

## **BPOL Uniform Ordinance Provisions**

*Virginia Code* § 58.1-3703.1 requires every ordinance levying a license tax pursuant to Chapter 37 of Title 58.1 of the *Va. Code* to include provisions substantially similar to those set out in the statute. The local severance taxes are imposed pursuant to *Va. Code* §§ 58.1-3712, 58.1-3712.1, 58.1-3713, and 58.1-3713.4, which are part of Chapter 37. More information regarding the Business, Professional, and Occupational License (BPOL) Tax may be found in the BPOL Tax regulations, 23 *Virginia Administrative Code* (VAC) 10-500-10 *et seq.*

The uniform ordinance provisions include:

- 1) general rules governing who may be subject to licensure in a locality, *Va. Code* § 58.1-3703.1(A)(1);
- 2) due dates, penalties, and interest for BPOL license applications and license tax payments, *Va. Code* § 58.1-3703.1(A)(2);
- 3) rules for determining the situs and apportionment of gross receipts, *Va. Code* § 58.1-3703.1(A)(3);
- 4) limitations and extensions for assessments, *Va. Code* § 58.1-3703.1(A)(4);
- 5) taxpayer appeal procedures at the local and state level, *Va. Code* § 58.1-3703.1(A)(5) – (A)(7);
- 6) provisions allowing taxpayers to obtain advance rulings from their local commissioners of the revenue, *Va. Code* § 58.1-3703.1(A)(8); and
- 7) record-keeping and audit procedures, *Va. Code* § 58.1-3703.1(A)(9).

House Bill 1233 and Senate Bill 658 (2012 *Acts of Assembly*, Chapters 665 and 722), require localities imposing a local severance tax to include the provisions substantially similar to those set forth in *Va. Code* § 58.1-3703.1, except for its provisions regarding license requirements and situs of gross receipts found in subdivisions (A)(1) and (A)(3) of such section. Accordingly, House Bill 1233 and Senate Bill 658 require the following provisions to be included in any ordinance imposing a local severance tax.

### Due Dates, Penalties, and Interest

If a person is not previously licensed, he must apply for a license prior to beginning business. If the person was licensed in the previous year, he must apply for a license prior to March 1st. The applications are on forms prescribed by the local tax officials. For reasonable cause, the local official may allow an extension for the filing of the application and such extension may be conditioned on the timely payment of an estimate of the tax due. Taxes paid based upon an estimate will be subject to correction, with interest and penalties, if the estimate is unreasonable. The locality has the option of requiring payment of the tax on or before March 1st or a later date, or thirty or more days after the person begins business.

A locality may impose a ten percent penalty on an entity which fails to file a license application or return on time or on an entity which makes late payments. Generally, only the late filing penalty may be imposed if both the application and payment are late, however, both penalties may be imposed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax, if the application and the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the, no late payment penalty may be assessed. If any assessment of tax is not paid within 30 days, the treasurer or other collecting official may impose a ten percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties may not be imposed. (Source: *Va. Code* § 58.1-3703.1(A)(2)(d))

Interest is charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of delinquency.

Whenever an assessment of additional or omitted tax is found to be erroneous, all interest and any penalties charged and collected on the amount found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or the due date, whichever is later. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later. (Source: *Va. Code* § 58.1-3703.1(A)(2)(e))

#### Limitations and Extensions of Time to Assess or Collect the Tax

*Virginia Code* § 58.1-3903 provides that, in general, an assessing official may only assess omitted local taxes for the current tax year and the three preceding tax years. Notwithstanding *Va. Code* § 58.1-3903, under *Va. Code* § 58.1-3703.1(A)(4) the assessing official may assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

However, if before the expiration of time established for the assessment, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time during the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

The uniform ordinance provisions also provide that the period for collecting any local license tax will not expire prior to:

- Five years following December 31 of the year for which such taxes were assessed,
- Two years after the date of assessment if the period for assessment has been extended,
- Two years after the final determination of an appeal for which collection has been stayed, or
- Two years after the final decision in a court application for which collection has been stayed, whichever is later.

