

**INTERIM REPORT OF THE**

**STATE AND LOCAL  
GOVERNMENT RESPONSIBILITY  
AND TAXING AUTHORITY  
COMMISSION**

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



**HOUSE DOCUMENT NO. 62**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1996**

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The Honorable Donald S. Beyer, Jr., **Chairperson**

Ms. Eva Teig, **Vice Chairperson**

The Honorable Thomas W. Moss, Jr.

The Honorable C. Richard Cranwell

The Honorable David G. Brickley

The Honorable S. Vance Wilkins, Jr.

The Honorable Stanley C. Walker

The Honorable Hunter B. Andrews

The Honorable Joseph B. Benedetti

The Honorable James S. Gilmore, III

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**Interim Report of the  
Commission on State and Local Government Services and Taxing  
Authority**

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

**Richmond, Virginia  
March, 1996**

TO: The Honorable George F. Allen, Governor of Virginia  
and  
the General Assembly of Virginia

**I. EXECUTIVE SUMMARY**

House Joint Resolution 487, passed by the 1995 General Assembly, created a commission to study the state and local tax system and the services delivery system. The commission held three public hearings around the Commonwealth. During its deliberations, the commission heard from state and local authorities, business representatives and private citizens who voiced their concerns about the issues before the commission. Of particular interest on everyone's list was the business, professional and occupational license (BPOL) tax.

Both the system for the delivery of services and the raising of revenues to fund such services have developed in piecemeal fashion over the years. This has led to questions regarding the efficiency of service delivery and the equity of state and local taxes. To examine the two areas more thoroughly, the Services Task Force and the Revenues Task Force were created. Both task forces began their work in November.

Realizing its task would take longer than one year to complete, the commission proposed legislation to continue the study for an additional year. It also recommended supporting the concepts and principles embodied in the BPOL uniform ordinance legislation which was originally introduced during the 1995 General Assembly Session.

## II. INTRODUCTION

The Commonwealth's state and local tax system has grown and developed, like all states, over the years. The same is true with regard to the services delivery system. As a result of this piecemeal evolution, questions have arisen as to whether services are being delivered in the most efficient manner and whether state and local taxes are inequitable and therefore, adversely impacting economic development by impeding business growth.

HJR 487 (1995) (Appendix A) established the Commission on State and Local Government Responsibility and Taxing Authority consisting of twenty-five members as follows:

The Speaker, the majority leader, and the minority leader of the House of Delegates; the Lieutenant Governor, President pro tempore, the majority leader, and the minority leader of the Senate; the Attorney General of Virginia; and seventeen citizens of whom three were appointed by the Speaker of the House; two were appointed by the Senate Committee on Privileges and Elections, and three were appointed by the Governor; four representatives of the Virginia Chamber of Commerce, upon its recommendation, appointed by the Speaker of the House; one representative of the Virginia Association of Commissioners of the Revenue; and two representatives each of the Virginia Municipal League and the Virginia Association of Counties, upon the recommendation of the respective organizations, appointed by the Senate Committee on Privileges and Elections.

The Commission was also requested to examine and make recommendations concerning the following:

(i) the service responsibilities of local, regional, and state governments, giving consideration to the appropriate role of government at all levels and what distribution of service responsibility provides the greatest efficiency and best serves Virginia citizens; (ii) revenue resources such as taxes, fees, and debt structures available to government to support their respective responsibilities and minimize burdens on taxpayers, which are appropriate to current and emerging economic, governmental, and social realities; (iii) a timetable and framework for implementing changes in service responsibilities and revenue resources; (iv) uniform and equitable administrative procedures for local and regional taxes which shall include, but not be limited to, audits and reviews, collection practices, taxpayer litigation, communications with taxpayers, and the feasibility of the codification of a uniform ordinance; (v) the identification and examination of all taxes and fees; (vi) the equity of each such tax and fee assessed, including the most efficient and least burdensome of such taxes and fees; (vii) the changes needed in the tax structure relative to Virginia's changing economy; and (viii) possible alternatives for the replacement or consolidation of taxes and fees.

### **III. BACKGROUND**

The catalyst for HJR 487 was the controversy between the business community and local government over the business, professional and occupational license (BPOL) tax. During the 1995 General Assembly Session, legislation was introduced which would have created a uniform BPOL ordinance to be used by all localities levying the tax. The legislation came about as a recommendation of a joint subcommittee which had been studying the BPOL tax for two years (HJR 526, 1993 and HJR 110, 1994).

The joint subcommittee studying the BPOL tax was unable to find a suitable funding replacement which would provide a comparable amount of revenues. Instead, it focused on the administration of the tax which resulted in the uniform ordinance. One of the complaints about the tax was as to how the tax was administered. It was thought that more certainty with regard to this aspect of the BPOL tax would make it less objectionable.

For a variety of reasons, the uniform BPOL ordinance legislation failed to pass during the 1995 session. It was determined that examining one local tax in a vacuum was not the best way to develop a solution, but instead, an examination of the state and local tax system as a whole, as well as what and how services are delivered would produce a clearer picture. The purpose of HJR 487 was to provide the means for acquiring that picture.

### **IV. ACTIVITIES OF THE COMMISSION**

The Commission met six times beginning on June 9th in Richmond when it had its organizational meeting. To provide background, a report was presented to the Commission on the taxing authority of localities.

The taxing authority of localities comes from three sources: the Constitution of Virginia, the Code of Virginia, and the Uniform Charter Powers Act. In Article X, Taxation and Finance, of the Constitution, the authority of the General Assembly and limitations on such authority regarding taxation and borrowing are delineated.

Unless otherwise provided in the Constitution, Section 1 of Article X requires all property be taxed, all taxes to be levied and collected under general laws, and all taxes be uniform upon the same class of subjects within the territorial limits of the taxing authority. It also allows the General Assembly to define and classify taxable subjects the state may tax and which subjects the localities may tax. Section 4 of Article X specifically segregates real estate, coal and other mineral lands, and

tangible personal property, except rolling stock of public service corporations, for taxation by local governments only.

The statutory authority for local taxes is found primarily in Chapters 30 through 39 of Title 58.1 of the *Code of Virginia*. Finally, the Uniform Charter Powers Act (UCPA) is a broad statutory grant of taxing authority in Title 15.1 of the *Code*. Under Section 15.1-841, cities and towns that have incorporated the UCPA into their charters have a general taxing authority. Therefore, they may levy taxes that counties may not.

As of June 30, 1993, Virginia's cities and counties collected a little over \$10.3 billion annually from local, state, and federal sources. Of that amount 63.2 percent was locally generated, 30.3 percent state generated, and 6.5 percent federally generated. Of the locally generated portion, 63.26 percent came from property taxes, 22.5 percent from other local taxes, and 13.37 percent from other revenues such as fees, fines and forfeitures, and charges for services.

The second meeting of the State/Local Government Responsibility and Taxing Authority Commission was held in Charlottesville at the Omni Hotel on August 15 during the Local Government Officials' Conference. A representative from the Joint Legislative Audit and Review Commission presented an overview of the findings and recommendations resulting from State/Local Relations and Service Responsibilities (Senate Document No. 37), a 1992 JLARC study.

The study examined the service delivery structures in the context of changes the Commonwealth has undergone in the past several years. The purpose of the study was to identify ways to improve state and local relationships and to identify whether the responsibility for any services needed to be changed. While overall the study indicates the Commonwealth's governmental structure is sound, service responsibilities of the Commonwealth and its localities have evolved over the years in a somewhat piecemeal approach and have not always kept up with the changing social and economic conditions in the Commonwealth. The report also substantiated officials' concerns that there is now an imbalance between services provided and revenue-raising ability.

The areas of service and funding responsibilities on which the report focused were transportation, education, human services, environmental protection, administration of justice, and general administration. In examining these responsibilities, broad criteria were used including efficiency/economy of scale, effectiveness, equity, fiscal accountability, responsiveness to the public, and flexibility.

Finally, with regard to the adequacy of local resources to fund the services, the Commonwealth's taxes are generally lower than surrounding states while local

taxes are higher. This indicates that as additional service responsibilities are assigned to local governments, additional use of revenue resources may need to occur at the state level.

Next a public hearing was held to allow those local government officials attending the conference to express their opinions and to make recommendations regarding the work of the Commission. Overall, the comments were the same. The localities need flexibility in raising revenues. They do not need fewer options, unless some of their service responsibilities are taken over and funded by the state.

The Commission met for the third time in Virginia Beach at the annual Virginia Municipal League Conference on October 9. The meeting was a public hearing designed to hear from individuals wanting to comment on the Commission's work, especially with regard to the services area, which was the topic during the August meeting in Charlottesville.

Speakers included representatives from the business sector as well as local government. In general, local government asked for flexibility with regard to taxes and revenue raising measures. They also asked that the state not send down any unfunded mandates, as in requiring more services be provided at the local level without some means to fund them.

Representatives from the business community focused on the business, professional and occupational license (BPOL) tax. The Commission was encouraged to adopt the uniform ordinance legislation which was proposed by the Brickley subcommittee during the 1995 General Assembly Session. The purpose of the uniform ordinance is to provide more uniformity between localities in the application and administration of the BPOL tax. Other business speakers emphasized the importance of less government and regulation of businesses.

