R. Purkey, James M. Scott, and Mitchell Van Yahres; Senators E.M. Holland, Robert L. Calhoun, Charles J. Colgan, and Kevin G. Miller; and citizen members Connie Bawcum; Helena L. Dodson; Judith S. Fox; Mark Jinks; George C. Newstrom; and Carl W. Stenberg III. During 1994, Judith S. Fox resigned and was replaced by John R. Broadway, Jr.

In accordance with HJR 526, during its first year the joint subcommittee investigated several options for restructuring or replacing some or all of the BPOL taxes with alternative revenue-neutral business taxes which are fairer, easier to understand and apply, and more efficient to administer. In making its determinations the subcommittee considered the following factors:

- (1) What is the purpose of the BPOL tax?
- (2) How have the economic conditions changed since the current BPOL tax law was enacted?
- (3) Will such changes be better addressed by amending the current law or by repealing it and replacing it with a different method of taxation?
- (4) What method of taxation will be fair and equitable to business as well as provide a comparable revenue stream to local government?
- (5) How can the administration of the tax be improved?

The subcommittee met twice and heard testimony from representatives of the business community as well as local jurisdictions. In addition, an advisory committee, appointed by the subcommittee chairman and comprised of business people and local jurisdiction representatives, met twice. The advisory committee focused on the administration of the tax in developing recommendations for the subcommittee. Its members included Mr. John L. Knapp, Ms. Betty Long, Mr. R. Michael Amyx, Ms. Ellen Davenport, Mr. James D. Campbell, the

Honorable Robert P. Vaughan, the Honorable Gerald H. Gwaltney, Mr. Ira F. Cohen, William L.S. Rowe, Esquire, Mr. Charles K. Tribble, Ms. Sandra D. Bowen, Dr. Edward H. Bersoff, Mr. Michael W. Dawkins, and Mr. Jim DePasquale. Mr. Jaydeep Doshi also joined the advisory committee in 1994.

During 1994, the subcommittee focused on the administration of the tax, wanting to make its application more uniform throughout the Commonwealth. It met three times to consider and review the work of the advisory committee and the Department of Taxation (the "Department"), which had developed a model BPOL ordinance to be used by local governments levying the tax. Both the business community and local government thought that more uniformity would improve the system.

### III. BACKGROUND

#### A. HISTORY

The license tax has existed for quite some time in Virginia. Practically unheard of in the colonial period, it was recognized as a source of revenue at the state level following the War of 1812, when the state government assumed Virginia's quota of the costs of that war. The license tax rates not only increased but were extended to more businesses. In addition, the tax was imposed at a flat rate for the "privilege" of establishing a business in a city or town which had to provide services to those businesses. By 1850, the policy of levying a license tax on practically all well-established businesses and professionals was adopted. In an attempt to provide a more equitable tax structure in the 20th century, the gross receipts basis of taxation was instituted because businesses had very different business volumes and the flat tax rate did not account for such differences. Today, the BPOL tax remains an important source of revenue to localities.

Although an important revenue source, the BPOL tax has been subject to criticism and study for many years, especially during the 1970s. BPOL tax rates were actually frozen at their December 31, 1974, level during the 1975 Session of the General Assembly at the recommendation of the Revenue Resources and Economic Commission, which was conducting a study that resulted in the publication of Fiscal Prospects and Alternatives: 1976. Included in the publication is a detailed analysis of the BPOL tax -- its advantages and disadvantages. The analysis points out the importance of the tax as a source of revenue and also discusses the inequities of the tax structure as it then existed. The tax was based on gross receipts, which had no relation to profitability. Further, different types of business had different levels of profitability relative to their receipts. For example, a grocery store would have a relatively low profit margin but a relatively high volume of gross receipts. However, other types of business have high profit margins with lower gross receipts. Finally, there were some extremely high tax rates for certain types of business in some localities.

The following year, in its 1977 Report to the Governor and General Assembly,<sup>1</sup> the commission focused on one alternative for restructuring the framework of the BPOL tax. The intent was to categorize activities that had displayed similar operating ratios over a recent time period and to set maximum tax rates per gross receipts for those classes reflecting the same relative differences in profitability. The report suggested that the state also could require that in addition to being within the state maximums, each locally set rate for each business category must be relative to the operating ratios for all categories. The report indicated that guidelines developed by the Department of Taxation would provide some assurance to the various categorized businesses that tax rates would reflect their general ability to pay and that no business would be subject to special treatment, because a rate change for one category would be accompanied by similar changes for other categories.

---

<sup>1</sup>Revenue Resources and Economic Commission, Report to the Governor and the General Assembly on Local Fiscal Issues, A Staff Report (December, 1977).



This 1977 report resulted in a proposal by the commission in its 1978 Report to the Governor and the General Assembly.<sup>2</sup> An excerpt from the 1978 report explains the proposal.

The proposal places ceilings on the local business, professional, occupational license tax as follows:

<u>CATEGORY OF ENTERPRISE</u>	<u>Tax Rate Per \$100 Gross Receipts</u>
Contracting	.16
Retail Sales	.20
Finance, real estate, and professional services	.58
Repair, personal and business services, and all other business	.36

No such local license tax shall exceed \$30 or the rate per \$100.00 of the enterprise's gross receipts as stated above, whichever is greater. Massage parlors, fortune tellers, and carnivals, are allowed as exceptions and no ceilings are placed on these businesses.

**NOTE:**  
The relationship between the ceiling rates reflects the relative differences in operating ratios between broad categories of similar activities, *i.e.*, the gross profit ratios for similar business activities as reported by the Internal Revenue Service in Statistics of Income: Business Income Tax Returns, 1970.

The Department of Taxation will be responsible for drafting regulations enumerating the various types of businesses which fall within the four broad categories. Local governments will have the option of setting varied rates for sub-categories of businesses as long as the rates do not exceed the ceiling rate of the major category.

Any local government which presently has rates higher than the proposed ceilings is frozen at the same amount of dollars it collected in FY 1977-78 until such time as it is able to reduce its rates to the ceiling rates without a loss of revenue. When the locality has adjusted its rates at or below the ceiling, it may once more collect additional revenues as inflation and/or economic growth increases the tax base.

The administrative procedure for a locality that must roll back its BPOL rates is explained by the following example:

- a) A locality is frozen at FY 1977-78 BPOL dollars (until such time as its tax rates are within the ceilings). For example, assume \$100,000 is collected in FY 1977-78.
- b) In FY 1978-79, assume \$106,000 is collected.

---

<sup>2</sup>Revenue Resources and Economic Commission, Report to the Governor and the General Assembly, Senate Doc. No. 16 (1978).

- c) The locality must lower the tax rates for the subsequent tax year on one or more of the categories which was above the ceiling rate. The rate (rates) must be lowered so that the total receipts in the next fiscal year can reasonably be expected to be the amount received in FY 1977-78 less the \$6,000 in receipts which was over-collected.

The merchants' capital tax is repealed. This tax source yielded \$2,806,321 for counties in tax year 1976 (Department of Taxation Annual Report 1976-77, Table 5.6). Some towns also levy this tax, but the total dollars collected is not available. It is perceived that counties now levying a merchants' capital tax would adopt a BPOL tax.

Any county license tax imposed shall not apply within the limits of any town located in such county. This is the present law (§ 58.1-266.1(7), *Code of Virginia*).<sup>3</sup>

Today's BPOL tax provisions, found in §§ 58.1-3700 through 58.1-3735, include many of the recommendations made by the Revenue Resources Commission in its 1978 report. The categories and maximum tax rates are identical to those recommended by the commission.

## **B. ADMINISTERING THE TAX**

In Virginia, the governing body of any locality may levy and provide for the assessment and collection of local license taxes on businesses, trades, occupations, and professions. Whenever a local jurisdiction imposes a BPOL tax, the basis for the tax, whether it is gross receipts or otherwise, will be the same for all individuals engaged in the same business. Some occupations and businesses are exempt from the tax (e.g., some public service corporations, manufacturers who sell merchandise at wholesale at the place of manufacture, and affiliated corporations).<sup>4</sup>

For counties, the license tax imposed does not apply in any town in the county where the town has a similar tax, unless the town's governing body makes provision for the county tax to apply.

Under current law, the situs for BPOL tax purposes is any county, city, or town in which the individual maintains an office or place of business. If such taxable situs is in more than one local jurisdiction, the tax due in any one jurisdiction is based on only the amount of business attributable to that local jurisdiction. The general rule regarding situs under the proposed model ordinance looks to the gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the local jurisdiction.

---

<sup>3</sup>Id. at 3-5.

<sup>4</sup>Va. Code § 58.1-3703 B.

In general, the limits on the BPOL tax rates are as follows:

[N]o local tax imposed ... shall be greater than thirty dollars or the rate set forth below for the class of enterprise listed, whichever is higher:

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 this section, thirty-six cents per \$100 of gross receipts.<sup>5</sup>

These rates are the same as recommended by the Revenue Resources Commission in its 1978 report.

In the proposed model ordinance, a threshold of \$100,000 of gross receipts had to be exceeded before any BPOL tax was due. An annual fee of fifty dollars, however, could be collected from everyone who acquired a business license.

In administering the BPOL tax, localities follow guidelines provided by the Department of Taxation, which define and explain the four categories of business named above. Because each local jurisdiction administers the tax, there are differences in rates as well as which businesses are subject to the tax; the model ordinance could eliminate some of the differences.

## **C. 1995 LEGISLATION**

During the 1995 Session of the General Assembly, several bills addressing the BPOL tax were introduced. House Bill 1719 exempted independent start-up businesses from the BPOL tax for the first three years they were in business. House Bill 2463 repealed the tax effective January 1, 2001. Finally, House Bill 1974 and Senate Bill 895, the Governor's bills, called for a five-year phase-out of the tax so it would be eliminated by the year 2001 and contained hold harmless provisions for the phase-out period for the local jurisdictions which would stop levying the tax. In addition, the bills contained a model ordinance similar to the one adopted by the joint subcommittee.

---

<sup>5</sup>Va. Code § 58.1-3706.

## **D. ACTIVITIES OF THE JOINT SUBCOMMITTEE**

### **1. 1993 Activities**

The purpose of the study was explained by staff during the joint subcommittee's June 1993 organizational meeting, which was also its first meeting. Staff also discussed the history of the tax, its problems and the issues on which the subcommittee needed to focus. This followed the election of Delegate David G. Brickley as chairman of the subcommittee and Senator Edward M. Holland as vice chairman.

During the second meeting, which was held in August 1993, representatives from the business community and local government voiced their concerns about the BPOL tax and offered suggestions for possible changes.

*a. Business Concerns.* The recurring theme from the business sector was how inequitable, regressive, and difficult to administer the BPOL tax is. A business subject to the tax in one locality may not be subject to it in a neighboring locality, or the rates for the same business might be different. This can create bookkeeping nightmares for businesses located in more than one locality, particularly smaller businesses.

Moreover, many businesses believe that the definition of gross receipts is much too broad. Some in the business community would like to see the definition refined to include only those receipts generated within the taxing local jurisdiction and only those receipts generated by the classified business.

Determining into which BPOL tax category businesses fall also can be confusing. The guidelines prepared by the Department of Taxation for use by the localities in making this determination have not been updated in several years. A great deal of flexibility is afforded the local jurisdictions, which makes it difficult for businesses to plan with any certainty.

*b. Local Government Concerns.* Local government representatives emphasized how important the BPOL tax revenues are to the localities that levy the tax. In most of those localities, the tax ranks fourth in producing revenues, exceeded only by real estate, personal property, and local sales taxes. Repealing the tax should not be considered without a replacement tax or an increase in the rates of some other existing tax to generate comparable revenues. Also, the elimination of the BPOL tax by the substitution of another tax raises the issue of who or what group should pay this alternative tax, as one taxpayer's BPOL reduction would become another taxpayer's tax increase.

Local government officials agreed that administration of the tax can be problematic and expensive. While open to the call for improvements to administering the tax, local officials generally did not want to relinquish control completely to the Department of Taxation.