(Source: *Va. Code* § 58.1-3703.1(A)(4))

### Record-Keeping and Audits

Every person who is assessable with a local license tax must keep sufficient records to enable the assessor to verify the correctness of taxes paid for the license years assessable and to enable the assessor to ascertain the correct amount of tax that was assessable. All such records, books of accounts and other information must be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within a jurisdiction. The assessor must provide the taxpayer with the option to conduct the audit at the taxpayer's place of business if the records are maintained there. If maintained outside the assessor's jurisdiction, copies of the appropriate books and records must be sent to the assessor's office upon demand. (Source: *Va. Code* § 58.1-3703.1(A)(9))

### Requests for Written Rulings

A taxpayer may request a written ruling from the local assessing officer regarding the application of a local license tax to a specific set of facts. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request will invalidate any such ruling issued.

A written ruling issued by the local assessing officer may be revoked or amended prospectively if: (i) there is a change in the law, a court decision, or the regulations issued by the Department of Taxation upon which the ruling was based, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect. (Source: *Va. Code* § 58.1-3703.1(A)(8))

## Appeals Procedures

The taxpayer must first file an Application for Review with the local assessing officer before an appeal can be made to the Tax Commissioner. The Application for Review must be filed within one year of the last day of the tax year for which such assessment is made or within one year from the date of the appealable event, whichever is later. An "appealable event" is defined as an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's:

- Examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment;
- Determination regarding the rate or classification applicable to the licensable business;
- Assessment of a local license tax when no return has been filed by the taxpayer; or
- Denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

(Source: *Va. Code* § 58.1-3703.1(A)(5))

Upon the timely filing of an Application for Review, the local assessing officer will make a final written determination on the taxpayer's application. The local assessing officer must issue a final written determination within a reasonable time of the taxpayer's timely filing of an Application for Review. A taxpayer whose application for correction has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner. The Tax Commissioner shall not consider an appeal filed in this manner if he finds that the absence of final determination was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination. After issuing a final written determination, the local assessing officer may commence or resume collection activity on a license tax assessment. (Source: *Va. Code* § 58.1-3703.1(A)(5))

The collection efforts must be suspended, however, upon the taxpayer's filing of a Notice of Intent to Appeal the final determination or upon the filing of an Appeal to the Tax Commissioner. The taxpayer then has 90 days from the date of the local assessing officer's final written determination to appeal that determination to the Tax Commissioner. In order to prevent the commencement or resumption of collection activities, the taxpayer must file a complete application for review within 30 days of filing the notice of intent to appeal. (Source: *Va. Code* § 58.1-3703.1 (A)(6))

The Tax Commissioner will provide written notice to the local assessing officer when the taxpayer has filed a timely Appeal to the Tax Commissioner. The local assessing officer will then have 30 days to file a reply with additional information or to

file a written request to address issues first raised on Appeal to the Tax Commissioner. If the local assessing officer files a written request to address new issues, the appeal must return to the local assessing officer and the local appeals process starts anew. (Source: *Va. Code* § 58.1-3703.1 (A)(6))

Following an order made by the Tax Commissioner, the taxpayer or the local assessing officer may file an appeal to the circuit court pursuant to *Va. Code* § 58.1-3984. The burden shall be on the appealing party to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to the appeal merely because the Tax Commissioner has issued a final determination. Collection activity will continue to be suspended unless an appeal to the circuit court is filed and a copy served on the local assessing officer within 30 days of filing a notice of intent to file an appeal to the circuit court. (Source: *Va. Code* § 58.1-3703.1 (A)(7)(a))

On receipt of a notice of intent to file an appeal to the circuit court of an order or final determination of the Tax Commissioner and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the local officer responsible for collection activity must further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous; (ii) collection would be jeopardized by delay; or (iii) suspension of collection would cause substantial economic hardship to the locality. No suspension of collection activity shall be required if the appeal to the circuit court fails to identify with particularity the amount in dispute. (Source: *Va. Code* § 58.1-3703.1 (A)(7)(b))

Collection activity will continue to be suspended unless an appeal to the circuit court is filed and a copy served on the local assessing officer within 30 days of filing a notice of intent to file an appeal to the circuit court. Suspension of collection activity shall not be applicable to any appeal that is initiated by the direct filing of an appeal to the circuit court without prior exhaustion of the right to appeal the assessment administratively to the local assessing officer and the Tax Commissioner. (Source: *Va. Code* § 58.1-3703.1 (A)(7)(b))