Following the public hearing, the chairman outlined a work plan for the remainder of the year and appointed two task forces to examine the services and revenues issues and make recommendations.

The fourth meeting of the Commission took place in Northern Virginia on November 14 at George Mason University and was a public hearing primarily for the business community. Prior to the public hearing the two as forces met.

The Services Task Force focused on six areas of service in which the state and localities share responsibilities: education, social services, health, mental health, corrections and transportation. Education consumes, by far, the greatest portion of each locality's budget.

Discussion regarding the JLARC report, presented to the Commission during its August meeting, on state and local service responsibilities concluded that while the factual information was helpful it did not proceed far enough in its recommendations. The Task Force decided to request the Virginia Municipal League, Virginia Association of Counties, the Virginia Chamber of Commerce and JLARC to make a presentation with recommendations concerning the six major areas of service responsibilities. The goal of the Services Task Force is to develop a list of services to examine and a general direction in which to go.

The Revenues Task Force examined the funding side of the study. The Revenues Task Force favored asking the General Assembly to enact legislation requiring localities levying a BPOL tax to adopt the uniform ordinance recommended by Delegate Brickley's Subcommittee (HJR 110).

The Task Force noted that the uniform ordinance provides for a \$100,000 threshold for taxability, rather than an exemption of \$100,000 of revenue. The issue of a threshold versus an exemption amount was not fully aired during the deliberations of Delegate Brickley's subcommittee. Changing the provision from a threshold to an exemption would have an undetermined, but substantial, effect on revenues. However, the equity of a threshold can be questioned because a business with \$100,000 of revenue would pay no tax while another with \$100,001 would pay tax on the full amount. The threshold provision is of special concern to small businesses, retailers and towns.

The Task Force favored asking the General Assembly to enact legislation establishing appeals procedures for local business taxes, which procedures follow those set out in the Brickley uniform ordinance for BPOL. Specifically, the procedures will allow appeals from the Commissioner of Revenue to the Tax Commissioner, and require localities to pay interest to prevailing taxpayers on funds improperly collected.

The Task Force favored extending the appeals procedures in the BPOL uniform ordinance to individual taxpayers, but did not recommend that the General Assembly act on this issue in 1996. The expansion of appeals of local taxing decisions by individuals to the Tax Commissioner would place an unknown burden on the Tax Department. Further study is required regarding the additional

resources the Tax Department would need in order to address appeals by individuals of local tax disputes; however, the Task Force decided that the same rights should be extended to individuals as soon as possible.

The Task Force further recommended that it study the mix of state and local taxes. This study will address the items and activities that are taxed, and how they are taxed, in addition to the tax burden. The study's focus will be on the effect of the mix of taxes on economic growth.

As part of this study, the Commission should seek funding from the 1996 Session of the General Assembly for an appropriation to finance a study by outside consultants of this issue. The study will compare Virginia's tax mix with those of other states with which the Commonwealth is competing for economic development opportunities.

Issues of particular concern include: (i) the continuation of the BPOL tax; (ii) the effect of local reliance on the real property tax on the agricultural sector; and (iii) the effect of the system of taxation on the high-tech community. The study should also identify alternatives to any source of revenue which may be replaced or restructured.

Following the two task force meetings, the third public hearing was held with a majority of the speakers representing the business community. Most of them mentioned the BPOL tax and called for its elimination or refinement. Several mentioned that the tax was a deterrent to economic development. The BPOL tax plus other factors have resulted in business moving out of localities which impose it, choosing not to expand or not locating in a locality which imposes it. Small businesses, in particular, are concerned about all taxes but the BPOL tax is a major concern because it is a gross receipts tax.

Many of the business community speakers called for the Commission to adopt the uniform ordinance and repeal the BPOL tax in the future. No business speaker, however, proposed an alternative revenue source. Instead, there was a call for localities to be creative in raising revenues or find ways to cut their costs.

Local government representatives, on the other hand, described how localities are limited in the number of revenue options at their disposal and are increasingly dependent on real and personal property taxes to generate sufficient revenues. Many local governments have held services steady or even reduced them and have had to increase their real and personal property tax rates anyway.

There were two suggestions made by local government for raising revenues. First, expand the sales tax to specific services that are exempt currently, because the economy is becoming more service driven. Second, create a local option for a differential real estate tax rate by class of property. This option would require a

state constitutional amendment because all classes of property are to be taxed at the same rate within a jurisdiction. (For more detail regarding speakers' statements see Appendix B.)

The Services Task Force held a second meeting on December 21 in Richmond in which the entire Commission was invited. The service areas examined were education, health, mental health, transportation, social services and corrections. The most dramatic suggestion made was for the state to assume the local share of funding the standards of quality. This would cost approximately \$1.4 billion. The standards of quality are established at the state level with localities having no control over them. Because of this, it was argued that the state should pay the local share.

To help the state fund this, it was suggested that a number of local taxes could be relinquished and turned over for administration by the state. They included personal property, local option sales, consumer utility and BPOL taxes.

The Commission held its final meeting for its first year on January 16, 1996, in Richmond. A discussion regarding the BPOL uniform ordinance legislation (House Bill 293-Appendix C) introduced by Delegate Brickley started the meeting. First, the Commission heard testimony from the President of the Commissioners of the Revenue Association who talked about the number of states which have some type of business license tax with the majority using it as a revenue source. He also talked about the \$100,000 threshold, what a burden it would be on towns, in particular, and how much worse an exemption in that amount would be.

Next, there was some concern expressed by the local government members of the Commission that House Bill 293 had new language which was not in the 1995 version of the bill. The language related to the inclusion of software in the manufacturing definition, the exemption of venture capital firms from the tax and the expansion of the appeals process to include all local business taxes, not just the BPOL tax. This concern led to the Commission's endorsement of the concepts and principles embodied in the bill and recognition that changes would most likely be made to the bill throughout the legislative process.

Finally, the Commission voted to support the resolution to continue the study for one additional year in order to complete its work (Appendix D). Further study is needed to evaluate more thoroughly the ideas presented to the Services Task Force in its December 21 meeting. In addition, the Revenues Task Force has issues it wants to investigate. Also mentioned was the idea of reexamining the elimination of the BPOL tax by some date in the future, provided some other revenue source could be found so that the loss to the localities would be lessened. The business community was encouraged to develop ideas for revenue replacement if it expects the BPOL tax to be repealed.



## V. ISSUES

- (1) Should any of the services being provided by the localities be transferred to the state and should any of the services being provided by the state be transferred to the localities?
- (2) What can be done to improve the tax system? Eliminate or change certain taxes in exchange for other forms of revenue raising?
- (3) Will changes in the federal budget affect the delivery of services and their funding within the states and, if so, how?

## VI. FINDINGS AND RECOMMENDATIONS

The Services Task Force made no final decisions regarding the transfer of services from the localities to the state or vice versa. Further study is necessary before recommendations regarding this issue can be made. The Revenues Task Force also wants to investigate further the state and local tax systems in order to make informed decisions. It did decide to act on the BPOL tax with the support of the full Commission.

In order to alleviate some of the concerns regarding the BPOL tax and to continue its examination of state and local services and revenues, the Commission recommends the following:

- 1. By legislation, provide a BPOL uniform ordinance to be used by the localities which levy the tax and establish an appeals process for all local business taxes.**
- 2. By joint resolution, extend the study (HJR 487) for one additional year in order to complete its work in a thorough manner.**

The Commission extends its gratitude to everyone who contributed to a successful year of study. We look forward to continuing our work in 1996.

Respectfully submitted,

The Honorable Donald S. Beyer, Jr., **Chairperson**

Ms. Eva Teig, **Vice Chairperson**

The Honorable Thomas W. Moss, Jr.

The Honorable C. Richard Cranwell

The Honorable David G. Brickley

The Honorable S. Vance Wilkins, Jr.

The Honorable Stanley C. Walker

The Honorable Hunter B. Andrews

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Mr. Robert J. O'Neill

Mr. William L.S. Rowe

Mr. John L. Rulison

Mr. David G. Speck

Mr. Todd A. Stottlemeyer

APPENDIX A  
1995 SESSION

LD3707297

HOUSE JOINT RESOLUTION NO. 487  
AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules  
on February 2, 1995)

(Patron Prior to Substitute—Delegate Hull)

*Establishing the Commission on State and Local Government Responsibility and Taxing Authority.*

WHEREAS, the state and local tax system in the Commonwealth as in all states has developed and grown over a number of years; and

WHEREAS, the economy and demographics of Virginia have changed significantly in recent years and these changes are projected to accelerate, resulting in changing service demands upon state and local governments; and

WHEREAS, fiscal soundness and the provision of quality state and local government services are essential to Virginia's economic growth and prosperity; and

WHEREAS, many taxes, regulations, and laws governing commerce in Virginia which were framed for an agricultural society and adapted to an industrial economy have not been adequately adapted to the realities of a post-industrial, information economy; and

WHEREAS, because the different sections of the tax code have been added at varying times, the impact each has on the other and on the taxpayers could not always be anticipated; and

WHEREAS, service responsibility and taxing authority of local government has evolved over the years in a piecemeal approach as responsibility for the delivery of services moves back and forth between the Commonwealth and its political subdivisions; and