*c. Possible Solutions.* Suggested solutions to the problems enumerated during the meeting included:

- (1) Gradually repeal the BPOL tax over a 10-year period;
- (2) Immediately repeal the tax and enact a local business net income tax;
- (3) Revise classifications and rates to reflect the current economy;
- (4) Transfer administration and audit of BPOL tax to the Virginia Department of Taxation;
- (5) Enact short-term exemptions or reduced rates for new businesses;
- (6) Designate threshold level of receipts before BPOL tax applies;
- (7) Create model ordinance for use by localities;
- (8) Create statewide mechanism for protest resolution; and
- (9) Change appeal deadlines and procedures.

At the suggestion of one of the speakers, an advisory committee composed of individuals from the business and local government sectors was established to assist the joint subcommittee in developing mutually acceptable solutions for the BPOL tax problems.

The advisory committee for the BPOL tax study met in Richmond in October. The committee had a round table discussion and, while no consensus was reached, the following suggestions regarding possible changes in the BPOL tax and its administration were examined:

- (1) Replace the BPOL tax system of four classifications having four different maximum rates with one classification having one rate.
- (2) Create a uniform system of classifications to be used statewide along with a model ordinance.
- (3) Create an appeals process with the Department of Taxation through which a business owner could object to the classification in which his business has been placed by the locality.
- (4) Refine the definition of gross receipts so it is better understood and easier to apply.
- (5) Request that the Department of Taxation update the guidelines used by the localities in classifying businesses. The last update was done in 1984.
- (6) Grant the Department of Taxation the power to issue regulations and make rulings regarding classifications which would provide more guidance to localities and businesses.

The second meeting of the advisory committee was held in January just one week prior to the beginning of the 1994 General Assembly Session. The discussion centered on developing a model ordinance and uniform system of classification, and refining the definition of gross receipts.

After reviewing many of the major issues involved, the committee directed staff, with the Department of Taxation's assistance, to draft a model ordinance which was then circulated among the advisory committee for comment before going to the joint subcommittee as a recommendation.

Because of the tax's importance and complexity, Chairman Brickley, with the approval of the joint subcommittee, offered in the 1994 Session a resolution extending the study for one more year, a resolution asking the Department of Taxation to assist with the development of a model ordinance and uniform system of classification, and a bill requiring the Department of Taxation to update the guidelines used by the localities to classify businesses for BPOL tax purposes.

## **2. 1994 Activities**

Beginning in May 1994, the advisory committee met and decided to divide the group into three subcommittees to focus on the following in attempting to develop the model ordinance:

1. Classification/Definitions
2. Audit and Appeals Procedures
3. Taxable Gross Receipts

The three subcommittees met in June and worked on the issues and recommendations related to each of these areas. The Department, particularly John Josephs, Lana Murray and Tim Winks, played an integral part in these meetings and in the entire process of developing the model BPOL ordinance.

The June meeting was followed by meetings in July and September, each one involving much discussion as well as compromise between the local government and business representatives who made up the advisory committee. By the first part of October a draft of the model BPOL ordinance was ready for presentation to the joint subcommittee.

*a. October 27, 1994, Meeting.* The joint subcommittee's first 1994 meeting focused on the model ordinance. A representative from the Department of Taxation reviewed the model ordinance, emphasizing the most controversial areas, which at that time included the definitions of "gross receipts," "definite place of business," and "professional services," and situs of gross receipts, penalty, interest on refunds, appeals, and audits.

Following the Department's presentation, representatives of the Virginia Association of Counties, the Virginia Municipal League, and the commissioners of the revenue conveyed the local government perspective on the ordinance. While willing to compromise, local government representatives continued to emphasize the importance of a solution that would be revenue-neutral. As previously stated, the revenues generated by the BPOL tax are the third or fourth largest category of local revenue, depending on the locality, exceeded only by real estate, personal property, and sales and use tax revenues. Therefore, the local governments rely on BPOL tax income and cannot afford to lose it.

The business community was represented by the Virginia Chamber of Commerce, the Virginia Manufacturer's Association, Bell Atlantic, and the Virginia Retail Merchants' Association. One business representative suggested repealing the BPOL tax and raising the local option sales and use tax by one percent; however, this suggestion was not supported by all of the business sector. Nevertheless, the BPOL tax is uniformly disliked by business and, in some cases, is harmful to economic development.

Both sides agreed that the model BPOL ordinance should help in administering the tax more uniformly. The chairman then directed the legislative and Department of Taxation staff members to meet with the advisory committee to discuss the remaining controversial areas and attempt to resolve them before the joint subcommittee met again in December.

The advisory committee met twice in November to work on the remaining differences. While many of the differences were resolved, some remained unresolved.

*b. December 7, 1994, Meeting.* When the joint subcommittee met in October, no one knew that by the next meeting on December 7 there would be a proposal from the Governor to phase out the tax. The Governor made the proposal on December 1 as part of a \$2.1 billion tax cut plan and the subcommittee was anxious to hear more about it.

Danny M. Payne, Tax Commissioner, briefed the subcommittee on the basics of the BPOL tax phase-out. Beginning in 1996, localities would have to lower their BPOL tax rates and would continue to do so through the year 2000 until their tax rates were zero. By January 1, 2001, the BPOL tax would be eliminated. During that time, state appropriations would be made annually to localities which levy the tax to cover the reduction in BPOL tax revenues. Also, in order to provide uniformity during the phase-out period, the Governor supported the adoption of the model ordinance which the joint subcommittee had been developing.

In response to these proposals, some members of the subcommittee expressed concern over the appropriations to be made annually to the localities. Would the localities be held harmless and receive the funds in addition to others they expected to receive or would their other appropriations be reduced in order for this BPOL revenue substitute to be funded? What would happen in the year 2001? Would localities be on their own to deal with the lost revenues? The subcommittee was told that answers to these types of questions would be provided on December 19 when the Governor presented his budget amendments.

Other subcommittee members welcomed the proposal, seeing it as a plus for small business in particular and economic development in general. The business community agreed with this evaluation while local government was worried about what would happen after the five-year phase-out.

Tim Winks, Assistant Tax Commissioner for Tax Policy, reviewed the BPOL model ordinance, emphasizing the areas of disagreement between the business community and local government. These were:

- nonprofit organizations exemption
- professional services definition
- investment income deduction
- out-of-state businesses with no Virginia office
- apportionment and situs rules
- reasonable cause for waiving penalty
- impact of taxpayer fault on interest
- stay of collection during administrative appeal
- effective date

The joint subcommittee adopted the model ordinance, with the understanding that changes discussed in the meeting would be made and a final vote taken at the next meeting on January 9, 1995. Also, it was decided to defer until the January meeting a vote on a recommendation to support the Governor's proposal to phaseout the BPOL tax. The majority wanted more information with regard to the funding of the lost revenues during the phase-out and thereafter.

*c. January 9, 1995, Meeting.* At its final meeting under HJR 110, the joint subcommittee adopted legislation which included the uniform BPOL ordinance which was introduced during the 1995 General Assembly Session (Appendix C for annotated legislation). The subcommittee also proposed extending the study for one more year by resolution in order to examine the possibility of eliminating the tax and replacing the revenues. (See Appendix D.) This was suggested in place of the motion to support the Governor's proposal to eliminate the tax over a five-year period because a majority of the joint subcommittee members were still concerned about the loss of revenues to the localities during and at the end of the five-year period.

## IV. ISSUES

**(1) CAN THE BPOL TAX BE ELIMINATED?**

**(2) WHAT CHANGES CAN BE MADE THROUGH A MODEL ORDINANCE TO IMPROVE THE ADMINISTRATION OF THE BPOL TAX?**



## V. FINDINGS AND CONCLUSIONS

After determining that the BPOL tax could not be eliminated because an acceptable alternative revenue producer could not be created at this time, the subcommittee decided to focus on the administration of the tax. Both business and local jurisdiction representatives agreed that improvements in how the BPOL tax is administered could be made.

Because the BPOL tax is local option, it is the local jurisdiction which decides whether or not to levy the tax. Once that decision is reached, the local jurisdiction has some leeway on whom it levies the tax. This capability can cause confusion for businesses operating in more than one local jurisdiction. One jurisdiction might levy the tax on a certain business while another neighboring jurisdiction exempts that business. Or one jurisdiction might charge a lower rate than a neighboring jurisdiction does on the same business. Also, the definition of gross receipts is open to varying interpretations by each locality. These are only three of the most obvious problems with the way in which the tax is administered.

In order to alleviate some of these discrepancies the subcommittee recommends the following:

1. *By legislation, provide a model BPOL ordinance to be used by local jurisdictions which levy the tax in order to bring uniformity to its administration (Appendix C).*
2. *By joint resolution, extend the study (HJR 613) for one additional year in order to re-examine the possibility of eliminating the tax and replacing it with another source of revenue (Appendix D).*

The joint subcommittee extends its gratitude to everyone who contributed to a successful year of study. We look forward to continuing our work in 1995.

Respectfully submitted,

Delegate David G. Brickley, **Chairman**  
Senator E.M. Holland, **Vice Chairman**  
Delegate Linda T. Puller  
Delegate Harry R. Purkey\*  
Delegate James M. Scott  
Delegate Mitchell Van Yahres  
Senator Robert L. Calhoun  
Senator Charles J. Colgan  
Senator Kevin G. Miller  
Connie Bawcum\*  
Helena L. Dodson  
John R. Broadway, Jr.  
Mark Jinks  
George C. Newstrom  
Carl W. Stenberg III

---

*\*See Dissenting Remarks*



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

HARRY R. (BOB) PURKEY  
2352 LEEWARD SHORE DRIVE  
VIRGINIA BEACH, VIRGINIA 23461  
EIGHTY-SECOND DISTRICT

COMMITTEE ASSIGNMENTS:  
FINANCE  
HEALTH, WELFARE AND INSTITUTIONS  
LABOR AND COMMERCE

## *Dissenting Remarks*

### **Page 14, First Paragraph:**

I respectfully disagree with the first paragraph. I maintain the view that the BPOL tax can be eliminated. I believe that various economies of scale downsizing, economic development initiatives, privatization initiatives, agency consolidations, and many other cost savings endeavors can be implemented to offset the lost revenues.

Respectfully submitted,

A handwritten signature in black ink that reads "Bob Purkey". The signature is stylized and written in a cursive-like font.

Harry R. Purkey

City of Richmond  
Office of the City Manager



900 East Broad Street, Richmond, Virginia 23219  
804 • 780-7970

March 15, 1995

Joan Putney  
Senior Attorney  
Commonwealth of Virginia  
Division of Legislative Services  
910 Capitol Street, 2nd floor  
Richmond, VA 23219

Dear Joan:

Thank you for sending me the draft report of the BPOL study committee. The Advisory Committee members, Legislative Services and the Department of Taxation are to be commended for their efforts on this important matter.

I believe that this study has helped address virtually all of the legitimate concerns of the business community. The model ordinance should assist taxpayers and tax administrators alike in achieving greater uniformity across the Commonwealth.

As a representative of local governments, I am generally very supportive of the overall results of this study. However, I feel that I must express dissent from the subcommittee's report as it relates to the proposed exemption of all businesses with gross receipts of \$100,000 or less. The reasons for my dissent are as follows:


- I do not believe that this issue was seriously raised by the business community, or analyzed in any detail by the Advisory Committee. The Advisory Committee's suggested \$10,000 threshold was increased tenfold in the very last subcommittee meeting with little analysis as to possible impact.
- There will be a very significant revenue loss to many smaller jurisdictions, especially towns. Very few localities had the opportunity to provide an analysis of fiscal impact.

Joan Putney  
March 15, 1995  
Page 2.

- An exemption of \$100,000, despite the proposed flat \$50 license fee, will greatly reduce voluntary filings by the exempt businesses, diminishing the ability of localities to track economic activity in their jurisdictions.

I appreciate the opportunity to comment on this report and to work with all the subcommittee members on this study.

Sincerely,

  
Connie Bawcum  
Deputy City Manager

cc: The Honorable David G. Brickley, Chairman  
R. Michael Amyx, Virginia Municipal League

## **VI. APPENDICES**

**Appendix A: House Joint Resolution No. 526 (1993)**

**Appendix B: House Joint Resolution No. 110 (1994)**

**Appendix C: House Bill 2351 (1995), *Annotated Legislation*  
*Prepared by Mr. John Josephs with the Department of  
Taxation***

**Appendix D: House Joint Resolution No. 613 (1995)**

## **Appendix A**

### **House Joint Resolution No. 526 (1993)**

1 **HOUSE JOINT RESOLUTION NO. 526**

2 LD9384136

3  
4 *Establishing a joint subcommittee to study the business, professional, and occupational*  
5 *license tax imposed by localities and to consider alternative means of taxation.*

6 Agreed to by the House of Delegates, February 18, 1993

7 Agreed to by the Senate, February 16, 1993

8  
9 WHEREAS, the Commonwealth, within certain limits, has granted localities the authority to issue  
10 business, professional and occupational licenses and to charge a tax on the issuance thereof (the "BPOL" tax); and

11  
12 WHEREAS, such taxes are imposed on the gross receipts generated by the businesses which may be  
13 subject to it; and

14  
15 WHEREAS, a tax measured by gross receipts bears no necessary relationship to the profitability of the  
16 businesses which may pay the tax nor does such a tax give any consideration to the competitive situation a particular  
17 industry may face nor of the economic situation in general; and

18  
19 WHEREAS, a business may be a high-volume, low-profit business and incur a large tax liability, while a  
20 low-volume, high-profit business will incur a small tax liability; and

21  
22 WHEREAS, a progressive tax structure is considered one bearing some relationship to a taxpayer's ability  
23 to pay and not necessarily to its sales volume or revenue; and

24  
25 WHEREAS, certain taxpayers in Virginia suffer a much larger local BPOL tax liability than state or  
26 federal income tax liability; and

27  
28 WHEREAS, the BPOL tax may be placing the Commonwealth at a competitive disadvantage in terms of  
29 attracting new business to the state and, in fact, may constitute a disincentive for remaining in Virginia or locating  
30 here in the first instance; and

31  
32 WHEREAS, the BPOL tax has become an increasingly important source of local tax revenues, and it  
33 would be unfair to reduce or eliminate this source of revenue without replacing it; and

34  
35 WHEREAS, other forms of taxation may represent a fairer and more easily administered taxing system;  
36 and

37  
38 WHEREAS, the interests of business and government coincide in the area of creating a fair, equitable, and  
39 predictable tax structure which provides government with a stable revenue stream and business with a fair taxing  
40 system without making the decision to do business in Virginia a competitive disadvantage; now, therefore, be it

41  
42 RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established  
43 to study the business, professional, and occupational license taxes by localities and to consider options for  
44 restructuring or replacing some or all of such taxes with alternative revenue neutral business tax or taxes that are  
45 fairer, easier to understand and apply, and more efficient to administer.



1           The joint subcommittee shall consist of 15 members who shall be appointed in the following manner: five  
2 members of the House of Delegates to be appointed by the Speaker of the House; four members of the Senate to be  
3 appointed by the Senate Committee on Privileges and Elections; three members of the business community, at least  
4 one of whom shall be from the high technology sector; one member of the academic community having knowledge  
5 and experience in the area of local government taxation; and a representative from the Virginia Municipal League  
6 and the Virginia Association of Counties. The Governor shall appoint all of the nonlegislative members.  
7

8           The joint subcommittee shall complete its work in time to submit its findings and recommendations, if  
9 any, to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division  
10 of Legislative Automated Systems for the processing of legislative documents.  
11

12           The indirect costs of this study are estimated to be \$9,680; the direct costs shall not exceed \$10,800.  
13

14           Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules  
15 Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.  
16

17   #  
18

**Appendix B**  
**House Joint Resolution No. 110 (1994)**

1 **HOUSE JOINT RESOLUTION NO. 110**

2 *Continuing the Joint Subcommittee Studying the Business, Professional, and*  
3 *Occupational License (BPOL) Tax.*

4 Agreed to by the House of Delegates, February 8, 1994

5 Agreed to by the Senate, February 28, 1994

6  
7 WHEREAS, House Joint Resolution No. 526, adopted by the 1993 Session of the General Assembly,  
8 established a joint subcommittee to study the business, professional, and occupational license (BPOL) tax  
9 imposed by local governments; and

10  
11 WHEREAS, the joint subcommittee was to consider options for restructuring or replacing such tax  
12 with an alternative revenue-neutral business tax or taxes that are fairer, easier to understand and apply, and  
13 more efficient to administer; and

14  
15 WHEREAS, the joint subcommittee met twice to review data and to hear testimony from both the  
16 business community as well as local governments concerning the BPOL tax; and

17  
18 WHEREAS, the joint subcommittee appointed an advisory committee consisting of representatives  
19 from local government and business to assist the joint subcommittee by developing recommendations  
20 concerning the BPOL tax; and

21  
22 WHEREAS, the advisory committee met twice and discussed possible changes which would improve  
23 the administration of the BPOL tax but needs more time to finalize its recommendations; and

24  
25 WHEREAS, the joint subcommittee realizes this is an important undertaking and any proposed  
26 changes must be thoroughly examined and understood prior to their adoption; now, therefore, be it

27  
28 RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee studying  
29 the business, professional, and occupational license tax be continued. The membership of the joint  
30 subcommittee shall continue as established by House Joint Resolution No. 526 of the 1993 Session of the  
31 General Assembly. Vacancies shall be filled by the Governor, the Speaker of the House of Delegates, and the  
32 Senate Committee on Privileges and Elections, as appropriate. The joint subcommittee shall continue to  
33 review the BPOL tax, particularly the administration of it.

34  
35 The joint subcommittee shall submit its findings and recommendations to the Governor and the 1995  
36 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated  
37 Systems for the processing of legislative documents.

38  
39 The direct costs of this study shall not exceed \$7,800.

40  
41 Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules  
42 Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

43  
44 #

**Appendix C**  
**House Bill 2351 (1995), *Annotated Legislation***  
***Prepared by Mr. John Josephs with the Department of Taxation***

1 SENATE BILL NO. . . . .

HOUSE BILL NO. . . . .

2  
3 A BILL to amend the Code of Virginia by adding §§ 58.1-3700.1 and 58.1-3703.1, and to amend and  
4 reenact §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, and 58.1-3732 of the Code of  
5 Virginia and to repeal §§ 58.1-3707 and 58.1-3725 of the Code of Virginia, relating to the local  
6 Business, Professional, and Occupational License tax.  
7

8 Be it enacted by the General Assembly of Virginia:

9 1. That the Code of Virginia is amended by adding sections numbered §§ 58.1-3700.1 and 58.1-3703.1,  
10 and by amending and reenacting §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, and  
11 58.1-3732 of the Code of Virginia as follows:  
12

13 § 58.1-3700. License requirement; requiring evidence of payment of business license, business  
14 personal property, meals and admissions taxes.

15 Whenever a license is required by law ordinance adopted pursuant to this chapter and whenever the  
16 ~~General Assembly~~ local governing body shall impose a license fee or levy a license tax on any business,  
17 employment or profession, it shall be unlawful to engage in such business, employment or profession  
18 without first obtaining the required license. The governing body of any county, city or town may require  
19 that no business license under this chapter shall be issued until the applicant has produced satisfactory  
20 evidence that all delinquent business license, personal property, meals, transient occupancy, severance and  
21 admissions taxes owed by the business to the county, city or town have been paid which have been properly  
22 assessed against the applicant by the county, city or town.

23 Any person who engages in a business without obtaining a required local license, or after being  
24 refused a license, shall not be relieved of the tax imposed by the ordinance.  
25

26 **COMMENT:**

27 *Amended to allow the imposition of a license fee and to clarify that the BPOL tax and fee are*  
28 *imposed by a local ordinance. A second paragraph is added to codify 1990 Att'y Gen. Ann. Rpt. 230*  
29 *(tax owed when business conducted after license refused for zoning violation).*

30  
31 § 58.1-3700.1. Definitions. For the purpose of this chapter and any local ordinances adopted  
32 pursuant to this chapter and unless otherwise required by the context:

33 "Affiliated group" means

34 (a) One or more chains of includible corporations connected through stock ownership with a  
35 common parent corporation which is an includible corporation if:

36 (i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least  
37 eighty percent of each class of the nonvoting stock of each of the includible corporations, except the  
38 common parent corporation, is owned directly by one or more of the other includible corporations; and

39 (ii) The common parent corporation directly owns stock possessing at least eighty percent of the  
40 voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at  
41 least one of the other includible corporations. As used in this subdivision, the term "stock" does not include  
42 nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means  
43 any corporation within the affiliated group irrespective of the state or country of its incorporation; and the  
44 term "receipts" includes gross receipts and gross income.

1 (b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own  
 2 stock possessing:

3 (i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote  
 4 or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and

5 (ii) More than fifty percent of the total combined voting power of all classes of stock entitled to  
 6 vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking  
 7 into account the stock ownership of each such person only to the extent such stock ownership is identical  
 8 with respect to each such corporation.

9 When one or more of the includible corporations, including the common parent corporation is a  
 10 nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation  
 11 membership or membership voting rights, as is appropriate to the context.

13 **COMMENT:**  
 14 *"Affiliated" is moved from § 58.1-3703 without substantive change.*

15  
 16 "Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate  
 17 is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An  
 18 assessment shall include a written assessment made pursuant to notice by the assessing official or a self-  
 19 assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice.  
 20 Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered  
 21 to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer  
 22 at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is  
 23 required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the  
 24 filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a  
 25 return or the payment of tax, as the case may be.

27 **COMMENT:**  
 28 *"Assessment" is new, but based on the definition for state taxes in § 58.1-1820. Under this*  
 29 *definition, when a taxpayer files a return showing a tax due, it is a "self-assessment" and the date of*  
 30 *the assessment is the date filed or due, whichever is later. When the assessing official determines that*  
 31 *a tax is due he must provide a written notice of assessment, whether it is based on an incomplete*  
 32 *return (e.g., showing the gross receipts, but not computing the tax), discovery of errors on a return, or*  
 33 *discovery of omitted tax (e.g., no return was filed). An assessment by the assessing official is deemed*  
 34 *made when the written notice is hand delivered to the taxpayer or mailed to his last known address (the*  
 35 *same standard as for state taxes).*

36  
 37 "Base year" means the calendar year preceding the license year, except for contractors subject to  
 38 the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the  
 39 gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal  
 40 year as for federal income tax purposes.

42 **COMMENT:**  
 43 *The base year is the year used to calculate the gross receipts for most businesses subject to a*  
 44 *tax measured by gross receipts. Typically the license, and license tax, for 1995 would be based on*  
 45 *1994 gross receipts; however, a new business usually would have to estimate its 1995 gross receipts.*  
 46 *Also, certain contractors would have to base their 1995 license tax on 1995 gross receipts (if they*  
 47 *exceed \$25,000). Other types of business pay a flat amount without regard to gross receipts.*

1 "Business" means a course of dealing which requires the time, attention and labor of the person so  
 2 engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of  
 3 dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one  
 4 business. The following acts shall create a rebuttable presumption that a person is engaged in a business:  
 5 (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; (ii)  
 6 filing tax returns, schedules and documents that are required only of persons engaged in a trade or  
 7 business.