WHEREAS, locally integrated and regional service delivery has proven to afford economies; and

WHEREAS, the federal government has mandated that state and local governments provide services that meet federally established standards; and

WHEREAS, the service demands on the state and its local governments have caused major fiscal pressures on tax and fee sources and rates resulting in governmental downsizing, prioritizing, and privatization of services; and

WHEREAS, the allocation of tax and fee authority between state and local governments should be examined periodically to ensure the efficacy and efficiency of that authority; and

WHEREAS, local and state taxes are major factors when businesses make decisions to expand, locate, and relocate in Virginia; and

WHEREAS, some state and local taxes have been criticized by citizens and businesses as being inequitable and adversely impacting state and local economies and impeding business growth; and

WHEREAS, the equity of the entire tax system in the Commonwealth has not been evaluated in depth; and

WHEREAS, the administration of all taxes needs to be examined in order to achieve uniformity as well as fair and equitable collection, audit, and appeals procedures; and

WHEREAS, JLARC examined the allocation of service responsibility between state and local governments and identified broad options for realignment of selected service responsibilities; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on State and Local Government Responsibility and Taxing Authority be established. The Commission shall be composed of twenty-five members to be appointed as follows: the Speaker, the majority leader, and the minority leader of the House of Delegates; the Lieutenant Governor, President pro tempore, the majority leader, and the minority leader of the Senate; the Attorney General of Virginia; and seventeen citizens of whom three shall be appointed by the Speaker of the House; two shall be appointed by the Senate Committee on Privileges and Elections, and three shall be appointed by the Governor; four representatives of the Virginia Chamber of Commerce, upon its recommendation, to be appointed by the Speaker of the House; one representative of the Virginia Association of Commissioners of the Revenue; and two representatives each of the Virginia Municipal League and the Virginia Association of Counties, upon the recommendation of the respective organizations, to be appointed by the Senate Committee on Privileges and Elections.

Consideration shall be given to appointing citizens and organizational representatives in such a

manner as to provide geographical and demographic representation. The Commission shall choose its chairman and vice-chairman from the membership of the Commission.

The Commission is requested to examine and make recommendations concerning the following: (i) the service responsibilities of local, regional, and state governments, giving consideration to the appropriate role of government at all levels and what distribution of service responsibility provides the greatest efficiency and best serves Virginia citizens; (ii) revenue resources such as taxes, fees, and debt structures available to government to support their respective responsibilities and minimize burdens on taxpayers, which are appropriate to current and emerging economic, governmental, and social realities; (iii) a timetable and framework for implementing changes in service responsibilities and revenue resources; (iv) uniform and equitable administrative procedures for local and regional taxes which shall include, but not be limited to, audits and reviews, collection practices, taxpayer litigation, communications with taxpayers, and the feasibility of the codification of a uniform ordinance; (v) the identification and examination of all taxes and fees; (vi) the equity of each such tax and fee assessed, including the most efficient and least burdensome of such taxes and fees; (vii) the changes needed in the tax structure relative to Virginia's changing economy; and (viii) possible alternatives for the replacement or consolidation of taxes and fees.

The Weldon Cooper Center for Public Service at the University of Virginia and the Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Department of Taxation and the State Corporation Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The direct costs of the study shall not exceed \$50,000.

The Governor and all entities requested to make appointments or to recommend persons to be appointed to the Commission are requested to submit such appointments and recommendations expeditiously so that the Commission may begin its work by April 1, 1995. The Commission shall complete its work and submit its findings and recommendations to the Governor and the General Assembly by December 1, 1995.

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

Official Use By Clerks

Passed By

The House of Delegates

without amendment ☐  
with amendment ☐  
substitute ☐  
substitute w/amdt ☐

Passed By The Senate

without amendment ☐  
with amendment ☐  
substitute ☐  
substitute w/amdt ☐

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the House of Delegates

\_\_\_\_\_  
Clerk of the Senate



## APPENDIX B

### **VIRGINIA MANUFACTURERS ASSOCIATION**

*P.O. Box 412, Richmond, Virginia 23203, 804-643-7489, FAX 804-780-3853*

Presentation to the Commission on  
State and Local Government  
Responsibility and Taxing Authority  
HJR 487

by Carol C. Wampler  
Vice President & General Counsel  
Virginia Manufacturers Association

November 14, 1995

Mr. Chairman and ladies and gentlemen:

I appreciate the opportunity to bring to this Commission some comments on behalf of the Virginia Manufacturers Association.

For almost four years, the Virginia Manufacturers Association (VMA) has been working actively with representatives of local government, Commissioners of the Revenue and Treasurers, and other business groups to address local taxation problems. At first, our efforts were informal meetings hosted in the VMA office. Later, we worked extensively with the Brickley BPOL Commission and its Advisory Committee.

We understand that many local governments have been increasingly stressed by mandates imposed by federal and state laws, as well as local needs. We are sympathetic to the needs of local governments. Our member companies rely heavily on the services which local governments provide, and we want to work to see that the needs of local governments are appropriately met.

Faced with these fiscal stresses, however, a number of local governments have aggressively interpreted the reach of local taxes on manufacturers and other businesses in ways which we believe are inappropriate and unlawful. This trend has in turn placed fiscal stresses and burdens on many of our members, to the point that a number of them have had to spend significant time and resources in challenging unfair local tax audits in court. Under current law, challenging local tax audits is an expensive and often arduous task. Even when our members eventually win in court, they still lose, because local tax laws almost never provide for payment of interest on refunds.

Accordingly, we respectfully urge this Commission to recommend two legislative reforms to the 1996 session of the General Assembly.

The first recommendation is for **adoption of the Brickley BPOL (Business, Professional, Occupational License) Uniform Ordinance**, introduced in the 1995 legislative session as House Bill 2351, which would reform administration of the BPOL tax. The Brickley Uniform Ordinance represents a hard-fought compromise among representatives of local governments, Commissioners of Revenue and Treasurers, and the business community. It creates the uniformity and fairness of administration which are so desperately needed by taxpayers across the Commonwealth. The Brickley Uniform Ordinance was, I believe, adopted unanimously by the BPOL Legislative Subcommittee and appeared to enjoy broad support among legislators until it got caught up in the separate effort to repeal or phase-out the BPOL tax in 1995. We believe that it is extremely important for this measure to pass in 1996.

Some people wrongly assume that manufacturers are exempt from the BPOL tax. Although some sales by manufacturers are not subject to the tax, let me assure you that our members pay very large amounts of money on the BPOL tax. A number

of VMA members are diversified companies, legitimately subject to the BPOL tax for certain operations, and therefore in need of a reasonably and uniformly administered tax structure. Some of our members are wrongly being assessed BPOL and need fair administrative appeals processes, including interest on refunds. The Brickley Uniform Ordinance, if enacted, can meet all of these needs.

And the needs are immediate. As many of you know, there is currently a court case pending which could jeopardize corporate headquarters in our state. A locality assessed BPOL on the worldwide sales of a Virginia manufacturer because the company's headquarters facility is located within that locality. The company prevailed at the trial court level; however, the local government appealed, and we are now waiting to learn if the Virginia Supreme Court will hear the appeal. At least two of our CEO's have already said that they will move their corporate headquarters out of Virginia if the company loses this case. Adoption of the Brickley BPOL Uniform Ordinance could prevent an unfavorable outcome in future cases similar to this one, and could help keep headquarters facilities in Virginia. Timely legislation could also nip this problem in the bud before localities become revenue-dependent on such wide-ranging assessment approaches.

The second recommendation is for **adoption by the 1996 General Assembly of legislation to provide equitable and uniform collection, audit, and administrative appeals procedures for all relevant local taxes.**<sup>1</sup> The appeals procedures should include paying interest on refunds, as provided in the Brickley Uniform Ordinance regarding the BPOL tax, and as found in the Virginia Department of Taxation's procedures for state taxes. The same fair procedures need to be applied to all local taxes.

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<sup>1</sup> We urge adoption of administrative appeals procedures for all "relevant" local taxes rather than for all local taxes because the real estate already has uniform appeals procedures which work well and should, we believe, remain in place.

of Taxation's procedures for state taxes. The same fair procedures need to be applied to all local taxes.

Again, court cases can illustrate the need for legislation. Fairly recently, one of our members waged a three-year battle to win a refund of erroneously-collected local taxes, and then received absolutely no interest on the refund. In another case decided by the Virginia Supreme Court just a few weeks ago, one of our member companies prevailed, as it had at the trial level, that certain capital of its corporate headquarters facility was excluded by state law from local taxation. However, the local ordinance did not provide for interest on refunds, so the company received none. In addition, the court found that the company was not entitled to post-judgment interest. From the taxpayer's point of view, the current state of local tax law already provides an incentive for localities to litigate rather than try to resolve taxpayer audit challenges, because localities do not have to pay interest on the tax money they are holding. This new case has, in our view, provided localities with a further incentive to appeal if they do not win at the trial level. One local tax attorney told me that the interest earned during the appeal of this case on the taxes being erroneously held by the locality could pay the locality's legal bill for the appeal two or three times over. This is not an appropriate incentive. The incentives should be for both sides to come to the table and try to resolve audit disputes. The legislative reform we ask you to recommend would accomplish this goal.