8  
 9 **COMMENT:**

10 *"Business" is new. The first two sentences are the common law definition quoted from City of*  
 11 *Portsmouth v. Citizens Trust Co., 219 Va. 903, 252 S.E.2d 339 (1979). See also, 1987-1988 Att'y Gen.*  
 12 *Ann. Rep. 513; and Va. Code § 58.1-5 (Dual Business). A person engaged in a "business" may be*  
 13 *required to obtain a license. If the person is engaged in a second business another license may be*  
 14 *required. It is not intended that secondary licenses be required for occasional transactions solely*  
 15 *because they would be in a different classification from the primary licensed business if the*  
 16 *transactions are merely ancillary to the primary business. See County of Chesterfield v. BBC Brown*  
 17 *Boveri, 238 Va. 64 at 72 (1989). The assessing official will have to review the facts and circumstances*  
 18 *of the primary business and its relationship to the transactions in question to determine if the*  
 19 *transactions constitute a separate licensable business rather than occasional and irregular*  
 20 *transactions or transactions that are ancillary to the primary business. The assessing official's*  
 21 *determination would be subject to de novo review by the circuit court under § 58.1-3984. Persons*  
 22 *who advertise their availability to engage in business activities; or who file a Schedule C with their*  
 23 *federal tax return should have to overcome a presumption that they have accurately portrayed the*  
 24 *nature of their activities to the public and I.R.S.*

25  
 26 "Definite place of business" means an office or a location at which occurs a regular and  
 27 continuous course of dealing for 30 consecutive days or more. A definite place of business for a person  
 28 engaged in business may include a location leased or otherwise obtained from another person on a  
 29 temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to  
 30 be a definite place of business if there is no definite place of business maintained elsewhere and the person  
 31 is not licensable as a peddler or itinerant merchant.

32  
 33 **COMMENT:**

34 *"Definite place of business" is new. This definition, when combined with the license*  
 35 *requirement in § 58.1-3703.1 (1) and the situs rules means that transient businesses can be taxed only*  
 36 *by the locality where its definite place of business is located (office or residence). There are, however,*  
 37 *statutory exceptions permitting the taxation of certain kinds of transient businesses such as itinerant*  
 38 *merchants, peddlers, circuses and carnivals.*

39  
 40 *The broad definition would enable localities to require licenses and impose the \$50 license fee*  
 41 *(as set forth in § 58.1-3703) on business locations without regard to whether gross receipts are*  
 42 *generated at the location. Having a definite place of business, however, will not result in a tax on*  
 43 *gross receipts unless the situs rules in § 58.1-3703.1 A.3. attribute gross receipts to the definite place*  
 44 *of business.*

1 *A small business with no office anywhere will be presumed to have a definite place of business*  
 2 *at the person's residence. Defining a person's residence as a definite place of business conforms with*  
 3 *§ 58.1-3707(B) and 1985-1986 Att'y Gen. Ann. Rep. 288 and provides an exception to 1991 Att'y Gen.*  
 4 *Ann. Rep. 252 and Commonwealth v. Manzer, 207 Va. 996 (1967), which held that a home office*  
 5 *includes space set aside, equipped and regularly used to transact business. If uniform and predictable*  
 6 *rules are to assign receipts somewhere for taxation (even if out of state), then the residence must be the*  
 7 *last resort when there is no other definite place of business anywhere.*

8  
 9 *The 30 day rule seems to be a reasonable period, and is used by at least one locality. The*  
 10 *person does not have to own the definite place of business, only use it for 30 days or more to engage in*  
 11 *the licensable business. Thus, for example, a person who leases space from another and conducts a*  
 12 *licensable business in such leased space for 30 days or more has a definite place of business at the*  
 13 *leased space (note, however, that the 30 days does not apply to an itinerant merchant or peddler who*  
 14 *must have a license for a single day's operation of a business).*

15  
 16 *In most localities an owner engaged in the business of renting space to others would be exempt*  
 17 *from BPOL. See § 58.1-3703.B.7. However, in localities where a tax on such real estate rental*  
 18 *businesses has existed since January 1, 1974, the real estate that is rented would be considered a*  
 19 *definite place of business, and the gross rental income derived from the real estate would be taxable*  
 20 *gross receipts.*

21  
 22 "Financial services" means the buying, selling, handling, managing, investing, and providing  
 23 advice regarding money, credit, securities, or other investments.  
 24

25 **COMMENT:**

26 *The definition is derived from City of Richmond Code § 27-316 except that "commodities" was*  
 27 *deleted (futures and options related to commodities are covered by "securities").*

28  
 29 "Gross receipts" means the whole, entire, total receipts, without deduction.  
 30

31 **COMMENT:**

32 *"Gross receipts" is new, and derived from Savage v. Commonwealth, 186 Va. 1012 (1947). Several*  
 33 *exclusions from gross receipts are added to § 58.1-3732.*

34  
 35 "License year" means the calendar year for which a license is issued for the privilege of engaging  
 36 in business.  
 37

38 **COMMENT:**

39 *"License year" and "base year" are defined. Generally the tax is paid early in one calendar*  
 40 *year (license year) based on gross receipts for the preceding calendar year (base year).*

41  
 42 "Professional services" means services performed by architects, attorneys-at-law, certified public  
 43 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing  
 44 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of  
 45 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no  
 46 others, as the Department of Taxation may list in the BPOL Guidelines promulgated pursuant to  
 47 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed



1 knowledge of some department of science or learning, gained by a prolonged course of specialized  
 2 instruction and study is used in its practical application to the affairs of others, either advising, guiding, or  
 3 teaching them, and in serving their interests or welfare in the practice of an art or science founded on it.  
 4 The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and  
 5 the application of knowledge to uses for others rather than for personal profit.  
 6

7 **COMMENT:**

8 *"Professional services" is derived from the BPOL Guidelines promulgated by the Department*  
 9 *on January 1, 1979, and last updated January 1, 1984. The advisory committee could not reach a*  
 10 *consensus on this definition. The business community believed that the classification should be*  
 11 *limited because it is subject to taxation at the highest rate. However, the term appears to have been*  
 12 *given a broader meaning in the past. This definition implements a compromise in that, while the*  
 13 *broader definition from the BPOL Guidelines is adopted, certainty will be achieved by limiting the*  
 14 *professional classification to only those occupations listed by the department in the updated BPOL*  
 15 *Guidelines. The Department will update the BPOL Guidelines by July 1, 1995, after consulting local*  
 16 *officials and other interested parties and holding a hearing. The BPOL Guidelines currently exclude*  
 17 *all consultants from the professional classification. In the update the department will consider if*  
 18 *consultants who provide professional services should be classified as professionals.*  
 19

20 "Purchases" means all goods, wares and merchandise received for sale at each definite place of  
 21 business of every wholesale merchant. The term shall also include the cost of manufacture of all goods,  
 22 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale  
 23 merchant may elect to report the gross receipts from the sale of manufactured goods, wares and  
 24 merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of  
 25 manufacture.  
 26

27 **COMMENT:**

28 *The definition of purchases is derived from §§ 58-304 and 58-317 relating to the state license*  
 29 *tax on wholesale merchants before its repeal.*  
 30

31 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or  
 32 appraisal of real property.  
 33

34 **COMMENT:**

35 *The definition is new.*  
 36

37 § 58.1-3701. Department to promulgate guidelines.

38 The Department of Taxation shall promulgate guidelines defining and explaining the categories  
 39 ~~listed in subsection A of § 58.1-3706~~ for the use of local governments in administering the taxes imposed  
 40 under authority of this chapter. In preparing such guidelines, the Department shall not be subject to  
 41 provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia for guidelines  
 42 promulgated on or before July 1, 2001, but shall cooperate with and seek the counsel of local officials  
 43 interested groups and shall not promulgate such guidelines without first conducting a public hearing. S  
 44 guidelines shall be updated during the 1994 taxable year and available for distribution to local governm  
 45 on July 1, 1995. Thereafter, the guidelines shall be updated triennially. After July 1, 2001, guidelines shall  
 46 be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205.

1 The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases  
 2 to interpret the provisions of this section chapter and the guidelines issued pursuant to this subsection  
 3 section; provided, however, that the Tax Commissioner shall not be required to interpret any local  
 4 ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an  
 5 interpretation of any other tax law.  
 6

7 **COMMENT:**

8 *The language limiting the Department's authority to classification issues is deleted. Therefore,*  
 9 *the guidelines and advisory opinions may involve any issues under this chapter. However, the*  
 10 *Department will not be required to issue opinions involving the interpretation of a local ordinance.*  
 11 *The BPOL Guidelines are not currently binding on localities, although they are accorded great weight*  
 12 *by local officials and the courts. Effective July 1, 2001, the BPOL Guidelines must be promulgated in*  
 13 *accordance with the Administrative Process Act and will be binding on all parties to the same extent as*  
 14 *a regulation.*

15  
 16 § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of  
 17 authority.

18 A. The governing body of any county, city or town may charge a fee for issuing a license in an  
 19 amount not to exceed fifty dollars and may levy and provide for the assessment and collection of county,  
 20 city or town license taxes on businesses, trades, professions, occupations and callings and upon the  
 21 persons, firms and corporations engaged therein within the county, city or town subject to the limitations  
 22 provided in subsection B of this section. The ordinance imposing such license fees and levying such license  
 23 taxes shall include the provisions of § 58.1-3703.1.

24 B. No county, city, or town shall impose a license fee or levy any license tax:

25 1. On any public service corporation except as provided in § 58.1-3731 or as permitted by other  
 26 provisions of law;

27 2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the  
 28 planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and  
 29 sheds of such county, city or town; provided, such products are grown or produced by the person offering  
 30 such products for sale;

31 3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or  
 32 other publication issued daily or regularly at average intervals not exceeding three months, provided the  
 33 publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or  
 34 conducting any radio or television broadcasting station or service;

35 4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise  
 36 at wholesale at the place of manufacture;

37 5. On a person engaged in the business of severing minerals from the earth for the privilege of  
 38 selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and  
 39 58.1-3713;

40 6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for  
 41 resale unless such wholesaler has a definite place of business or store in such county, city or town. This  
 42 subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax  
 43 on a peddler at wholesale pursuant to § 58.1-3718;

44 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of  
 45 such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel  
 46 trailer parks, lodging houses, rooming houses and boarding houses; however, any county, city or town  
 47 imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the  
 48 provisions of this subdivision;

1 8. Upon a wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis  
2 for the benefit of the Virginia Independence Bicentennial Commission or any local bicentennial  
3 commission;

4 9. On or measured by receipts for management, accounting, or administrative services provided on  
5 a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural  
6 cooperative association under the provisions of Chapter 3, Article 2 (§ 13.1-312 et seq.), Title 13.1, or a  
7 member or subsidiary or affiliated association thereof, to other members of the same group. This exemption  
8 shall not exempt any such corporation from such license or other tax measured by receipts from outside the  
9 group;

10 10. On or measured by receipts or purchases by a corporation which is a member of an affiliated  
11 group of corporations from other members of the same affiliated group. This exclusion shall not exempt  
12 affiliated corporations from such license or other tax measured by receipts or purchases from outside the  
13 affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's  
14 license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person,  
15 company, or corporation, notwithstanding the fact that the wholesale merchant's license tax would be based  
16 upon purchases from an affiliated corporation. Such tax shall be based on the purchase price of the goods  
17 sold to the nonaffiliated person, company, or corporation. As used in this subdivision the term "*sales by the*  
18 *affiliated corporation to a nonaffiliated person, company or corporation*" shall mean sales by the  
19 affiliated corporation to a nonaffiliated person, company or corporation where goods sold by the affiliated  
20 corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the  
21 nonaffiliated person, company or corporation.

22 For purposes of this exclusion, the term "*affiliated group*" means

23 ~~(a) One or more chains of includible corporations connected through stock ownership with a~~  
24 ~~common parent corporation which is an includible corporation if:~~

25 ~~(i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least~~  
26 ~~eighty percent of each class of the nonvoting stock of each of the includible corporations, except the~~  
27 ~~common parent corporation, is owned directly by one or more of the other includible corporations; and~~

28 ~~(ii) The common parent corporation directly owns stock possessing at least eighty percent of the~~  
29 ~~voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at~~  
30 ~~least one of the other includible corporations. As used in this subdivision, the term "stock" does not include~~  
31 ~~nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means~~  
32 ~~any corporation within the affiliated group irrespective of the state or country of its incorporation; and the~~  
33 ~~term "receipts" includes gross receipts and gross income.~~

34 ~~(b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own~~  
35 ~~stock possessing:~~

36 ~~(i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote~~  
37 ~~or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and~~

38 ~~(ii) More than fifty percent of the total combined voting power of all classes of stock entitled to~~  
39 ~~vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking~~  
40 ~~into account the stock ownership of each such person only to the extent such stock ownership is identical~~  
41 ~~with respect to each such corporation.~~

42 ~~When one or more of the includible corporations, including the common parent corporation is a~~  
43 ~~nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation~~  
44 ~~membership or membership voting rights, as is appropriate to the context;~~

45 11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this  
46 title or on any agent of such company;

47 12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this  
48 title;

1 13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for  
2 which the taxicab driver operates;

3 14. On any blind person operating a vending stand or other business enterprise under the  
4 jurisdiction of the Department for the Visually Handicapped, or a nominee of the Department, as set forth  
5 in § 63.1-164;

6 15. (Expires July 1, 1997) On any hospital, college, university, or other institution of learning not  
7 organized or conducted for pecuniary profit which by reason of its purposes or activities is exempt from  
8 income tax under the laws of the United States unless such tax was enacted by the local governing body  
9 prior to January 15, 1991. The provisions of this subdivision shall expire on July 1, 1997;

10 ~~16. Upon any person who is authorized to celebrate the rites of marriage under §§ 20-23 and 20-25~~  
11 ~~and any person who is authorized to solemnize a marriage under § 20-26 provided such gross annual~~  
12 ~~receipts total no more than \$500; or~~

13 17. On an accredited religious practitioner in the practice of the religious tenets of any church or  
14 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely  
15 in praying for others upon accreditation by such church or religious denomination ; or

16 18. Nonprofit organizations.

17 (a) On or measured by receipts of a charitable nonprofit organization except to the extent  
18 the organization has receipts from any trade or business the conduct of which is not substantially  
19 related to the exercise or performance of its charitable, educational, or other purpose or function  
20 constituting the basis for its exemption. When determining whether a trade or business is  
21 substantially related to the exempt purpose of a nonprofit organization, the determination shall be  
22 based solely on the relationship of the business activities to the exempt purpose. The fact that  
23 profits derived from the trade or business may be used for an exempt purpose shall not be  
24 considered. For the purpose of this subdivision, the term "charitable nonprofit organization" shall  
25 mean an organization which is described in Internal Revenue Code § 501(c)(3) and to which  
26 contributions are deductible by the contributor under Internal Revenue Code § 170, except that  
27 educational institutions shall be limited to schools, colleges and other similar institutions of  
28 learning.

29 (b) On or measured by gifts, contributions, and membership dues of a non-profit  
30 organization. Activities conducted for consideration which are similar to activities conducted for  
31 consideration by for-profit businesses shall be presumed to be activities that are part of a licensable  
32 business. For the purpose of this subdivision, the term "nonprofit organization" shall mean an  
33 organization exempt from federal income tax under Internal Revenue Code § 501 other than  
34 charitable nonprofit organizations.

36 **COMMENT:**

37 *The first paragraph is amended to retain licensing authority and allow localities to levy a flat*  
38 *license fee of \$50 or less on all licensable businesses. The Joint Subcommittee adopted this concept at*  
39 *its January 9, 1995 meeting in conjunction with provisions in § 58.1-3706 which exempt businesses*  
40 *with gross receipts of \$100,000 or less from the tax. The license fee would apply to all businesses,*  
41 *including larger businesses who would pay the fee, plus a tax on gross receipts. Although imposed as*  
42 *a fee, localities could provide a credit against the tax due by larger businesses.*

43  
44 *The section also requires each locality imposing a BPOL tax to adopt the uniform ordinance*  
45 *provisions. The definition of "affiliated" is moved to the definitions section.*

1        *A new exemption is also added for nonprofit organizations. This exemption is a matter of*  
 2 *great concern to localities because it may exempt significant business activities of some taxpayers. A*  
 3 *distinction is drawn between traditional charities (churches, schools, etc.) to which tax deductible*  
 4 *contributions can be made. Traditional charities will be subject to BPOL tax only if they engage in*  
 5 *activities that would subject them to federal income tax on their unrelated business taxable income*  
 6 *(UBIT) under the Internal Revenue Code. However, the UBIT rules are extremely complex and*  
 7 *difficult to administer and the Internal Revenue Service enforcement of UBIT reporting by nonprofits*  
 8 *has been criticized in the past. Therefore, local assessing officials will not be bound by the fact that*  
 9 *the I.R.S. has failed to assess a tax on UBIT. Under this approach, when the current moratorium on*  
 10 *taxing nonprofit hospitals and colleges expires in 1997 (together with the grandfather clause for*  
 11 *existing taxes on such organizations) both types of organizations would be exempt except to the extent*  
 12 *of UBIT.*

13  
 14        *Many other types of nonprofit organizations also exist, such as social clubs, business and*  
 15 *trade organizations, and various types of employee benefit associations. Localities have generally*  
 16 *required licenses when a nonprofit organization engages in a trade or business that competes with*  
 17 *other licensable businesses. Under this approach, for example, a social club that occasionally*  
 18 *organizes a trip for its members would not be engaged in a business, but a "club" that continuously*  
 19 *advertises numerous trips to the general public is probably engaged in a business that competes with a*  
 20 *licensable travel agency. As with any person, the determination of whether a particular nonprofit*  
 21 *organization's activities constitute a licensable business is a factual issue for which the assessing*  
 22 *official must make an investigation and initial determination.*

23  
 24        § 58.1-3703.1. Uniform ordinance provisions.

25        A. Every ordinance levying a license tax pursuant to this chapter shall include provisions  
 26 substantially similar to the subdivisions of this subsection. As they apply to license taxes, the provisions  
 27 required by this section shall override any limitations or requirements in Chapter 39 of Title 58.1 of the  
 28 Code of Virginia to the extent that they are in conflict.

29        (1.) License requirement.

30        Every person shall apply for a license for each business or profession when engaging in a business  
 31 in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; or (ii) there is no  
 32 definite place of business anywhere and the person resides in this jurisdiction; or (iii) there is no definite  
 33 place of business in this jurisdiction but the person operates amusement machines or is classified as an  
 34 itinerant merchant, a peddler, carnival, circus, contractor subject to § 58.1-3715, or a public service  
 35 corporation. A separate license shall be required for each definite place of business and for each business.  
 36 A person engaged in two or more businesses or professions carried on at the same place of business may  
 37 elect to obtain one license for all such businesses and professions if all of the following criteria are  
 38 satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements  
 39 imposed by state law or other provisions of the ordinances of this jurisdiction; (ii) all of the businesses or  
 40 professions are subject to the same tax rate or, if subject to different tax rates, the licensee agrees to be  
 41 taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such  
 42 information as the assessor may require concerning the nature of the several businesses and their gross  
 43 receipts.

**COMMENT:**

*Some localities use license tax information to keep track of the business conducted in the locality, the owner of each business, and other data. These localities may issue licenses without charge to small businesses as long as the information is supplied. The owner of two or more businesses taxed similarly may elect to obtain a single license for all business conducted at the same location, but the locality may require adequate information about the different businesses for recordkeeping purposes.*

**(2.) Due dates and penalties**

a. Each person subject to a license tax shall apply for a license prior to beginning business, if he was not licensable in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he has been issued a license for the preceding year. The application shall be on forms prescribed by the assessing official.

b. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business the tax shall be paid on or before March 1 or later date, including installment payment dates, or 30 or more days after beginning business, at the locality's option.

c. The assessing official may grant an extension of time in which to file an application for license for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of 10% of the portion paid after the due date.

d. A penalty of 10% of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days the Treasurer or other collecting official may impose a 10% late payment penalty. The penalties shall not be imposed, or if imposed shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) 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 (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty, or 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.

**COMMENT:**

A uniform March 1 due date is specified (see transitional provisions below for the effective date and proration by localities which must change their license year). Some businesses cannot ascertain their gross receipts until federal tax returns are prepared – the assessing official can grant filing extensions, but may require payment of an estimated amount of tax. This is similar to how federal and Virginia income tax extensions are granted. Note that the locality has the option of specifying a later payment date or installment payment dates.

The Advisory Committee could not reach consensus on the issue of reasonable cause for waiving penalties. The business community believes that the existing language referring to lack of fault by the taxpayer means that penalties should be waived for "reasonable cause shown," a standard which is widely used but hard to define. Localities are concerned with the lack of uniformity an undefined standard would cause when administered by numerous officials. The standard in this draft requiring responsible action and events beyond the taxpayer's control is derived from U.S. Treas. Reg. § 301.6724-1 relating to reasonable cause for abating a penalty for failure to file information returns.

The business community also believes that a taxpayer who fails to file because he honestly believes that no tax is owed is entitled to penalty waiver. The holding of Commonwealth v. United Cigarette Machine Co., 120 Va. 835 (1917) lends support to this interpretation of lack of taxpayer fault. However, in United Cigarette the taxpayer had advice of counsel and the circuit court found in its favor. Not until the Virginia Supreme Court reversed was it clear that a tax was owed. Most taxpayers are unlikely to have such strong evidence supporting their "honest belief." The Internal Revenue Service has attempted to define the equivalent to an "honest belief" in its regulation § 1.6662-4 for accuracy related penalties, which requires a taxpayer to have substantial authority for a position taken in filing a return. Such a standard was omitted from this draft because of the complexity and uncertainty created when a taxpayer's motives and beliefs must be evaluated. Taxpayers desiring certainty may obtain an advance ruling from the assessing official under subdivision A.4. below. Further guidance is expected in the BPOL Guidelines.

If a return was filed and additional tax was found on audit, the local Commissioners generally do not assess any penalty. This practice is codified for returns filed in good faith with language derived from income tax penalty provisions except that "fraud, reckless or intentional disregard of the law" is substituted for "without any fault by the taxpayer." Mistakes happen, and a taxpayer who has filed a return in good faith should not be penalized for an innocent mistake, or required to prove that the mistake was an event beyond his control. Instead, the auditor will be required to determine that the under reporting of gross receipts was intentional.

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

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than thirty days from the date of the payment that created the refund or the due date of the tax, whichever is later.

**COMMENT:**

*The business community and localities have differing views on when interest should apply: the localities consider interest to be related to fault, while the business community views interest as a charge for the use of funds without regard to fault. At one time state law required the payment of interest only if the taxpayer was not at fault (the United Cigarette case discussed above contains a reference to such a law). Fault is no longer relevant to interest on state taxes, but vestiges of fault can still be found in laws and ordinances relating to local taxes. See § 58.1-3916 which provides that no penalty or interest shall be assessed for late filing or late payment if the failure was not the fault of the taxpayer.*

*Per the Joint Subcommittee meeting of January 9, 1995, the section was amended to abandon fault with respect to interest on late payments and refunds and require that interest accrue in both instances. Additionally, a grace period is provided whereby interest would not be paid or charged if an error is discovered and corrected within 30 days, either on the part of the locality or the taxpayer. The refund interest rate is set at the same amount charged for late payments.*

**(3.) Situs of gross receipts.**

**(a) General Rule.** Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

**(i) the gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of § 58.1-3715;**

**(ii) the gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled, provided, however, that a wholesaler subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers, and any wholesaler subject to license tax in two or more localities who is subject to multiple taxation because the localities use different measures may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality;**

**(iii) the gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed;**

**(iv) the gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.**

**(b) Apportionment.** If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be



1 attributed under the general rule, the gross receipts of the business shall be apportioned between  
 2 the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to  
 3 a definite place of business unless some activities under the applicable general rule occurred at, or  
 4 were controlled from, such definite place of business. Gross receipts attributable to a definite place  
 5 of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other  
 6 jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business  
 7 in such other jurisdiction.