Right now, we know of only one locality whose laws provide for interest on tax refunds, although it appears that all localities require taxpayers to pay penalties and interest on delinquent taxes. We would ask you to create a more level playing field, as the state Department of Taxation has done, and as all parties agreed last year should be done for BPOL in the Brickley Uniform Ordinance. We know of no principled reason why anyone would object to extending these fair and uniform appeals processes to all local taxes.



**In summary, we strongly urge this commission to recommend two reform measures for enactment in 1996: (1) the Brickley BPOL Uniform Ordinance and (2) similar uniform and equitable collection, audit, and appeals procedures (including interest on refunds) for all other relevant local taxes.**

The question is sometimes asked, "Where does VMA stand on the question of repeal or phase-out of the BPOL tax?" We do not at this time have a formal position on this question. I can tell you, however, that our members believe the BPOL tax, like any gross receipts tax, is a bad tax, which hampers economic development. I can also tell you that there was widespread consternation among our members last session when Governor Allen proposed a phase-out of BPOL. Several local governments, apparently doubting that replacement revenues would actually be provided to them, threatened to raise property taxes, machinery and tools taxes, and other local taxes. These threats deeply concerned a number of our members.

Based on members' reactions during the 1995 session, as well as numerous subsequent discussions among our Taxation Committee members and Board members, I believe that they would expect two assurances before being willing to endorse a specific plan to repeal or phase out BPOL: (1) that local governments, like private businesses and state government, have made appropriate cost-reduction efforts, and (2) that any remaining revenue shortfall to local governments will not be addressed by measures which would be even more detrimental than the BPOL tax to Virginia's business and economy.

I fully believe that this commission can and will address both of these issues. I do not believe, however, that you can do so appropriately before the 1996 legislative session. Precipitous or premature efforts to repeal BPOL can have unintended negative consequences, just as occurred in the 1995 session. Enacting the reform measures outlined above can provide the breathing room for repeal to be considered

and planned wisely and equitably.

And BPOL is only one piece of the total picture of local revenue and service needs. All of these issues -- and the total picture -- are extremely important to Virginia's future economic viability and the quality of all citizens' lives. It is not often that we are privileged to have a commission with the stature of this one to address such issues. Like the Virginia Chamber of Commerce, VMA is willing and eager to work with this commission to continue to address possible BPOL repeal and other local tax issues in a second year of the commission's existence. We may not get this unique opportunity again, and we are sincerely committed to "doing the job right." **We urge you to ask the 1996 General Assembly to extend the life of this commission for one additional year so that the needs and concerns of both taxpayers and local governments can be addressed fully and prudently.**

Thank you for the opportunity to speak to you today, and for considering our concerns.

Excerpted Remarks of Ellen M. Bozman,  
Vice Chairman, Arlington County Board

1995 HJR 487 Commission on State and Local Government  
Responsibility and Taxing Authority

November 14, 1995

I am Ellen M. Bozman, Vice Chairman of the Arlington County Board. Thank you for the opportunity to testify. Board Member and new state-senator elect Mary Margaret Whipple testified before the Commission in August at the annual Local Government Officials Conference in Charlottesville. Her remarks focused on state and local service responsibilities. Today, I wish to focus on your second assignment: revenues.

In particular, I will make two basic points:

1. Virginia's localities have a limited number of revenue options at their disposal, and are increasingly dependent upon the increased real and personal property taxes to generate adequate resources.

All three levels of government are either cutting their budgets or trying to hold spending constant. Many local governments have held services steady or reduced services and yet have had to increase their real and personal property tax rates.

There are several reasons for this phenomenon. But, allow me to point out two important examples:

1. First, the federal and state governments both expect local governments to assume greater program and funding responsibilities.

A good example of this might be welfare reform. It appears that local governments may have to assume a significant portion of the employment services costs associated with implementing welfare to work. (And, local governments may have to assume a greater share of future Medicaid funding in order to care for the indigent and the elderly.)

2. And second, here in Arlington our constituents expect the County Board to keep education expenditures rising with escalating costs and increased needs. Since 1990, Arlington has had (on a percentage growth basis) one of fastest growing school populations, education expenditures have accounted for a larger share of Arlington County's budget. While service expenditures have held steady--under the rate of inflation--school funding has risen. For example, last year the County's budget grew only 2% and the Schools were allocated 80% of that 2% increase.

We have increased the real property tax rate each of the last four years in Arlington. Real and personal property tax revenues account for approximately 55 percent of Arlington's entire general fund. (BPOL revenues account for another approximately 10 percent.)

My second point is that if Business, Professional and Occupational License (BPOL) is to be eliminated, the revenue generated from the BPOL tax in each locality must be replaced on a

dollar-for-dollar basis with some other local option tax which would not significantly shift taxes from business to residents or from large businesses to small businesses. If eliminated, the failure to replace the BPOL tax with a new local option business tax -- or taxes -- will likely compel local governments to increase the real and personal property taxes. Furthermore, it would be unacceptable to replace BPOL revenue with an unreliable state subsidy that is subject to an annual appropriation. Such a policy is not fiscally prudent and would put the fiscal stability of each local government at risk during every General Assembly session.

I suggest, therefore, that if you choose to recommend the elimination of the tax, you may wish to examine two specific alternatives I will outline. However, let me make clear that I do not contend that the tax should be eliminated. Northern Virginia's local governments are instituting equitable reforms as suggested by the Brickley Commission. Also, there is little to no historical and empirical evidence to suggest that the BPOL tax is a disincentive to economic development. BPOL's structure in the economy is much like the European VAT -- a concept that is being discussed by Republicans as one form of possible tax reform at the federal level. While I recognize there are issues with the BPOL tax and there are many who now feel strongly about the elimination of this tax, reform of its administration makes it more of an acceptable revenue source.

Therefore, the following are two alternatives for your consideration:

Alternative 1.

Expand the sales tax to specific services that are currently exempted. Given that all of our economies have evolved to a more service economy and away from the sale of hardgoods, it only makes sense to change the method of taxation to match this shift towards the service sector.

Alternative 2.

Create the local option of a differential real estate tax rate by class of property. This may make a good substitution for the BPOL tax, as there is likely to be a strong correlation between who pays BPOL and how much and who pays property taxes either directly or through a lease. It also uses an accepted existing tax assessment system.

I thank you for your time. Arlington County is prepared to assist you however possible as you continue your deliberations.



*A Regional Chamber of Commerce  
for the District of Columbia, Northern Virginia and Suburban Maryland*

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**TESTIMONY BY PHILIP E. MEANY JR.  
PRESIDENT OF GRUBB AND ELLIS  
CHAIRMAN, VIRGINIA PUBLIC AFFAIRS COUNCIL  
  
BEFORE THE COMMISSION ON STATE AND LOCAL  
GOVERNMENT RESPONSIBILITY AND TAXING  
AUTHORITY**

**NOVEMBER 14, 1995**

Good afternoon, Lt. Governor Beyer and members of the HJ 487 Commission. I am Phil Meany, president of Grubb & Ellis a commercial real estate firm operating in the National Capital Region and across the United States. I am here today representing the over 1,000 corporate members of The Greater Washington Board of Trade, many who are headquartered in Virginia or have some substantial presence in the Commonwealth. Today, I would like to briefly address the mission of this Commission and outline three proposals for your consideration.

As you prepare recommendations for the upcoming legislative session, The Greater Washington Board of Trade requests your support for three specific actions:

- ▲ adoption of the bipartisan, public and private sector developed statewide uniform ordinance for the Business, Professional and Occupational License Tax;
- ▲ agreement that a gross receipts tax has no place in Virginia by adopting legislation that sets out a date certain in the future by which the BPOL Tax will be repealed; and,
- ▲ extension of this Commission for one year to develop a specific plan to repeal the BPOL Tax and if necessary provide an appropriate revenue source for local government.

Let me spend a few moments on why these are the Board of Trade's priority recommendations for this Commission. As chairman of the Board of Trade's Virginia Public Affairs Council I communicated our support for the creation of this Commission during the 1995 legislative session. Specifically we supported the Commission's charge to:

- ▲ address the current division of responsibilities between local and state government to insure the most cost-effective and efficient delivery of services to citizens and businesses;
- ▲ provide for an appropriate system of revenues to local and state government to support their responsibilities while minimizing the tax burden on individuals, businesses and the Virginia economy; and,



- △ identify changes needed to local, regional and state taxes in recognition of Virginia's, and indeed, the world's changing economy.

We admit this is a powerfully complex set of issues you have been charged to address. But, these are the important, fundamental issues that must be addressed if Virginia is to maintain and even enhance its job creation opportunities in the coming century. Economic activity provides the revenues necessary to produce efficient transportation systems, quality education institutions, green space and cultural attractions. These qualities have been consistently identified as existing in the National Capital Region and desirable in a business location by those CEOs looking to locate or expand their operations. The dilemma is how to provide these benefits without strangling economic activity.

The Board of Trade and its members believe the BPOL Tax is a major obstacle to Virginia firms' and individual's ability to take full advantage of the emerging global economy. A gross receipts tax -- with or without uniform administration -- will always be a drag on the economy and the profitability of firms. A gross receipts tax, which by its very nature will never tax the net performance of a company, is particularly harmful for companies with high revenues and low profit margins and to start up companies who don't often have any profits for some years.