8 (c) Agreements. The assessor may enter into agreements with any other political  
 9 subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among  
 10 definite places of business. However, the sum of the gross receipts apportioned by the agreement  
 11 shall not exceed the total gross receipts attributable to all of the definite places of business affected  
 12 by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is  
 13 fundamentally inconsistent with the method of one or more political subdivisions in which the  
 14 taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes  
 15 on more than 100% of its gross receipts from all locations in the affected jurisdictions, the assessor  
 16 shall make a good faith effort to reach an apportionment agreement with the other political  
 17 subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek  
 18 an advisory opinion from the Department of Taxation pursuant to § 58.1-3701, notice of which  
 19 request shall be given to the other party. Notwithstanding the provisions of § 58.1-3993, when a  
 20 taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have  
 21 assessed taxes on gross receipts that may create a double assessment within the meaning of § 58.1-  
 22 3986, the court shall enter such orders pending resolution of the litigation as may be necessary to  
 23 ensure that the taxpayer is not required to pay multiple assessments even though it is not then  
 24 known which assessment is correct and which is erroneous.

26 **COMMENT:**

27 *The situs and apportionment rules in this section, together with the amendments to § 58.1-*  
 28 *3708 and the repeal of § 58.1-3707, create uniform rules for all businesses and professions. Gross*  
 29 *receipts must be attributed to a definite place of business. The draft repeals language in § 58.1-3708*  
 30 *allowing a locality to tax gross receipts of an out of state business if it has no definite place of business*  
 31 *anywhere in Virginia. It has also been the practice in a few localities to tax gross receipts that may*  
 32 *properly be attributable to another locality if that locality did not impose a BPOL tax; this*  
 33 *"throwback" practice is eliminated (except for contractors subject to § 58.1-3715).*

34 *Several localities objected to the limitation to a definite place of business, citing a revenue loss*  
 35 *to the extent that out-of-state businesses with no definite place of business in Virginia are exempted. It*  
 36 *is believed that the limitation is consistent with legislative intent and history, and reduces the risk of*  
 37 *constitutional questions. Such a business may face multiple taxation if its sole office is in another*  
 38 *state which has a gross receipts tax because there is no mechanism to ensure that receipts taxed*  
 39 *elsewhere are not again taxed in Virginia. Such a business would be subject to different tax rules than*  
 40 *a similar type of business with an office in Virginia, which raises constitutional issues, especially when*  
 41 *the rules are internally inconsistent (i.e., that no more than 100% of gross receipts would be taxed if*  
 42 *all jurisdictions imposed the same tax as the one in dispute).*

1  
2 ***Situs:*** *With few exceptions, gross receipts are only taxable at a definite place of business that*  
3 *generated them. If a business has only one definite place of business then all of its gross receipts are*  
4 *properly attributable there. See Short Brothers, Inc. v. Arlington County, 244 Va. 520 (1992).*  
5 *However, application of BPOL tax to a large, decentralized business with numerous offices is difficult*  
6 *and often controversial. Several offices may participate or contribute to a particular sale, and the*  
7 *business may keep its records on a profit center basis rather than by political jurisdictions.*

8  
9 *Rules are set out for sourcing gross receipts to the appropriate definite place of business.*  
10 *Several localities have expressed concern over these rules, particularly in the area of sales solicitation*  
11 *activity. This concept has been discussed (earlier drafts focused on customer contact) but not resolved.*  
12 *Under this proposal no gross receipts would be attributed to a warehouse even if it ships merchandise*  
13 *directly to customers. While many localities do not currently tax warehouses, those that do would lose*  
14 *revenue.*

15  
16 *The Advisory Committee considered changing the measure for taxing wholesale merchants*  
17 *from purchases to gross receipts, since some are now taxed on gross receipts under the grandfather*  
18 *clause in § 58.1-3716 (i.e., the locality taxed wholesale merchants on gross receipts prior to 1964).*  
19 *This change, however, would have also changed where wholesalers were taxed. Purchases are taxed*  
20 *at the definite place of business where the goods are physically delivered to customers or placed on*  
21 *trucks for delivery to customers. See Richmond v. Petroleum Marketers, 221 Va. 372 (1980). The*  
22 *situs rules would have changed this to the location of the sales office. There was also concern that the*  
23 *change in measure would affect the taxation of distributing houses (warehouses owned by a chain of*  
24 *retail stores that distribute goods to the retail stores). Under former § 58-319 distributing houses were*  
25 *expressly subject to state license tax on purchases in the same manner as wholesale merchants. At its*  
26 *January 9, 1995, meeting the Joint Subcommittee decided to continue the existing treatment of*  
27 *wholesalers with the proviso that any allegation of double taxation by localities using different*  
28 *measures would be resolved by the Department of Taxation.*

29  
30 ***Apportionment:*** *Where two or more locations participate in a sale, and the gross receipts*  
31 *cannot easily be sourced by the business records, then apportionment is required. The use of VEC*  
32 *payroll information seems to be the preferred method among localities and is mandated. Although the*  
33 *use of payroll information is relatively easy to administer, it must be emphasized that the purpose is to*  
34 *divide gross receipts among the definite places of business that participate in sales and service*  
35 *activities, not to impose a disguised payroll tax on all employees. Some localities have used*  
36 *apportionment to attribute gross receipts to a definite place of business which has no contact with*  
37 *customers, no participation in specific sales or service contracts, and to which no gross receipts would*  
38 *be attributable under the proposed situs rules. Examples of such locations might be a research*  
39 *facility, or general administrative facilities. Under the proposed apportionment rules no gross receipts*  
40 *could be attributed to such locations.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

*Comments from the business community expressed reservations about any formula for apportionment because it resembled an income tax. The business community also expressed reservations about taxing any item of gross receipts when all of the activity that was necessary to earn it did not occur in the taxing locality. Adopting such an approach would also look like an income tax, which considers all activity and expenses to "earn" income, than a gross receipts tax, which focuses on the activity that produced the sale. Both the Attorney General and Virginia Supreme Court have recently issued opinions on when apportionment of local taxes is required: Opinion to the Honorable Ross A. Mugler dated November 17, 1994, relating to BPOL tax, and Ryder Truck Rental, Inc. v. County of Chesterfield, (November 4, 1994) relating to personal property tax. The Ryder case is particularly relevant because the court noted that the fact that property was absent from Chesterfield for part of the year did not prove that the property had acquired tax situs elsewhere for property tax purposes. Thus, the fact that a taxpayer has activities in another state sufficient to subject it to property, income or other taxes is not sufficient to require apportionment under this draft unless the taxpayer has a definite place of business to which gross receipts would be properly attributable. But see § 58.1-3728 for a deduction allowed for receipts subject to an income tax in another state.*

*Agreements: Localities are encouraged to enter into agreements with other localities to ensure that the situs and apportionment rules are uniformly applied to a particular business in order to reduce the risk of multiple taxation. No mechanism is provided to resolve situations in which the localities cannot agree, but the Tax Department may be called upon to issue an advisory opinion.*

*Legislative History: The legislative history appears to demonstrate an intent to limit localities to taxing only gross receipts attributable to a definite place of business. For many years only cities and towns had the authority to impose a BPOL tax. Then in 1948 two counties were allowed to impose it, and additional counties were authorized in 1950 and 1952. In 1954 the General Assembly enacted a situs rule for professions (tied primarily to an office) and for a place of business that straddled a local boundary line (divided by area of the building in each locality). These rules survive in §§ 58.1-3707 and 58.1-3709. In 1956 another situs rule was added, initially applicable only to certain cities and adjacent counties, that focused on a definite place of business. This provision (§ 58-266.5, the predecessor to § 58.1-3708) used to allow localities to tax gross receipts attributable to picking up and delivering property, even though the work was done at a definite place of business in another locality. See Stork Diaper Serv. Inc. v. City of Richmond, 210 Va. 705 (1970). When BPOL tax authority was extended to all counties in 1964, wholesalers were taxable only if a definite place of business existed in the locality. See 1964 Acts of Assembly, Ch. 424. The 1974 General Assembly overturned Stork Diaper by amending § 58-266.5 to eliminate all authority for a locality to tax gross receipts solely on the basis of pickups and deliveries by a business located in another Virginia locality. 1974 Acts of Assembly Ch. 386. See also the comments following § 58.1-3707.*

(4.) Limitations and extensions.

(a) Where before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) Notwithstanding § 58.1-3903, the assessing official shall assess 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.

1 (c) The period for collecting any local license tax shall not expire prior to a date two years  
 2 after the date of the assessment, two years after the final determination of an administrative appeal  
 3 pursuant to § 58.1-3980, or two years after the final decision in a court application pursuant to §  
 4 58.1-3984 or similar law, whichever is later.  
 5

6 **COMMENT:**

7 *The ability to extend the period for assessing tax by agreement is similar to that used by the*  
 8 *Department of Taxation pursuant to the provisions of § 58.1-101. The extra time to review audit*  
 9 *issues with the taxpayer may reduce instances in which an assessment must be protested. Because*  
 10 *§ 58.1-3940 limits the period for collecting local taxes to five years, the collection period must be*  
 11 *similarly extended when the period to assess is extended. The collections period is also extended for*  
 12 *the period of time an assessment is being appealed to the assessing officer and Tax Commissioner as*  
 13 *provided in subdivision 5 below. The six year assessment period for fraud or failure to file is similar*  
 14 *to the period for state taxes under § 58.1-104.*

15  
 16 (5.) Appeals and rulings.

17 (a) Any person assessed with a license tax as a result of an audit may apply within ninety  
 18 days from the date of such assessment to the assessor for a correction of the assessment. The  
 19 application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy  
 20 sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any  
 21 other facts relevant to the taxpayer's contention. The assessor may hold a conference with the  
 22 taxpayer if requested by the taxpayer, or require submission of additional information and  
 23 documents, further audit, or other evidence deemed necessary for a proper and equitable  
 24 determination of the application. The assessment shall be deemed prima facie correct. The  
 25 assessor will undertake a full review of the taxpayer's claims and issue a determination to the  
 26 taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by  
 27 a written explanation of the taxpayer's right to seek correction and the specific procedure to be  
 28 followed in the jurisdiction (e.g., the name and address to which an application should be directed).

29 (b) Provided a timely and complete application is made, collection activity shall be  
 30 suspended until a final determination is issued by the assessor, unless the assessor determines that  
 31 collection would be jeopardized by delay or that the taxpayer has not responded to a request for  
 32 relevant information after a reasonable time. Interest shall accrue in accordance with the  
 33 provisions of subdivision 2e of this subsection, but no further penalty shall be imposed while  
 34 collection action is suspended. The term "jeopardized by delay" includes a finding that the  
 35 application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to  
 36 remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any  
 37 other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the  
 38 tax for the period in question.

39 (c) Any person assessed with a license tax as a result of an audit may apply within ninety  
 40 days of the determination by the assessing official on an application pursuant to subparagraph (a)  
 41 above to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall  
 42 issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application,  
 43 unless the taxpayer and the assessing official are notified that a longer period will be required. The  
 44 application shall be treated as an application pursuant to § 58.1-1821 and the Tax Commissioner  
 45 may issue an order correcting such assessment pursuant to § 58.1-1822. Following such an order  
 46 either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to §  
 47 58.1-3984. However, the burden shall be on the party making the application to show that the  
 48 ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department

1 of Taxation shall be made a party to an application to correct an assessment merely because the  
 2 Tax Commissioner has ruled on it.

3 (d) On receipt of a notice of intent to file an appeal to the Tax Commissioner under  
 4 subparagraph (c) above, the assessing official shall further suspend collection activity until a final  
 5 determination is issued by the Tax Commissioner, unless the assessor determines that collection  
 6 would be jeopardized by delay or that the taxpayer has not responded to a request for relevant  
 7 information after a reasonable time. Interest shall accrue in accordance with the provisions of  
 8 subdivision 2e of this subsection, but no further penalty shall be imposed while collection action is  
 9 suspended. The term "jeopardized by delay" shall have the same meaning as set forth in  
 10 subparagraph (b) above.