Today in Virginia, not only do we have a regressive gross receipts tax, but we have one that is administered in as many ways as there are local governments who impose the tax. The provisions in the Brickley Subcommittee proposal -- defining gross receipts; setting a common due date across Virginia; conforming apportionment, appeals and rulings -- are key to making BPOL tolerable and relieving companies both large and small of an unnecessarily complex compliance burden. A voluntary ordinance will not be a uniform ordinance. We ask you to recommend that the General Assembly quickly adopt a mandatory statewide uniform ordinance for the BPOL Tax.

But uniformity and correction of some the major inequities of the BPOL Tax does not reduce the harm it causes to the economic health of a company.

Virginia must eventually get rid of this regressive gross receipts tax. The Board of Trade does not support abrupt elimination of the tax, which could cause more harm than good if localities chose an equally burdensome tax to make up for lost revenue. A commitment to get rid of the tax will signal Virginia's understanding that gross receipts taxes makes its companies noncompetitive in a global marketplace. A commitment set out some years recognizes that some areas will need assistance to meet service responsibilities and keeps both the public and private sector at the table to find a mutually beneficial solution.

With the adoption of the mandatory uniform ordinance and a date certain in the future for repeal of the BPOL Tax, the second year of this Commission can focus on Virginia's overall tax system, how to fund the appropriate local and state government responsibilities and recommend those revenue sources that do not compromise the Commonwealth's economic competitiveness. The Commission should take a specific look at how revenues are raised and what specific impact that has on Virginia's competitiveness particularly in its core industries.

The Commonwealth of Virginia has a great number of attributes that make future economic growth probable, but it is by no means assured. The Greater Washington Board of Trade asks for your support to address specific improvements that will increase the odds in Virginia's economic favor:

- △ adoption of the statewide uniform ordinance for the BPOL Tax and
- △ setting a date certain for repeal of BPOL in recognition that a gross receipts tax can only limit economic opportunities.

I thank you for this opportunity to speak before you today. The Board of Trade looks forward to the recommendations from the services and revenues task forces and working with you to improve Virginia's tax system.



**Testimony by Terrie Spiro  
President and CEO  
Tysons National Bank**

**Fairfax County Chamber of Commerce  
November 14, 1995**

Good afternoon Mr. Chairman and members of the commission. My name is Terrie Spiro, President and CEO of Tysons National Bank. I also serve on the Executive Committee of the Fairfax County Chamber of Commerce. Today I am representing the Chamber's nearly 2,000 corporate members and 5,500 business men and women.

In my position as President of a local bank, I have the opportunity to meet and serve many small business owners and entrepreneurs. I must tell you that my experience indicates that taxes, specifically the BPOL tax, are one of the biggest concerns most small businesses have. Small businesses create the vast majority of new jobs in Virginia, even while struggling to meet their payrolls, expand their client base and feed their own families. The issues you are here to address are important to the future of small businesses, and I hope you will carefully weigh the impacts of your actions on this most important sector of Virginia's economy.

The Chamber's comments at your October 9th meeting focused on the service responsibilities of local governments and how localities can utilize business tools to make themselves more efficient in the delivery of services. Today we would like to touch on the issue of taxes in Virginia; specifically business taxes.

The BPOL tax is by far the most obvious of topics for the Chamber to talk about. Repeal of the BPOL tax has been the number one issue for this chamber for many years, and continues to be so today. At the commission meeting in Virginia Beach, you heard from local government officials from all over Virginia talking about the steps they were taking to address the unfairness of the BPOL tax; specifically they spoke about voluntary actions to adopt the model ordinance drafted by the VML and VACO. We applaud the efforts of local governments, such as Mr. Gilmore's home Henrico County, to take these voluntary steps. I know that in those localities where the changes have been made the local chambers have been involved in helping implement the ordinance. However, this Commission must understand that these voluntary actions cannot fully address the concerns expressed by businesses from around the Commonwealth, thereby negating the need for uniform reform and eventual repeal. That is simply untrue. There is no "fix" for the BPOL problem short of repeal of the tax. It's still a tax on gross receipts, and it's still regressive and unfair.

A model ordinance is simply that; a model. It requires local governments to commit to nothing more than what they want. Local governments are free to pick and choose which pieces of the suggested ordinance they wish to adopt.

Some local governments have set a threshold of \$50,000 under which businesses would pay no tax; some set it at \$100,000; some have no threshold at all. This commission and the General Assembly must not let two years of unanimous work undertaken by Delegate David Brickley's commission go to waste by not enacting its important provisions.

To that end, there are two things that the Fairfax County Chamber wishes to see this commission and the General Assembly accomplish by next March:

- 1) Have the Commission recommend and the General Assembly approve the uniform ordinance developed by the Brickley Commission one year ago.
- 2) Approve legislation establishing a date by which the BPOL tax will be repealed, with the opportunity over the next year to determine what revenues must be in place to meet the needs of local governments.

Legislation defeated in the 1995 Session would have set a date certain of July, 2002, by which the BPOL tax would be repealed. Establishing this reasonable legislative timeframe within which the BPOL tax can be phased-out has no immediate financial impact on any local government and provides sufficient comfort for the business community that our concerns are being heard and addressed. We're not asking for immediate repeal, just establishment of a target date to which we can focus our attentions.

Next, this commission should endorse and the General Assembly adopt the uniform ordinance that was unanimously approved by the Brickley Commission nearly one year ago, albeit with one modification. The \$100,000 threshold in gross receipts under which businesses would not be subject to the tax should be changed to a \$100,000 exemption for all businesses, meaning the first \$100,000 in gross receipts of every Virginia business would be exempt from the tax. By using the \$100,000 as a threshold rather than exemption, businesses that have gross receipts just over the threshold are subject to the full tax, creating a disincentive for the business to grow above the threshold. Delegate Brickley, the business community and local governments worked for two years on the uniform ordinance, and it had the unanimous support of everyone involved. Its adoption will help ease the burden on businesses as the tax is phased-out. It deserves your support.

This commission also has as one of its charges the examination of the overall tax structure in Virginia; more specifically, determining whether the existing tax structure meets the needs of the state and local governments and does not place undue burdens on the business community and its citizens. The Fairfax County Chamber of Commerce strongly encourages this commission to become fully engaged in this issue and fundamentally examine how Virginia taxes its citizens and businesses to determine what changes are needed and necessary.

The BPOL tax is a prime example of how an 18th century privilege tax has become a 20th century nightmare. Virginia's economy in the 21st century will be significantly different than that of the last 100 years, and we must prepare ourselves to be competitive in a global economy. Many of the businesses located here do not have to be here; technology will allow businesses to conduct business anywhere in the world from anywhere in the world. Virginia's system of taxation must, at the very least, do nothing to harm the Commonwealth's ability to attract and retain jobs. Over the past several months, Virginia has had the good fortune of being selected for several high-profile economic development projects. Yet two weeks ago, *Fortune* magazine released its survey of the best areas in which to do business in the United States, and Virginia was nowhere to be found. Our fortunes can change at any moment, and we must be prepared.

Two years ago, the Chamber and the Fairfax County Board of Supervisors jointly commissioned a study by KPMG Peat Marwick of how our overall business tax burden compared to the regions of the country with whom we compete, such as Atlanta, San Jose, and Austin, Texas. The results indicated that the combined state and local tax burden makes Fairfax County noncompetitive with these other areas; we had the second highest tax burden behind Indianapolis, Indiana. The point of this exercise was not to lower taxes on businesses in Fairfax County. Instead, we wanted to determine what sources of taxation our competitors were using and how each tax impacts the economy. Perhaps by coincidence, Atlanta, San Jose and Austin did make the *Fortune* Magazine's list of the Top 20 places to do business in America.

We believe that the combined impact of state and local taxes on the state economy is important information that this Commission must have before embarking on any reform of the tax system. In that regard, the Chamber encourages this Commission to commit to having an outside entity conduct a comprehensive review of how the Commonwealth's system of taxation, including local taxes, impacts its competitiveness relative to the states with whom we compete for jobs. Not just a look at the amount of taxes we pay, but a look at how those taxes are collected, i.e., what are we taxing? Such a study will help the Commonwealth determine what combination and methods of taxation will do the least harm to the state's economy while still meeting the needs of the state and local governments. Delegate Cranwell has for years discussed a local income tax. We presume this commission would want that to be part of this study. We do not believe changes to the Commonwealth's tax system should be made in a vacuum and without a study of the impacts of the changes on the economy. It has come to our attention that a number of states, including Pennsylvania and Maryland, are doing just this type of study so they can compete more effectively.

Part of any plans to restructure taxes must adhere to the principles of equity and uniformity. Consistency in what local taxes are in place and how they are applied are very important to businesses looking to do business in Virginia. In that regard, no matter how the BPOL or other tax issues are resolved, this Commission and the General Assembly should avoid giving local governments a menu of new local option taxes from which to choose as part of any restructuring. As the population grows and jurisdictional boundaries blur, businesses will increasingly operate in multiple jurisdictions. Simply adding new taxes to existing ones does not get to the heart of the issue: competitiveness. Consistency in the number, type and enforcement of local government taxes is necessary to ensure easy compliance and accounting.