11 (e) Any taxpayer may request a written ruling regarding the application of the tax to a  
 12 specific situation from the assessor. Any person requesting such a ruling must provide all the  
 13 relevant facts for the situation and may present a rationale for the basis of an interpretation of the  
 14 law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the  
 15 factual situation as presented in the ruling request shall invalidate any such ruling issued. A  
 16 written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court  
 17 decision, or guidelines issued by the Department of Taxation upon which the ruling was based, or  
 18 (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the  
 19 ruling was based. However, any person who acts on a written ruling which later becomes invalid  
 20 shall be deemed to have acted in good faith during the period in which such ruling is in effect.

21  
 22 **COMMENT:**

23 *Provides a defined, mandatory local appeals process that generally tracks the state*  
 24 *administrative procedures. Per the decision of the Joint Subcommittee on January 9, 1995, it also*  
 25 *provides taxpayers the option of a further appeal to the State Tax Commissioner before proceeding to*  
 26 *court (a concept supported by the business community). Localities generally are opposed to staying*  
 27 *collections while an appeal is pending as taxpayers have an obligation to pay taxes and should not be*  
 28 *allowed to defer payment. An advance ruling process is provided for. While a government cannot be*  
 29 *bound by an erroneous ruling, the uniform ordinance attempts to provide as much certainty as*  
 30 *possible for taxpayers. A new assessing official would be bound by rulings of his predecessor until*  
 31 *prospective notice of a policy change is given.*

32  
 33 **(6.) Recordkeeping and audits.**

34 Every person who is assessable with a license tax shall keep sufficient records to enable  
 35 the assessor to verify the correctness of the tax paid for the license years assessable and to enable  
 36 the assessor to ascertain what is the correct amount of tax that was assessable for each of those  
 37 years. All such records, books of accounts and other information shall be open to inspection and  
 38 examination by the assessor in order to allow the assessor to establish whether a particular receipt  
 39 is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall  
 40 provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if  
 41 the records are maintained there. In the event the records are maintained outside this jurisdiction  
 42 copies of the appropriate books and records shall be sent to the assessor's office upon demand.

**COMMENT:**

*Localities need access to the relevant gross receipts information when auditing a business, but the information may be kept at a central or regional office elsewhere and the localities have no travel expenses budgeted. Businesses are concerned with the expense of providing information related to their worldwide operations just to resolve a local tax issue for a small part of its operations.*

**B. Transitional provisions.**

1. 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 shall not be required to prorate any license tax to reflect a license year of less than 12 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.

2. The provisions of this section relating to penalties, interest, and administrative and judicial review of an assessment shall be applicable to assessments made on and after January 1, 1997, even if for an earlier license year. The provisions relating to agreements extending the period for assessing tax shall be effective for agreements entered into on and after July 1, 1995. The provisions permitting an assessment of license tax for up to six preceding years in certain circumstances shall not be construed to permit the assessment of tax for a license year beginning before January 1, 1997.

3. Every locality shall adopt a March 1 due date for applications no later than the 2001 license year.

**COMMENT:**

*While there was consensus that a uniform due date was desirable, and March 1 would be acceptable, there were reservations by some localities. In large, automated localities the programming lead time and expense would be considerable. In smaller offices the flow of work is a consideration; staff resources may not be able to handle BPOL licenses at the same time that property tax bills must be prepared. Therefore, a long period is provided for localities to plan for the programming and workload changes. It is desired that localities change to the March 1 date as soon as feasible; in fact a number of localities in the Tidewater area are already anticipating such a change. However, any locality that changes its due dates will not be required to prorate tax because of the change.*

§ 58.1-3706. Limitation on rate of license taxes.

A. Except as specifically provided in this section, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of this title or any charter, shall be ~~greater than thirty dollars~~ imposed on any person whose gross receipts from a licensable business, profession or occupation are \$100,000 or less annually. Any business with gross receipts of more than \$100,000, shall be subject to the tax at or the rate set forth below for the class of enterprise listed, whichever is higher:

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 this section, thirty-six cents per \$100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants

1 or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums  
 2 having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed  
 3 by § 58.1-3729; (viii) savings and loan associations and credit unions, which shall be governed by § 58.1-  
 4 3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be  
 5 governed by § 58.1-3719.1.

6 B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the  
 7 categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a  
 8 higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the  
 9 following conditions:

10 1. A locality may not increase a rate on any category which is at or above the maximum prescribed  
 11 for such category in subsection A.

12 2. If a locality increases the rate on a category which is below the maximum, it shall apply all  
 13 revenue generated by such increase to reduce the rate on a category or categories which are above such  
 14 maximum.

15 3. A locality shall lower rates on categories which are above the maximums prescribed in  
 16 subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year  
 17 thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of  
 18 revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such  
 19 revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for  
 20 each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase  
 21 in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax  
 22 year the amount of revenues received from all categories exceeds the revenue base for such year, the rates  
 23 shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be  
 24 subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or  
 25 categories with rates above the maximum in a manner determined by the locality, and divided by the gross  
 26 receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or  
 27 categories for the second tax year following the year whose revenue was used to make the calculation.

28 C. Any person engaged in the short-term rental business as defined in § 58.1-3510 shall be  
 29 classified in the category of retail sales for license tax rate purposes.

30 D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving  
 31 identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of  
 32 the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer  
 33 software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences  
 34 shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds received in  
 35 payment of such contracts upon documentation provided by such person, firm or corporation to the local  
 36 commissioner of revenue or finance officer confirming the applicability of this subsection.

37 2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by  
 38 that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid,  
 39 or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted  
 40 by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the  
 41 Commonwealth.

42 3. Notwithstanding the provisions of subsection D 1 above, in any county operating under the  
 43 county manager plan of government, the following shall govern the taxation of the licensees described in  
 44 subsection D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving  
 45 identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of  
 46 the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer  
 47 software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences  
 48 may be separately classified by any such county and subject to tax at a license tax rate not to exceed the  
 49 limits set forth in subsections A through C above as to such federal funds received in payment of such

1 contracts upon documentation provided by such persons, firms, or corporations to the local commissioner  
 2 of revenue or finance officer confirming the applicability of this subsection.

4 **COMMENT:**

5 *At its January 9, 1995 meeting, the Joint Subcommittee adopted a proposal to eliminate the tax*  
 6 *for businesses with gross receipts of \$100,000 or less annually. In conjunction with this exemption,*  
 7 *the subcommittee approved a flat license fee of \$50 or less on such businesses (see § 58.1-3703). The*  
 8 *\$100,000 threshold may have a 2-4% revenue impact on some larger localities, but result in over 75%*  
 9 *of small businesses being exempt from the tax; however, the revenue impact on smaller localities,*  
 10 *especially towns, could be much greater. The Joint Subcommittee further indicated its support to hold*  
 11 *harmless localities which lose 4% or more of their total revenue due to the \$100,000 provision.*

12  
 13 ~~§ 58.1-3707. Situs for local license taxation of practitioners of professions:~~

14 ~~A. The situs for the local license taxation of every practitioner of a profession which the~~  
 15 ~~Commonwealth regulates by law shall be the county, city or town in which such a practitioner maintains~~  
 16 ~~his office in this Commonwealth. If any such person maintains offices in more than one county, city or~~  
 17 ~~town in this Commonwealth, the county, city or town in which each office is located may impose a local~~  
 18 ~~license tax on him, but if such local license tax is measured by volume, the volume on which the tax may be~~  
 19 ~~computed shall be the volume attributable to practice in each county, city or town in which such an office is~~  
 20 ~~maintained.~~

21 ~~B. If any practitioner of a profession which the Commonwealth regulates by law does not maintain~~  
 22 ~~any office in this Commonwealth, but does maintain a place of abode in this Commonwealth, and does~~  
 23 ~~practice such profession in the Commonwealth, the situs for the local license taxation of such a practitioner~~  
 24 ~~shall be the county, city or town in which such person maintains his place of abode.~~

25 ~~C. If any practitioner of a profession which the Commonwealth regulates by law does not maintain~~  
 26 ~~an office or a place of abode in this Commonwealth, the situs of local license tax shall be each county, city~~  
 27 ~~or town in which he practices his profession.~~

28 ~~D. The word "volume," as used in this section, means gross receipts or any other base for~~  
 29 ~~measuring a license tax which is related to the amount of business done.~~

31 **COMMENT:**

32 *Repealed so that the same situs rules will apply to both professions and businesses, in*  
 33 *particular the elimination of "throwback" of untaxed gross receipts to be taxed in another*  
 34 *jurisdiction. In City of Richmond v. Pollok, 218 Va. 693 (1978) the court upheld Richmond's tax on*  
 35 *gross receipts attributable to an attorney's branch office in Fluvanna because Fluvanna did not*  
 36 *impose a BPOL tax. This case was decided on January 13, 1978, and the 1978 General Assembly*  
 37 *added language to § 58-266.4 which overturned Pollok. See 1978 Acts of Assembly, ch. 433. This*  
 38 *language was omitted as "unnecessary" when recodified into § 58.1-3707. Therefore, the general*  
 39 *rules in § 58.1-3708 and the situs and apportionment rules of the uniform ordinance do not permit a*  
 40 *locality to tax gross receipts properly attributable to a definite place of business in another locality (or*  
 41 *another state).*

42  
 43 § 58.1-3708. Situs for local license taxation of businesses, professions, occupations, etc.

44 A. Except as otherwise provided by law and except as to public service corporations, the situs for  
 45 the local license taxation for any licensable business, profession, trade, occupation or calling, shall be the  
 46 county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of  
 47 business ~~or maintains his office~~. If any such person has a definite place of business ~~or maintains an office~~



1 in any other locality, then such other locality may impose a license tax on him, provided such other locality  
 2 is otherwise authorized to impose a local license tax with respect thereto.

3 B. Where a local license tax imposed by any ~~such other~~ locality is measured by volume, the  
 4 volume on which the tax may be computed shall be the volume attributable to all definite places of business  
 5 of the business, profession, trade, occupation or calling in such other locality. All volume attributable to  
 6 any definite places of business of the business, profession, trade, occupation or calling in any such other  
 7 locality which levies a local license tax thereon shall be deductible from the base in computing any local  
 8 license tax measured by volume imposed on him by the locality in which the first-mentioned definite place  
 9 or office is located.

10 C. ~~If any such person has no definite place of business or office within the Commonwealth, the~~  
 11 ~~situs for the local license taxation of such a person shall be each locality in which he engages in such~~  
 12 ~~business, trade, occupation or calling, with respect to what is done in each such locality.~~

13 D. The word "volume," as used in this section, means gross receipts, sales, purchases, or other  
 14 base for measuring a license tax which is related to the amount of business done.

15 E. This section shall not be construed as prohibiting any locality from requiring a separate license  
 16 for each definite place of business or each office located in such locality.