The Fairfax County Chamber of Commerce looks forward to working with this commission to ensure Virginia remains a strong and viable place in which to live and do business. Thank you for your time and attention.



Statement of  
John B. Nicholson  
Owner, COMPANY FLOWERS!  
A flower shop in Arlington, VA  
Tuesday, November 14, 1995

MR. CHAIRMAN. Thank you for allowing me to tell you my views as a small business owner and florist, regarding taxation policies at the local and State level.

Our shop is a member of the National Federation of Independent Businesses. I am a member of FTD's Board of Governors representing some 550 florist shop owners throughout the Commonwealth. Our FTD shopowners regard taxation based on gross receipts as unfair, regressive, and unduly harsh especially on low-margin small businesses that may not be succeeding.

We ask that this tax, known as the Business & Professional Organizations License (BPOL), be phased out beginning in this coming year, and that during the phase-out period it should be applied uniformly throughout the Commonwealth to avoid unfair inducement of geographic dislocation seeking non-applicability.

Mr. Chairman, you and other legislative representatives have the chance to make a difference for the Commonwealth's florists. We have two issues of direct concern to us:

#1. We have asked you to prohibit out-of-state predators from setting up shell businesses to advertise as if their businesses were local, when in fact their locally-appearing phone ads are merely a guise for a long-distance connection that siphons money away from the truly local shops that pay Commonwealth sales taxes. We applaud your efforts, Mr. Chairman, for taking the lead in this effort to retain taxable sales for Commonwealth enterprise.

#2. We seek a legislative change to an administrative ruling that is rather minor in the scope of revenues, but of considerable nuisance with our customers. It has to do with the taxation of Wire Service fees. Florists who deliver flowers are not taxed on delivery fees, deemed to be fee for service and not product. But the Revenue Department has ruled that a Wire Service fee, applied when creating a Wire Order for a local customer, must be considered part of the product and not an ancilliary service. The florist's custom is to separate this

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wire fee (because it is apart from that which is passed along to the fulfilling florist) -- just as is done with delivery fees because they are applied apart from the value of the product. Yet one is taxed and the other is not! Customers question our inconsistency; we in turn question the inconsistent position of the Commonwealth. The tax revenue is scant (most Wire Service fees are less than \$5) but the inconvenience and customer misunderstandings are great. We ask for a legislative reversal of taxation of this Wire Service fee.

These two items of taxation policy, directly applicable to florists, pale in comparison to the onerous nature of the gross receipts "BPOL" tax, especially on top of all the other state and local taxes. Look at the taxes we pay:

## We pay tax on our sales, even if we don't charge our customers separately for the tax.

## We pay taxes on real estate, either as owners or as tenants subject to pass-through clauses in virtually all commercial leases.

## We pay taxes on tangible assets -- usually in three ways, on our business autos, on our listed assets, and on lease payments to those who have loaned us money secured by the leased assets. I might add, these payments are based on values set by formula depreciation policies, originated by the taxing authorities, not necessarily reflecting the real or booked asset values.

## We pay a payroll tax, based on gross payroll that may include employees no longer working for us, for unemployment compensation.

## We pay a separately-determined, usually higher "commercial rate" tax on the consumption of product from regulated utilities -- power, natural gas, telephone, etc.

## We pay sales tax on all items consumed in our businesses.

## We are a corporation, for protection of asset purposes, and we must therefore pay a separate franchise tax.

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## We pay State income tax, sometimes twice if our business is incorporated and we haven't elected the so-called Subchapter S provisions.

## And we assist the Commonwealth in collecting income tax from those we employ -- and look out, for being as much as a half-hour late in making those payments invokes stiff fines and penalties that often can exceed the amount collected.

On top of all this (and probably more that hasn't come to mind) -- regardless of how much or little profit may be dropping to the bottom line -- we must pay a gross receipts tax.

Traditionally, a flower shop operates on extremely thin margins. It's one of the few small businesses not requiring much capital to be tied up in inventory -- our inventory dies in four or five days! Any tax based on volume penalizes especially hard an undercapitalized business, easily transforming a perceived profit into a known loss. As you've heard, the tax applies whether or not the business makes enough money to pay it.

Also, of direct relevance to florists, much of many florists' gross income is derived from the sale of wired-out orders. We pay sales tax on the total amount, but we act as a conduit for most of the money since it must be passed along to the fulfilling florist. To tax this "conduit" money twice, first with a sales tax and then again as part of the gross receipts tax, is unduly harsh and patently unfair.

I acknowledge you face a problem in coming up with fairer alternative sources of revenue. As a former government official from years ago, I guess I join many Virginians in believing that one alternative is to reduce the number of local employees. However, more adept management with fewer people is seldom rewarded in local government service; the oiling of politically squeaking wheels is often deemed more important.

At any rate, remove this patently unfair BPOL tax. Do so in an equitable manner, requiring that as it phases out, it must be applied equally. And do so, starting next year!

Thank you for listening to me. I'd be happy to answer any questions.



## **Public Hearing Before HJ 487 Commission**

**November 14, 1995**

My name is Jennifer Woolbright. I am a manager in the State and Local Tax Practice in the Ernst & Young LLP Vienna, Virginia office. I want to thank the HJ 487 Commission for allowing me to speak today on behalf of the Virginia Public Affairs Council, a division of the Greater Washington Board of Trade. I want to take this opportunity to reaffirm the Board of Trade's commitment to the ultimate repeal of the Business, Professional and Occupational License (BPOL) tax. We believe that the BPOL tax is a regressive gross receipts tax that continues to drag on the economic growth potential in the Commonwealth of Virginia.

As a practicing tax accountant that deals exclusively with state and local tax issues, including a great deal of BPOL tax related matters, I thought it would be helpful to you if I were to highlight some of the issues that we deal with in practice which demonstrate how the BPOL tax increases the compliance complexities for Virginia businesses and potentially harms their ability to be competitive with businesses located in adjacent jurisdictions. For these reasons, the ultimate repeal would eliminate this negative factor to a company's decision to do business in Virginia.

It is our experience that the counties often apply the BPOL tax inconsistently. The sourcing of gross receipts is an issue we see repeatedly, especially for our clients who may have their headquarters in Virginia, or may simply have their accounting centers in the State. The counties want to tax these clients because they have a location here, however, the counties fail to take into account that oftentimes these locations do not generate any income for the taxpayer. The guidance for sourcing of receipts is lacking, and counties seem to apply their own methodology which often results in the taxpayer paying BPOL tax on receipts that were not generated in the counties.

Another inconsistency relates to the definition of taxable receipts which can vary, sometimes significantly, between the different counties. For example, Arlington excludes certain receipts received by IRC § 501(c)(6) organizations from tax while Fairfax County has no similar exclusion.

In addition to the frustrations caused by these inconsistencies, when our clients have issues or concerns related to the BPOL tax, they are often frustrated by the lack of an appeals process. Essentially, if a taxpayer's informal appeal to the counties is turned

down, the taxpayer's only recourse is to take the case to court. The counties need to provide aggrieved taxpayers with a consistent method to plead their cases.

One of the most significant issues our clients face in regard to difficulties of the administration of the BPOL tax is that the county ordinances are out of date. Most of the categories have not been updated in recent years, and many do not adequately address emerging businesses and high technology companies that do not fit into the categories established twenty years ago. These outdated categories often lead to confusion over the proper rate at which companies should be taxed.

Also, the current rate structures seem to be contrary to the development of new business in Virginia, especially Northern Virginia. While the business growth in Northern Virginia in the past decade has been substantially from high technology service companies, the rates for these types of industries are consistently among the highest. By placing the burden more heavily on the high technology service types of companies, the counties are hindering the State's ability to attract these taxpayers to Virginia.

Another significant issue is the treatment of tiered partnerships. The State statute prohibits the counties from taxing receipts received from members of an affiliated corporate group, however, no similar exemption exists for partnerships. As a result, the same income can be subjected to BPOL tax multiple times as it flows up through the different levels of partnerships. Presumably, the State exemption for affiliated corporate receipts is to prevent double taxation. It is inconsistent not to provide a similar exemption for related partnerships. Multiple taxation of the gross receipts of these tiered partnerships deters real estate and investment management companies from locating in Virginia.

We have also seen BPOL tax be an issue in a business's decision as to whether or not to locate or expand in Virginia. One of the most significant problem is faced by high technology companies and start up companies that may have high receipts but have very low net income, or in many cases, significant tax losses. The BPOL tax can cause cash flow problems for these companies that may not generate any profit for many years, yet are subject to the tax from the first day they have a location within Virginia. The fact that there is no cap or limitation on the tax also presents a concern. While many businesses are willing to pay some amount for a license to do business in Virginia, the fact that this amount is unknown and unlimited is more than many companies are willing to bear. Growing companies with significant receipts and significant expenses can face an unmanageable BPOL tax bill each year.

When our clients approach us about recommending a location to do business, we list the BPOL tax as an issue that the clients need to consider carefully, especially since Maryland has similar tax structure and rate but does not have an equivalent to the BPOL

tax. Although tax in general, and the BPOL tax specifically, is not always the determining factor in location or expansion decisions, we have seen taxpayers decide not to move their business to Virginia, or not to expand certain parts of their business here, because of the gross receipts tax. We have even seen taxpayers move all or a portion of their business out of Virginia because of the BPOL tax.

In summary, in order to reduce the risk to Virginia businesses from the inconsistent application of the BPOL tax rules between counties, and to decrease the competitive impact that the BPOL tax has on a company's decision to locate or expand in Virginia, The Board of Trade would like to ask the Commission to recommend adopting the statewide uniform ordinance as an interim step both to reform and to bring consistency to the BPOL tax. Also, to reduce administration and to attract small and start up businesses, we ask the Commission to recommend changing the \$100,000 threshold to a \$100,000 exemption. Finally, the Board of Trade asks that the Commission recommend setting a date by which the BPOL tax would be repealed as a sign that the Commission recognizes that a gross receipts tax has no place in Virginia. The date should be set to occur anywhere from five to ten years in the future.

Thank you for your time and consideration.

APPENDIX C  
1996 SESSION

961935136

**HOUSE BILL NO. 293**

Offered January 10, 1996

A *BILL to amend and reenact §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, and 58.1-3732 of the Code of Virginia: to amend the Code of Virginia by adding sections numbered 58.1-3700.1 and 58.1-3703.1; and to repeal §§ 58.1-3707 and 58.1-3725 of the Code of Virginia, relating to the local business, professional, and occupational license tax.*

Patrons—Brickley, Albo, Almand, Armstrong, Bryant, Callahan, Cantor, Clement, Connally, Cooper, Crouch, Davies, Diamonstein, Dillard, Drake, Forbes, Grayson, Hall, Hamilton, Harris, Heilig, Ingram, Katzen, Keating, Kilgore, Marshall, McClure, McDonnell, Morgan, Nelms, Nixon, O'Brien, Parrish, Plum, Puller, Purkey, Putney, Rhodes, Scott, Shuler, Tata, Thomas, Van Yahres, Wagner, Wardrup, Watkins and Wilkins; Senators: Barry, Benedetti, Chichester, Colgan, Howell, Stosch and Waddell

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-3700, 58.1-3701, 58.1-3703, 58.1-3706, 58.1-3708, and 58.1-3732 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-3700.1 and 58.1-3703.1 as follows:**

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

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

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

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:

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

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

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to

1 vote or more than fifty percent of the total value of shares of all classes of stock of each corporation,  
2 taking into account the stock ownership of each such person only to the extent such stock ownership  
3 is identical with respect to each such corporation.

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

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

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

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

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

34 "Financial services" means the buying, selling, handling, managing, investing, and providing of  
35 advice regarding money, credit, securities, or other investments.

36 "Gross receipts" means the whole, entire, total receipts, without deduction.

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

39 "Professional services" means services performed by architects, attorneys-at-law, certified public  
40 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the  
41 healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or  
42 alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such  
43 occupations, and no others, as the Department of Taxation may list in the BPOL guidelines  
44 promulgated pursuant to § 58.1-3701. The Department shall identify and list each occupation or  
45 vocation in which a professed knowledge of some department of science or learning, gained by a  
46 prolonged course of specialized instruction and study is used in its practical application to the affairs  
47 of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the  
48 practice of an art or science founded on it. The word "profession" implies attainments in  
49 professional knowledge as distinguished from mere skill, and the application of knowledge to uses for  
50 others rather than for personal profit.

51 "Purchases" means all goods, wares and merchandise received for sale at each definite place of  
52 business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,  
53 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A  
54 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods.

1 wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the  
2 cost of manufacture.

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

5 § 58.1-3701. Department to promulgate guidelines.

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

16 The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases  
17 to interpret the provisions of this ~~section~~ chapter and the guidelines issued pursuant to this  
18 ~~subsection~~ section: however, the Tax Commissioner shall not be required to interpret any local  
19 ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an  
20 interpretation of any other tax law.

21 § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of  
22 authority.

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

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

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

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

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

40 4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise  
41 at wholesale at the place of manufacture. *Without limiting or restricting the meaning of the term*  
42 *"manufacturing" as otherwise provided by law, for purposes of this section, "manufacturing and*  
43 *selling" shall include the design, development or other creation of computer software for lease, sale*  
44 *or license, and "manufacturing" shall include the assembly of materials or components to produce an*  
45 *integrated system or other different product ;*

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

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

53 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of  
54 such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel

trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for

1 which the taxicab driver operates;

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

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

10 16. ~~Upon any person who is authorized to celebrate the rites of marriage under §§ 20-23 and~~  
11 ~~20-25 and any person who is authorized to solemnize a marriage under § 20-26 provided such gross~~  
12 ~~annual 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  
15 solely in praying for others upon accreditation by such church or religious denomination;

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

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

32 19. *On any venture capital fund which means a debt or equity investment fund providing capital*  
33 *to a business enterprise at any stage of its development prior to any public offering of stock.*

34 § 58.1-3703.1. Uniform ordinance provisions.

35 A. Every ordinance levying a license tax pursuant to this chapter shall include provisions  
36 substantially similar to this subsection. As they apply to license taxes, the provisions required by this  
37 section shall override any limitations or requirements in Chapter 39 (§ 58.1-3900 et seq.) of this title  
38 to the extent that they are in conflict.

39 1. License requirement.

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

54 2. Due dates and penalties:



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

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

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

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

28 "Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a  
29 prudent person would exercise under the circumstances in determining the filing obligations for the  
30 business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as  
31 requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment,  
32 acting to remove an impediment once it occurred, and promptly rectifying a failure once the  
33 impediment was removed or the failure discovered.

34 "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of  
35 records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness)  
36 of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in  
37 good faith, upon erroneous written information from the assessing official, who was aware of the  
38 relevant facts relating to the taxpayer's business when he provided the erroneous information.

39 e. Interest shall be charged on the late payment of the tax from the due date until the date paid  
40 without regard to fault or other reason for the late payment. Whenever an assessment of additional or  
41 omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and  
42 collected on the amount of the assessment found to be erroneous shall be refunded together with  
43 interest on the refund from the date of payment or the due date, whichever is later. Interest shall be  
44 paid on the refund of any BPOL tax from the date of payment or due date, whichever is later,  
45 whether attributable to an amended return or other reason. Interest on any refund shall be paid at  
46 the same rate charged under § 58.1-3916.

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

51 3. Situs of gross receipts.

52 a. General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the  
53 gross receipts included in the taxable measure shall be only those gross receipts attributed to the  
54 exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of

1 activities conducted outside of a definite place of business, such as during a visit to a customer  
2 location, the gross receipts shall be attributed to the definite place of business from which such  
3 activities are initiated, directed, or controlled. The situs of gross receipts for different classifications  
4 of business shall be attributed to one or more definite places of business or offices as follows:

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

9 (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of  
10 business at which sales solicitation activities occur, or if sales solicitation activities do not occur at  
11 any definite place of business, then the definite place of business from which sales solicitation  
12 activities are directed or controlled; however, a wholesaler subject to a license tax measured by  
13 purchases shall determine the situs of its purchases by the definite place of business at which or from  
14 which deliveries of the purchased goods, wares and merchandise are made to customers. A ny  
15 wholesaler who is subject to license tax in two or more localities and who is subject to multiple  
16 taxation because the localities use different measures, may apply to the Department of Taxation for a  
17 determination as to the proper measure of purchases and gross receipts subject to license tax in each  
18 locality;

19 (3) The gross receipts of a business renting tangible personal property shall be attributed to the  
20 definite place of business from which the tangible personal property is rented or, if the property is  
21 not rented from any definite place of business, then to the definite place of business at which the  
22 rental of such property is managed; and

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

26 b. Apportionment. If the licensee has more than one definite place of business and it is impractical  
27 or impossible to determine to which definite place of business gross receipts should be attributed  
28 under the general rule, the gross receipts of the business shall be apportioned between the definite  
29 places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite  
30 place of business unless some activities under the applicable general rule occurred at, or were  
31 controlled from, such definite place of business. Gross receipts attributable to a definite place of  
32 business in another jurisdiction shall not be attributed to this jurisdiction solely because the other  
33 jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business  
34 in such other jurisdiction.

35 c. Agreements. The assessor may enter into agreements with any other political subdivision of  
36 Virginia concerning the manner in which gross receipts shall be apportioned among definite places of  
37 business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the  
38 total gross receipts attributable to all of the definite places of business affected by the agreement.  
39 Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally  
40 inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to  
41 engage in business and that the difference has, or is likely to, result in taxes on more than 100% of  
42 its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith  
43 effort to reach an apportionment agreement with the other political subdivisions involved. If an  
44 agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the  
45 Department of Taxation pursuant to § 58.1-3701; notice of the request shall be given to the other  
46 party. Notwithstanding the provisions of § 58.1-3993, when a taxpayer has demonstrated to a court  
47 that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may  
48 create a double assessment within the meaning of § 58.1-3986, the court shall enter such orders  
49 pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to  
50 pay multiple assessments even though it is not then known which assessment is correct and which is  
51 erroneous.

#### 52 4. Limitations and extensions.

53 a. Where, before the expiration of the time prescribed for the assessment of any license tax  
54 imposed pursuant to this ordinance, both the assessing official and the taxpayer have consented in

1 writing to its assessment after such time, the tax may be assessed at any time prior to the expiration  
2 of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in  
3 writing made before the expiration of the period previously agreed upon.