17 F. ~~Where a local license tax, or any portion thereof, is measured other than by volume, the tax, or~~  
 18 ~~such portion, shall first be computed for each locality as if the entire business were done within such~~  
 19 ~~locality and the amount so determined shall be multiplied by a fraction, the numerator of which is the~~  
 20 ~~volume of business done in such locality and the denominator of which is the volume of business done in~~  
 21 ~~this Commonwealth.~~

22  
 23 **COMMENT:**

24 *The repeal of § 58.1-3707 makes professions subject to the same situs rules as other*  
 25 *businesses. It will overturn City of Richmond v. Pollok, 218 Va. 693, 239 S.E.2d 915 (1978) which*  
 26 *allowed the City of Richmond to levy the tax an attorney's total gross receipts (including those*  
 27 *attributable to the attorney's branch office in Fluvanna County) since Fluvanna County had no tax*  
 28 *based on gross receipts. Several localities were concerned about the revenue loss from eliminating this*  
 29 *practice and the perceived equities of favoring a business located in a county without a BPOL tax that*  
 30 *competes with similar businesses located in cities that have the tax. This draft recognizes that*  
 31 *businesses are free to establish locations where they choose (subject to zoning restrictions), and taxes*  
 32 *are a legitimate factor in the location decision.*

33  
 34 *Paragraphs A and B of § 58.1-3708 are amended to apply to both professions and other types*  
 35 *of businesses. Paragraph C is repealed, and B amended to ensure that a locality taxes only receipts*  
 36 *attributable to a definite place of business in that locality without regard to whether some other*  
 37 *locality taxes the business. Paragraph F is repealed because license taxes will either be a flat amount*  
 38 *or measured by gross receipts or purchases. References to an "office" are deleted because the*  
 39 *definition of a "definite place of business" includes offices.*

40  
 41 ~~§ 58.1-3725. Collection agencies:~~

42 ~~For purposes of the license tax authorized in § 58.1-3703, any person, firm or corporation whose~~  
 43 ~~business it is to collect claims, including notes, drafts and other negotiable instruments, on behalf of others,~~  
 44 ~~and to render an account of the same shall be deemed a collection agency. This section shall not apply,~~  
 45 ~~however, to a regularly licensed attorney at law.~~

46 ~~No local license hereunder shall be issued to any person desiring to act as a collection agent or~~  
 47 ~~agency in the Commonwealth unless such person exhibits a current license or other evidence showing that~~

1 the applicant has been duly licensed to act as a collection agent or agency by the Virginia Collection  
 2 Agency Board.  
 3

**COMMENT:**  
 5 *Obsolete provision – the Virginia Collection Agency Board was abolished many years ago.*  
 6 *Collection agencies are taxed like any other business service (36¢ per \$100 rate cap).*

7  
 8 § 58.1-3732. ~~Limitation on Exclusions and deductions from "gross receipts."~~

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

11 The following items are excluded:

12 (i) amounts received and paid to the United States, the Commonwealth or any county, city or town  
 13 for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, for any  
 14 federal or state excise taxes on motor fuels, or ;

15 (ii) any amount representing the liquidation of a debt or conversion of another asset to the extent  
 16 that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable  
 17 created by sales which have been included in taxable receipts even though the creation of such debt and  
 18 factoring are a regular part of its business);

19 (iii) any amount representing returns and allowances granted by the business to its customer;

20 (iv) receipts which are the proceeds of a loan transaction in which the licensee is the obligor;

21 (v) receipts representing the return of principal of a loan transaction in which the licensee is the  
 22 creditor, or the return of principal or basis upon the sale of a capital asset;

23 (vi) rebates and discounts taken or received on account of purchases by the licensee. A rebate or  
 24 other incentive offered to induce the recipient to purchase certain goods or services from a person other  
 25 than the offeror, and which the recipient assigns to the licensee in consideration of the sale goods and  
 26 services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's  
 27 gross receipts together with any handling or other fees related to the incentive.

28 (vii) withdrawals from inventory for which no consideration is received and the occasional sale or  
 29 exchange of assets other than inventory whether or not gain or loss is recognized for federal income tax  
 30 purposes.

31 (viii) investment income not directly related to the privilege exercised by a licensable business not  
 32 classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the  
 33 business, and to interest, dividends and other income derived from the investment of its own funds in  
 34 securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply  
 35 to interest, late fees and similar income attributable to an installment sale or other transaction that occurred  
 36 in the regular course of business.

37 B. The following shall be deducted from gross receipts that would otherwise be taxable:

38 (i) any amount paid for computer hardware and software that are sold to a United States federal or  
 39 state government entity provided that such property was purchased within two years of the sale to said  
 40 entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell  
 41 such property to a state or federal government entity. This ~~exclusion~~ deduction shall not occur until the  
 42 time of resale and shall apply to only the original cost of the property and not to its resale price, and the  
 43 ~~exclusion~~ deduction shall not apply to any of the tangible personal property which was the subject of the  
 44 original resale contract if it is not resold to a state or federal government entity in accordance with the  
 45 original contract obligation.

46 (ii) any receipts attributable to activities conducted in another state or foreign country in which the  
 47 taxpayer is liable for an income or other tax based upon income.  
 48

**COMMENT:**

This section is broken into two subsections to distinguish between items excluded because they are not receipts that should be taxable, and deductions from otherwise taxable receipts. While there was general consensus that the tax should be restricted to receipts arising from the exercise of the licensed privilege, there does not appear to be a consensus as to how to identify those receipts. Consideration was given to incorporating an "ordinary course of business" standard during Advisory Committee deliberations. However, local governments expressed concern that such a standard may give too much weight to how narrow a "business" someone advertises and how "ordinary" should be defined. Would a retailer who advertises only plain widgets be justified in classifying the sale of a blue widget as not being in the regular course of business? The Joint Subcommittee decided at its January 9, 1995 meeting to incorporate an "ordinary course of business" standard in the exclusion section so that it would not be necessary to provide an exhaustive list of exclusions. Further explanation and examples of this fact driven issue will be provided in the BPOL Guidelines.

There was general agreement that returns, allowances and returns of principal were not taxable gross receipts. While discounts on purchases would not be gross receipts, manufacturer's rebates and coupons offered to consumers and redeemed at a retailer would be gross receipts to the retailer.

Subsection (vii) addresses situations in which a withdrawal from inventory for personal use may create income tax consequences under the tax benefit rule (converting to personal use an item previously deducted for federal income tax purposes). For gross receipts tax purposes, a licensee cannot create taxable gross receipts by dealing with himself. An unresolved issue involves inventory swaps, such as an automobile dealer who exchanges cars with another dealer to supply a customer. While localities agreed that such swaps should not be taxable, language could not be agreed upon that would prevent potential abuse. It can be argued that such a swap is not a retail sale but an exchange at wholesale of property for resale. Because the transaction would merely be ancillary to a retail sale, such transactions would not constitute a separate licensable wholesale business. The occasional sale of assets would not be taxable—this is close to a "ordinary course of business" standard. A suggestion to incorporate federal non-recognition provisions (e.g., for like-kind exchanges) was not adopted because the occasional sale exclusion should cover most such instances.

It was generally agreed that funds received in a true fiduciary capacity, such as a trustee, are not taxable gross receipts. Examples of fiduciary capacity will be provided in the BPOL Guidelines. There was concern that language incorporating a fiduciary exclusion would become a loophole for businesses to structure transactions for tax avoidance purposes.

Subsection (viii) expands on the concept of income that is not related to the licensed privilege. Investment income is earned merely from the ownership of capital, not from the conduct of a business. However, it can be difficult to distinguish between some types of income, such as interest, that may arise from a transaction in the ordinary course of business or merely from the passive ownership of an investment. Localities were concerned that the allowance of such an exclusion may lead to a significant revenue loss.

1            *New subsection B. incorporates a deduction for certain government contractors that is in*  
 2 *existing law. A major unresolved issue relates to a government contractor's reimbursables, as well as*  
 3 *subcontractors generally. A contractor and his subcontractors are separate, independent businesses*  
 4 *and each is liable for BPOL tax on his own gross receipts. The controversy arises from the fact that*  
 5 *the prime contractor is allowed no deduction for amounts paid to the subcontractor or to any other*  
 6 *supplier. Some government contracts require the contractor to supply equipment at cost with no*  
 7 *markup or profit. The reimbursement for such equipment is a taxable gross receipt even though no*  
 8 *profit is possible on the transaction (although the whole contract may be profitable). Localities were*  
 9 *concerned that any deduction for a contract expense would change the nature of the tax to an income*  
 10 *tax and might cause a far greater revenue loss than anticipated. See § 58.1-3706 D. for an example of*  
 11 *how complex a special deduction, exemption, or classification for government contractors can be.*

12  
 13            *At its January 9, 1995 meeting, the Joint Subcommittee also adopted a deduction that*  
 14 *effectively exempts all receipts that are subject to income tax in other states. This is contrary to the*  
 15 *concept of a privilege tax, which generally looks to the place where the privilege was exercised rather*  
 16 *than the destination of the goods. Localities are extremely concerned about such a provision,*  
 17 *especially larger localities who contend it could cause significant revenue losses. The business*  
 18 *community would prefer to exempt all gross receipts which have any connection with activity in other*  
 19 *states. The provision, however, only exempts receipts when the activity in the other state has resulted*  
 20 *in an actual income tax liability to the other state or foreign country. The apportionment of receipts*  
 21 *attributable to activities within Virginia will not be affected. Nor does the provision allow for a*  
 22 *deduction for a business which has its only office in Virginia and its contacts with other states is not*  
 23 *sufficient to allow any other state to impose an income tax.*

24  
 25            2. That §§ 58.1-3707 and 58.1-3725 of the Code of Virginia are repealed.

26  
 27            3. That the transitional provisions of § 58.1-3703.1 B shall be effective as stated in such subsection.

28  
 29            4. That the remaining provisions of this act, including the repeal of §§ 58.1-3707 and 58.1-3725, shall be  
 30 effective for license years beginning on and after January 1, 1997, but any provision, except the imposition  
 31 of a license fee pursuant to § 58.1-3703, may, at the locality's election, be adopted and applied to an earlier  
 32 license year.  
 33

34            **COMMENT:**

35            *This act, together with the revised BPOL Guidelines to be issued July 1, 1995, make some*  
 36 *substantial changes to the revenue in some localities, and to the administrative procedures in almost*  
 37 *all localities currently imposing the tax. In addition to affecting tax revenue of certain localities, there*  
 38 *may be some significant costs in other localities. Large localities with automated offices would incur*  
 39 *significant programming costs. Small localities with small staffs may find that changes must be made*  
 40 *during peak workloads for other tax types, such as assessing and billing property taxes. Localities*  
 41 *have indicated concern that six months is not sufficient time for over 100 counties, cities, and towns to*  
 42 *review the changes made by this act and the new BPOL Guidelines, draft, advertise and adopt new*  
 43 *ordinances. Localities are particularly concerned with any impact on their FY96 budgets because they*  
 44 *will generally be finalized early in 1995, in many cases before this legislation can be enacted. At that*  
 45 *time the property tax rates are also fixed, which severely limits the ability of localities to deal with a*  
 46 *significant revenue loss or a significant increase in administrative costs.*

47  
 48            #

**Appendix D**  
**House Joint Resolution No. 613 (1995)**

**1995 SESSION  
ENGROSSED**

1 LD9729136

2 **HOUSE JOINT RESOLUTION NO. 613**

3 **House Amendments in { } -- February 4, 1995**

4 *Continuing the joint subcommittee studying the business, professional, and occupational*  
5 *license tax.*

6 -----  
7 Patrons--Brickley, Albo, Almand, Croshaw, Diamonstein, Dillard, Harris, Parrish, Plum, Puller,  
8 Purkey, Scott and Van Landingham; Senators: Calhoun and Colgan

9 -----  
10 Referred to Committee on Rules  
11 -----

12  
13 WHEREAS, the business, professional, and occupational license (BPOL) tax has been studied for the  
14 past two years by a joint subcommittee established by House Joint Resolution No. 526 in 1993 and continued  
15 by House Joint Resolution No. 110 in 1994; and

16  
17 WHEREAS, the joint subcommittee appointed an advisory committee consisting of representatives  
18 from the business community and local government; and

19  
20 WHEREAS, the advisory committee worked closely with the Department of Taxation to develop a  
21 model BPOL ordinance to be used by local government throughout the Commonwealth; and

22  
23 WHEREAS, the joint subcommittee adopted the model ordinance and proposed legislation for the  
24 1995 General Assembly Session incorporating such ordinance; and

25  
26 WHEREAS, the joint subcommittee agreed that eliminating the BPOL tax in the future should be  
27 studied further; now, therefore, be it

28  
29 RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee  
30 Studying the BPOL Tax be continued for a third year in order to examine existing local revenue resources, the  
31 economic impact eliminating the BPOL tax would have on localities, and if and how the tax could be  
32 eliminated over time while holding the local governments harmless.

33  
34 The joint subcommittee shall { ~~complete its work in time to submit its~~ be continued for one year only  
35 and shall submit its final } findings and recommendations, if any, to the Governor and the 1996 Session of the  
36 General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the  
37 processing of legislative documents.

38  
39 #  
40