4 b. Notwithstanding § 58.1-3903, the assessing official shall assess the local license tax omitted  
5 because of fraud or failure to apply for a license for the current license year and the six preceding  
6 license years.

7 c. The period for collecting any local license tax shall not expire prior to a date two years after  
8 the date of the assessment, two years after the final determination of an administrative appeal  
9 pursuant to § 58.1-3980, or two years after the final decision in a court application pursuant to §  
10 58.1-3984 or similar law, whichever is later.

11 5. Appeals and rulings. For purposes of this subdivision and subdivision 6 of this section, "local  
12 business tax" means any one or more of the following: (i) business, professional and occupational  
13 license tax, (ii) machinery and tools tax, (iii) business tangible personal property tax, and (iv)  
14 merchant's capital tax.

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

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

36 c. Any person assessed with a local business tax as a result of an audit may apply within ninety  
37 days of the determination by the assessing official on an application pursuant to subdivision 5a to the  
38 Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a  
39 determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the  
40 taxpayer and the assessing official are notified that a longer period will be required. The application  
41 shall be treated as an application pursuant to § 58.1-1821, and the Tax Commissioner may issue an  
42 order correcting such assessment pursuant to § 58.1-1822. Following such an order, either the  
43 taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984.  
44 However, the burden shall be on the party making the application to show that the ruling of the Tax  
45 Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be  
46 made a party to an application to correct an assessment merely because the Tax Commissioner has  
47 ruled on it.

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

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

11 6. Recordkeeping and audits.

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

21 B. Transitional provisions.

22 1. A locality which changes its license year from a fiscal year to a calendar year and adopts  
23 March 1 as the due date for license applications shall not be required to prorate any license tax to  
24 reflect a license year of less than twelve months, whether the tax is a flat amount or measured by  
25 gross receipts, provided that no change is made in the taxable year for measuring gross receipts.

26 2. The provisions of this section relating to penalties, interest, and administrative and judicial  
27 review of an assessment shall be applicable to assessments made on and after January 1, 1997, even  
28 if for an earlier license year. The provisions relating to agreements extending the period for assessing  
29 tax shall be effective for agreements entered into on and after July 1, 1996. The provisions permitting  
30 an assessment of license tax for up to six preceding years in certain circumstances shall not be  
31 construed to permit the assessment of tax for a license year beginning before January 1, 1997.

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

34 § 58.1-3706. Limitation on rate of license taxes.

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

41 1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100  
42 of gross receipts;

43 2. For retail sales, twenty cents per \$100 of gross receipts;

44 3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts;  
45 and

46 4. For repair, personal and business services, and all other businesses and occupations not  
47 specifically listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

48 The rate limitations prescribed in this section shall not be applicable to license taxes on (i)  
49 wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be  
50 governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by §  
51 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi)  
52 itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums,  
53 arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the  
54 public, which shall be governed by § 58.1-3729; (viii) savings and loan associations and credit

1 unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by  
2 § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

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

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

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

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

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

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

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

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

52 § 58.1-3708. Situs for local license taxation of businesses, professions, occupations, etc.

53 A. Except as otherwise provided by law and except as to public service corporations, the situs for  
54 the local license taxation for any licensable business, profession, trade, occupation or calling, shall be

1 the county, city or town (hereinafter called "locality") in which the person so engaged has a definite  
2 place of business ~~or maintains his office~~. If any such person has a definite place of business ~~or~~  
3 ~~maintains an office~~ in any other locality, then such other locality may impose a license tax on him,  
4 provided such other locality is otherwise authorized to impose a local license tax with respect thereto.

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

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

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

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

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

24 § 58.1-3732. Exclusions and deductions from "gross receipts."

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

28 *The following items are excluded:*

29 1. Amounts received and paid to the United States, the Commonwealth or any county, city or  
30 town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on  
31 cigarettes, for any federal or state excise taxes on motor fuels ; ~~or any.~~

32 2. Any amount representing the liquidation of a debt or conversion of another asset to the extent  
33 that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts  
34 receivable created by sales which have been included in taxable receipts even though the creation of  
35 such debt and factoring are a regular part of its business).

36 3. Any amount representing returns and allowances granted by the business to its customer.

37 4. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

38 5. Receipts representing the return of principal of a loan transaction in which the licensee is the  
39 creditor, or the return of principal or basis upon the sale of a capital asset.

40 6. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or  
41 other incentive offered to induce the recipient to purchase certain goods or services from a person  
42 other than the offeror, and which the recipient assigns to the licensee in consideration of the sale  
43 goods and services shall not be considered a rebate or discount to the licensee, but shall be included  
44 in the licensee's gross receipts together with any handling or other fees related to the incentive.

45 7. Withdrawals from inventory for which no consideration is received and the occasional sale or  
46 exchange of assets other than inventory whether or not a gain or loss is recognized for federal  
47 income tax purposes.

48 8. Investment income not directly related to the privilege exercised by a licensable business not  
49 classified as rendering financial services. This exclusion shall apply to interest on bank accounts of  
50 the business, and to interest, dividends and other income derived from the investment of its own funds  
51 in securities and other types of investments unrelated to the licensed privilege. This exclusion shall  
52 not apply to interest, late fees and similar income attributable to an installment sale or other  
53 transaction that occurred in the regular course of business.

54 B. The following shall be deducted from gross receipts or gross purchases that would otherwise be

1 *taxable:*

2 1. Any amount paid for computer hardware and software that are sold to a United States federal or  
3 state government entity provided that such property was purchased within two years of the sale to  
4 said entity by the original purchaser who shall have been contractually obligated at the time of  
5 purchase to resell such property to a state or federal government entity. This ~~exclusion~~ deduction shall  
6 not occur until the time of resale and shall apply to only the original cost of the property and not to  
7 its resale price. and the ~~exclusion~~ deduction shall not apply to any of the tangible personal property  
8 which was the subject of the original resale contract if it is not resold to a state or federal  
9 government entity in accordance with the original contract obligation.

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

12 2. That, effective January 1, 1997, §§ 58.1-3707 and 58.1-3725 of the Code of Virginia are  
13 repealed.

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

16 4. That the remaining provisions of this act shall be effective for license years beginning on and  
17 after January 1, 1997, but any provision, except the imposition of a license fee pursuant to  
18 § 58.1-3703, may, at the locality's election, be adopted and applied to an earlier license year.

#### Official Use By Clerks

##### Passed By

##### The House of Delegates

without amendment ☐  
with amendment ☐  
substitute ☐  
substitute w/amdt ☐

##### Passed By The Senate

without amendment ☐  
with amendment ☐  
substitute ☐  
substitute w/amdt ☐

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the House of Delegates

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Clerk of the Senate



APPENDIX D  
1996 SESSION

965620297

HOUSE JOINT RESOLUTION NO. 108

Offered January 22, 1996

*Continuing the Commission on State and Local Government Responsibility and Taxing Authority.*

Patrons—Hull, Cranwell and Diamonstein

Referred to Committee on Rules

WHEREAS, House Joint Resolution 160 (1994) established the Local Revenue Resources Subcommittee to begin to examine all local taxes and fees and review their equity and efficiency, and House Document 69 reported the findings of the Commission; and

WHEREAS, House Joint Resolution 487 (1995) broadened the focus of the HJR 160 study by establishing the Commission on State and Local Government Responsibility and Taxing Authority to examine the services and means of raising revenues both at the state and local levels; and

WHEREAS, the Commission had three public hearings during 1995 as part of their examination of such services and revenues; and

WHEREAS, the members of the Commission were appointed to either a Services Task Force or a Revenues Task Force in order to focus on these two areas; and

WHEREAS, the Revenues Task Force adopted the business, professional and occupational license uniform ordinance 1995 legislation and recommended it be introduced during the 1996 General Assembly Session; and

WHEREAS, the Revenues Task Force suggested that further examination of the revenues aspect of the study is required; and

WHEREAS, the Services Task Force examined the provision of services in the areas of education, health, mental health, social services, corrections and transportation; and

WHEREAS, suggestions were made regarding what services could be transferred to the state from the localities; and

WHEREAS, the major suggestion was to transfer the local share of the funding (\$1.4 billion) for the standards of quality in education to the state because the localities have no control over or input into creating those standards; and

WHEREAS, in order to assist with this funding it was also suggested that one or more local taxes could be assumed by the state, such as the BPOL tax, personal property tax and local options sales tax; and

WHEREAS, it was suggested by the business community that further consideration should be given to setting a date certain for repealing the BPOL tax and replacing it with some other revenue source; and

WHEREAS, the Commission has determined that further study is needed, now therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on State and Local Government Responsibility and Taxing Authority be continued in order to complete its task of examining the state and local services and the revenues raised to provide those services and determining if changes should be made in such arrangements. The Speaker of the House of Delegates may appoint an additional House member who has experience in finance and local government.

The direct costs of this study shall not exceed \$50,000.

The Weldon Cooper Center for Public Service at the University of Virginia and the Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Department of Taxation and the State Corporation Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall be continued for one year only and shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

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



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without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
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